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Court : Patna

Decided On : Jan-29-2004

Judge : Chandramauli Kumar Prasad, J.

Appeal No. : CWJC No. 7929 of 2003

Appellant : Saryug Kumar

Respondent : State of Bihar and ors.

Disposition : Application allowed

Judgement :

Chandramauli Kumar Prasad, J.

1. This application has been filed for quashing the order dated 11.10.2002 passed by the Divisional Commissioner, Munger in Arms Appeal No. 6/2001-2002 whereby the appeal preferred by the petitioner against the order of the Licensing Authority revoking the licence has been, dismissed for default. Further prayer made by the petitioner is to quash the order dated 31.1.2003 (Annexure-7) whereby the application filed for restoration of the aforesaid appeal, has been dismissed.

2. Short facts giving rise to the present application are that the petitioner held licence bearing No. 12 of 1996 for a non-prohibited bore arms. After the grant of

the licence, he purchased the rifle on 7.9.1998. A proceeding for revocation of the licence was initiated against the petitioner and the Licensing Authority cancelled his licence. Against the said order, he preferred appeal before the Commissioner which was registered as Arms Appeal No. 6 of 2001, 2002 in which on 6.9.2002, petitioner filed hajri. On that date Commissioner called for the lower Court record and the case was directed to be listed on 4.10.2002. On the said date, petitioner was absent and a statement was made by the counsel for the State that notwithstanding the cancellation of the licence by the Collector, petitioner had not deposited the arms. Taking note of the aforesaid statement, the Commissioner observed that in case the petitioner does not do so 'keeping in mind his persistent absence, this Court will be constrained to come to the view that he is not interested in pursuing his appeal and will take necessary action accordingly.' Thereafter the Commissioner adjourned the case for 11.10.2002 and on that date, petitioner did not appear and hence, the appeal was dismissed for default. Thereafter, the petitioner preferred application for restoration of the same but by order dated 31.1.2003 (Annexure-7), same has been rejected.

3. A supplementary affidavit has been filed on behalf of the petitioner in which it has been stated that the petitioner had surrendered the arms on 5.9.2001 and in support of the aforesaid assertion, certificate granted by the Sub Inspector of Police, has been placed on record.

4. Mr. Maitin, appearing on behalf of the petitioner submits that the Commissioner was swayed by the fact that the petitioner had not deposited the arms although the licence was cancelled to dismiss the petitioner's appeal for default. He points out that by order dated 6.9.2002, the lower Court record was called for but the same was not received and the Commissioner instead of waiting for the same, dismissed the petitioner's appeal for default on 11.10.2002. He points out that the petitioner having shown sufficient cause, the Commissioner ought to have restored the appeal and should not have rejected the petitioner's prayer for restoration.

5. Junior Counsel to Standing Counsel VI, however, submits that the petitioner did not appear on four subsequent dates and as such the Commissioner rightly dismissed the appeal for default.

6. Having considered the rival contentions, I find substance in the submission of Mr. Maitin. It is relevant here to state that first date in the case was 12.10.2001 and on that date, the petitioner appeared but the case was adjourned. Thereafter on 22.3.2002, although petitioner was absent, but the matter was not taken up as the Commissioner was otherwise busy. Thereafter on 20.6.2002, petitioner did not appear and the next date fixed in the case was 6.9.2002. On that date, the petitioner was present and lower Court record was called for and the case was directed to be listed on 4.10.2002, when a statement was made by the counsel for the State that the petitioner had not deposited the arms and taking note of the aforesaid statement, the case was adjourned to 11.2.2002. On 11.2.2002, nobody appeared and the case was dismissed.

The Commissioner had dismissed the appeal in default being swayed by the fact that the petitioner had not deposited the arms which does not seem to be correct. Further, the petitioner has stated that he was suffering from Jaundice and therefore, did not attend the Court. In support thereof, the certificate granted by the doctor was also placed on record. I am of the opinion that the petitioner having shown sufficient cause, the Commissioner ought to have restored the appeal which was dismissed for default.

8. In the result, the application is allowed. The orders dated 11.10.2002 (Annexure-5) and 31.1.2003 (Annexure-7) are quashed and the Commissioner is directed to hear the appeal on merit. The petitioner undertakes that he shall appear before the Commissioner on 16th of February, 2004. Let him do so. No cost.

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