

Mohd. Nazim and Etc. Vs. State

Mohd. Nazim and Etc. Vs. State

SooperKanoon Citation : sooperkanoon.com/486785

Court : Allahabad

Decided On : Oct-01-1997

Reported in : 1998CriLJ1089

Judge : S.K. Phaujdar, J.

Acts : [Arms Act, 1959](#) - Sections 3, 5, 7, 8, 8(2), 11, 13, 17, 25, 29, 33 and 44; Prevention of Corruption Act - Sections 5(2); Companies Act; Indian Penal Code (IPC) - Sections 161, 165, 409, 420, 467, 468 and 471; Code of Criminal Procedure (CrPC) , 1974 - Sections 155(2) and 482; Code of Criminal Procedure (CrPC) - Sections 491 and 561A; Arms Rules - Rules 4, 25, 25(2) and 25(3); [Constitution of India](#) - Articles 226 and 227

Appeal No. : Criminal Misc. Appln. Nos. 4434, 4452, 4988, 3923, 3903, 4460 and 4694 of 1997

Appellant : Mohd. Nazim and Etc.

Respondent : State

Advocate for Def. : S.F.A. Naqvi, A.G.A.

Advocate for Pet/Ap. : V.P. Srivastava, ;Laxmi Kant Dubey, ;N.D. Shukla, ;C.P. Upadhyay, ;A.N. Misra and ;Ajit Kumar, Advs.

Judgement :

ORDER

S.K. Phaujdar, J.

1. All these cases have been taken up together as certain common questions of law regarding interpretation of the provisions of the [Arms Act, 1959](#), had cropped up in all these matters. While taking up the matters, the common points will be dealt in common while the individual cases of the applicants, beyond the common points, shall be taken up separately. The cases could be grouped in three broad groups. In almost all the applications the FIRs in the respective case have been sought to be quashed. In some of them protection against arrest during investigation has been prayed for while in one case there is simply a prayer for transfer of the investigation of C.B.I (in Cri. Misc. Application No. 4694 of 1997). Some of the applicants are dealers in arms, who are sought to be prosecuted for purchase of weapons allegedly smuggled into India. Some others are both purchasers and sellers while a third group consists of mere bona fide purchasers as per their claims.

2. The basic facts behind these cases, bereft of the details, are as follows : On some report about illegal smuggling of arms into India, the District Magistrates of different districts issued directions to the licensed arms dealers to declare their transactions of purchase and sale during a certain period. Upon such disclosures the matters were enquired into and alleged fake

3. Cri. Misc. Application No. 4434 of 1997 relates to case Crime No. 631 of 1997 under Section 8(2)(25) of the Arms Act, P. S. Shahganj, Allahabad. This report was lodged on 8-7-1997 by the City Magistrate, In-charge of the Arms Section, Allahabad. M/s. India Arms Stores, Leader Road, P. S. Shahganj, stood names as the accused; The applicant, Mohd. Nazim, is the licensee for this M/s. India Arms Stores. This case relates to two pistols on which the names of the manufacturing company were not engraved. The licensee was asked to indicate in detail the description of these two pistols but the licensee simply indicated the pistols to be of foreign make. It was stated in the FIR that there was violation of Section 8(2) punishable under Section 25 of the Arms Act. The FIR itself speaks of a plea by the dealer that he was not in a position to give the other details as his papers were seized by the CBI. It is the, case of the prosecution that the CBI had seized the

papers for a particular period only and it was open for the dealer to give the details from the subsequent papers. In this case it is the plea of the applicant Mohd. Nazim that the available details were given to the District Magistrate in terms of his notice. His firm had purchased one pistol from M/s. H. N. Sahu and Company, another from one Mirajuddin, an arms dealer of Indore and, thus, papers were there for the two pistols involved in the FIR. He took up a plea that he was a bona fide purchaser of the pistols from two arms dealers and he had sold these two pistols to customers in his capacity as a dealer in arms. It was submitted that he violated no provisions of law and the FIR should be quashed or, at least, he should be given a protection against arrest during investigation of the case. Initially, the prayer for quashing the FIR was not there but it was subsequently added by an amendment.

4. Crl. Misc. Application No. 4452 of 1997 of Ashiqur Rehman Khan deals with an FIR in case Crime No. 26 of 1996 under Section 25 of the Arms Act, P.S. Khitar, District Shahjehanpur, together with another FIR in case Crime No. 23 of 1996 under Sections 420, 467 and 471, IPC of the same police station. He also made a prayer for protection against arrest during investigation. In this FIR, the allegations against the applicant and others was made on 7-3-1996. It is the case of the prosecution that the applicant posed to be holder of a fire-arm licence issued from Nagaland which after verification was found to be illegal and forged. The concerned licence, which according to the applicant, was issued to him from Nagaland where he had been staying in connection with his business, bore No. NL/3/467/ TSQ for a 12-bore DBBL gun. He was also holding a gun under that licence, the Gun No. being 5416 of 1992 and the possession thereof is not denied, rather is being justified to have been held under the aforesaid licence. In this application it was stated that no step was taken by the authorities for cancellation of the licence and the whole proceeding was untenable.

5. In the third case, being Crl. Misc. Application No. 4988 of 1997, the application is by one Indra Lal. Initially he prayed for a protection against arrest in case Crime No. 177 of 1997 under Section 25 of the Arms Act, as also in case Crime No. 178 of 1997 for offences under Sections 420, 467, 468 and 471, IPC relating to P.S. Meja, District Allahabad. Subsequently, the prayer was amended to include a

prayer for quashing these FIRs. The allegations against him as per the FIRs covering the above two cases are that he was in possession of a fire-arm on the basis of a licence issued from Nagaland which was a forged one. It was his defence that he was given a valid licence by the Additional Dy. Commissioner, Deemapur, Nagaland for a gun and on the basis of that licence he was holding a DBBL gun of 12-bore which he had purchased from India Arms Store, a registered fire-arm dealer at Allahabad. It was further stated that the licence had not been cancelled as yet and he may not be arrested by police. It was contended by the learned AGA that under the Arms Act and Rules the Addl. Dy. Commissioner of Nagaland could not have issued a licence to a person, for holding a gun at Allahabad and, at least on this point the possession of the gun must be held to be illegal.

6. In Crl. Misc. Application No. 3923 of 1997, the applicant is Markedly Misra. For him, there is something more in the case than the others, as on presentation of his application before this Court on 27-6-1997 before Hon. B. K. Sharma, J. an interim order was passed directing that he may not be arrested in the concerned case Crime Nos. 526 of 1997, 527 of 1997, 628 of 1997 and 529 of 1997, all relating to P. S. Khatauli, District Allahabad, subject to his surrendering his weapon (pistol) No. PNB1400- 49) in the concerned police station latest by 10 a.m. on 28th June, 1997. This interim order stood extended from time to time and it remains in operation till the present order is pronounced. So far this applicant, Markandey Misra, is concerned, the case against him is made out in the FIR that was drawn up on 13-6-1997. Under the orders of the District Magistrate, as indicated in the initial paragraphs of this judgement, the arms dealers had submitted reports of purchase and sale of arms by them and it came out from such statements of M/s. H. N. Sahu and Company that four pistols were purchased from persons who were holding the same under licences issued from Nagaland and the same were re-sold to four persons including this applicant. The aforesaid licences from Nagaland were found to be fake and forged. The applicant was sought to be prosecuted for holding a weapon which had come to the hands of the dealer through a fake licence-holder. The weapon in question was of foreign origin and was smuggled into India and its possession was not permitted under the law. The applicant took a plea of the bona fide as he was holding a valid licence and as he made a

purchase, as per rule, from a licenced dealer and there was no bad faith on his part. In this case, the learned AGA submitted that while all the three other purchasers from M/s. H. N. Sahu and Co. had immediately surrendered their weapons, this applicant was absconding. It was further stated that although he was a permanent resident of Vindhyachal he obtained a licence showing himself to be a resident of Strachy Road, Allahabad, and on verification this address was found to be fake.

7. Crl. Misc. Application No. 4694 of 1997 is again by Mohd. Nazim whose prayer for quashing the FIR has been dealt with in the earlier paragraphs of this judgment in relation to Crl. Misc. Application No. 4434 of 1997. in the present application, however, Mohd. Nazim had made a prayer that investigation in case Crime Nos. 526, 527, 528, 520 all of 1997, relating to P. S. Kotwali, district Allahabad and in case Crime No. 631 of 1997 of P. S. Shahganj, district Allahabad be taken off the hands of the local police and be entrusted with the Central Bureau of Investigation for the reasons that certain other similar matters were being investigated into by the CBI. It was also alleged that the investigating agency of the local police stations were not acting fairly with a view to extract illegal gratification from innocent persons under threat of prosecution. The prayer herein is absolutely different from the other cases but it was also taken up as the applicant of this case had moved another application, as indicated above, and as these very FIRs were concerned in the other cases.,

8. Crl. Misc. Case No. 4460 of 1997 has been filed by one Om Prakash Tewari for quashing the FIR in case Crime No. 349 of 1997 under Sections 8(2) and 25 of the Arms Act, relating to P. S. Kotwali, district Allahabad lodged against M/s. S. N. Neogi and Company and others. A prayer has also been made for a protection against arrest of the petitioner during investigation of this case. The allegation against him in that case is that he had purchased a fire-arm from M/s. S. N. Neogi and Company as a bona fide licence-holder and the purchase was also made from a registered and licensed dealer. On behalf of the prosecution, it was urged in this case that the applicant was simply asked by the Investigating Officer to surrender the arm in question which was purchased by him from M/s. S. N. Neogi, but instead of giving the proper assistance to the investigating agency the applicant

was raising all possible mala fide allegations against the officers conducting the investigation. It was contended by the learned AGA that the arms licence of the applicant had already been cancelled and he had no subsisting right to keep the arms on the basis of the licence already cancelled. The concerned arm is a pistol. Against the order of cancellation of licence the applicant had preferred an appeal, a stay order was granted which was in force up to 26th April, 1997 and at present there is no stay order in operation. The applicant had not surrendered the point-30 bore pistol No. 1531. For Om Prakash, it was contended by the prosecution that even the licence granted to him was a forged one and was obtained by manipulation of record.

9. The last case in the bunch is Crl. Misc. Application No. 3903 of 1993 instituted at the instance of Smt. Vidyawati Sahu. This application was filed during summer vacation for quashing an FIR and for protection against arrest in relation to case Crime Nos. 526, 527, 528, 529 all of 1997, relating to P. S. Kotwali, District Allahabad. Upon presentation of the application, the State was directed to come up with a counter-affidavit and the matter was directed to be listed on 4-8-1997. As an interim measure it was directed that till the aforesaid date, Vidyawati Sahu was not to be arrested in the aforementioned cases. The State, however, came up with a prayer for recall of the interim order setting out the facts under which the cases were instituted. The matter was not kept in the waiting till 4-8-1997 and was heard after due notice to the applicant and the interim order was discharged. It was held in the order dated 26-6-1997 by this Court that the stay order was obtained by submission of materials which were proved to be not genuine. The applicant had produced along with her application a copy of the letter addressed to the District Magistrate, Allahabad, by the Dy. Commissioner of Mok, Nagaland. She could not explain how she could get a copy of the letter which was a communication between one administrator to another. It was found that the licences of the persons who had sold certain weapons to the present dealer (partner of M/s. H. N. Sahu and Company) were fake and forged. The order dated 26-6-1997 further indicated that even those fake licences were for guns only but the arms sold to the dealer were pistols and not guns. It was the case of the prosecution that the weapons bore Chinese marks of manufacture, but before delivery of the same to the purchasers these Chinese marks were filed off and U.S.S.R. manufacture

marks were inscribed. While vacating the interim order, the Court required that the question of maintainability of the present application under Section 482 would also be heard.

10. In fact, in all these applications, barring the one for transfer of investigation to the CBI, a common question arose as to what is the scope of Section 482, Cr. P.C. in quashing an FIR. On this point it was contended by the learned counsels, referring to different case laws, that there is no absolute bar for the High Court to enter into the question of quashing an FIR in exercise of powers under Section 482, Cr. P. C. It was contended that the case laws made it clear that although in the rarest of rare cases such power should be exercised to quash an FIR, it would depend upon the individual case to see if the case fell within the span of the rarest of rare cases. Thus, it was not a bar of jurisdiction, rather it was a bar of prudence and each individual case has to be seen on its merits whether an interference at the investigation stage in that case would or would not be necessary. It was argued that to have a power is one thing and to exercise it is absolutely another. The very existence of the power does not always obligates that it must be exercised in each and every case. The gist of the argument was that the Court may not throw away an application under Section 482, Cr. P.C. simply on the ground that it is aimed at quashing an FIR or an investigation. The Court is rather required to go through the merits of the cases to see the tenability of the prayer. The case laws that were referred in this application may now be discussed. Reliance was placed on the decision of the Supreme Court in the case of State of Haryana v. Bhajan Lal as reported in : 1992 CriLJ527 . A complaint was lodged against Sri Bhajan Lal alleging possession of pecuniary resources or property disproportionate to his known sources of income. Upon receipt of this complaint, the then Chief Minister of Haryana, who belonged to a rival political party, forwarded the matter to the Director General of Police for appropriate action. The DGP, in his turn, forwarded it to the Superintendent of Police and he directed registration of a case and investigation by the SHO of the concerned police station, and, accordingly, a prosecution was launched under Sections 161 and 165 of the IPC read with Section 5(2) of the Prevention of Corruption Act. Sri Bhajan Lal thereafter filed a writ petition under Articles 226 and 227 of the Constitution seeking issuance of a writ of certiorari for quashing the FIR and also a writ of

prohibition restraining the authorities from further proceeding with the investigation. The Punjab and Haryana High Court was of the view that the allegations did not constitute a cognizable offence for commencing a lawful investigation and granted the reliefs as prayed for and had saddled the respondent No. 2, who initiated the complaint, with the costs of the writ petition. Only thereafter the State of Haryana preferred the appeal before the Supreme Court. In appeal, the Supreme Court not only set aside the judgment of the High Court whereby the FIR and investigation was quashed but also quashed the investigation by the agency which was conducting it and directed investigation according to law through a competent police officer. In discussing different aspects of the powers of the High Court towards quashing an FIR the Supreme Court categorised the cases by way of illustration wherein the extraordinary powers under Article 226 or the inherent powers under Section 482, Cr. P.C. could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Supreme Court further observed that it was not possible to lay down any precise, clearly defined and sufficiently channelised inflexible guidelines or rules or formulae and to give an exhaustive list of myriad kinds of cases wherein such powers should be exercised. In this judgment the Supreme Court illustrated seven possible categories of cases wherein the aforesaid powers could be exercised to quash an FIR and an investigation. The relevant ones are as follows:

- (1) The allegations in the FIR did not prima facie constitute any offence even read with the materials collected.
- (2) The allegations in the FIR did not disclose a cognizable offence and there was no order under Section 155(2), Cr. P.C. of the Magistrate.
- (3) The allegations in the FIR were so absurd and inherently improbable that no prudent person could conclude that there were sufficient grounds for proceeding against the accused.
- (4) There is an express legal bar either in the Cr. P.C. or under the Act under which the prosecution is sought against continuance of the proceedings.

(5) Criminal proceeding is manifestly tainted with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive of wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. In this judgment the Supreme Court clearly expressed its view that the High Court's power to quash a criminal proceeding should be exercised sparingly in rarest of rare cases and it, was not for the High Court to go to the question of reliability of the allegations made in the FIR or in the complaint upon which the prosecution was initiated. This caution has been reiterated by the Supreme Court in several subsequent judgments as well. In the case of *Roopan Deol Bajaj v. K.P.S. Gill* as reported in : 1996 CriLJ381 , the Supreme Court held on the facts of the case that the quashing of an FIR and complaint by the High Court was not legal in the absence of any finding that the allegations made in the FIR were absurd and inherently improbable. In the case of *State of Bihar v. Rajendra Agrawal*, the decision of *Roopan Deol Bajan v. K.P.S. Gill* was referred to and the Supreme Court expressed its views to say that the jurisdiction of the High Court to quash an order of cognizance of criminal offence should be in an exceptional case only and great care must be taken to scuttle the prosecution at its inception. The Supreme Court found on fact that the High Court had exceeded its jurisdiction by trying to appreciate the evidence and quashing the order of cognizance. Even powers of the High Court under Articles 226 and 227 of the Constitution to quash a criminal proceeding was held, to have been not properly exercised in that judgment of the Supreme Court. In the case of *State of Bihar v. P.P. Sharma* as reported in 1992 SCC (Cri) 192, it was found that the writ petitions were filed for criminal proceedings at a stage anterior to the trial Court's decision on taking cognizance of the offence on the basis of police report submitted to it. The High Court acted upon the affidavits and documents produced by the petitioner in the writ petition and quashed the proceedings. This was held to be a serious error on the part of the High Court and it was observed that the High Court by easily entertaining such writ petitions encouraged the accused persons to delay the trials by diverse tricks. In the case of *Radhey Shyam Khemka v. State of Bihar* as reported in 1993 SCC (Cri) 591 : 1993 AIR SCW 2427, it was observed that the High Court could not hold a parallel trial in exercise of powers under Section 482, Cr. P.C. If an offence prima facie fell under the Penal Code, launching of

prosecution could not be thwarted by the High Court under Section 482, Cr. P.C. merely because penal action was open under any other statute. It was a case where upon the allegations cognizance was taken by a Magistrate for an offence under Section 409, IPC against the directors of public limited company and materials were there to prima facie disclose the dishonest misappropriation of shares and the debentures collected from public. The High Court interfered under Section 482, Cr. P.C. on the ground that a penal provision was available under the Companies Act and hence the prosecution under Section 409, IPC was not maintainable. This view was not supported by the Supreme Court and it was held that the High Court was not justified in dismissing the application.

12. In this application a Full Bench decision of the Allahabad High Court by seven Hon'ble Judges in the case of Ram Lal Yadav is also relevant. Another Full Bench of the Allahabad High Court had answered certain questions posed in the case of Prashant Gaur v. State of U.P. and the instant Full Bench was constituted as, in the case of Ram Lal Yadav and other, a further reference was made to the Full Bench as the Hon'ble single Judge dealing with the question found a conflict between earlier Full Bench decisions and decision of the Supreme Court and the decisions of the Privy Council. The questions and answers that were covered by the earlier judgment were as follows :

Whether under Section 482, Cr. P.C. the High Court had the inherent powers to interfere with the investigation by Police.

The Full Bench had answered in Prashant Gaur's case that investigation into an offence is a statutory functions of the police and the Superintendence thereof is vested in the State Government and it was only in the rarest of rare case and, that too, when it was found by the Court that the FIR and the investigation over a reasonable length of time did not disclose the commission of a cognizable offence that the High Court could under Section 482, Cr. P.C. interfere with the investigation.

13. The next question that was posed in the Prashant Gaur's case was that whether the High Court had powers to stay the arrest during investigation, and the answer was that under Section 482, Cr. P.C. the High Court might not direct the

stay or arrest except for a limited period in case of such exceptional nature as were indicated in answer to the first question. In the case of Ram Lal Yadav, the Hon'ble single Judge posed a question as to whether the answers to the aforementioned two questions in Prashant Gaur's case and the reasons thereof were in accord with the laws laid down by the Supreme Court and the Privy Council and if the answer is no, then what was the correct answer to the questions.

14. The Full Bench took up the responsibility . of answering these two questions and went through different decisions pronounced by the Privy Council, the Supreme Court and the other High Courts. This Full Bench of seven Hon'ble Judges was of the view that the first question posed by the Hon'ble single Judge was to be answered in the negative, that is, the earlier answers by the earlier Full Bench were not in accord with law laid down by the Supreme Court and the Privy Council. In answer to the second question, the seven-Judge Full Bench was clearly of the view that the High Court had no inherent powers under Section 482, Cr. P.C. to interfere with the investigation by police. The High Court had also no inherent powers under Section 482 to stay the arrest of the accused during investigation. The Full Bench also overruled the decision of the earlier Full Bench given in Prashant Gaur's case.

15. This judgment was recorded on February 1, 1989 and the in flow of applications under Section 482, Cr. P.C. for quashing FIR remained incessant even thereafter not only in this High Court but also in other High Courts and certain matters had gone to the Supreme Court against exercise of the power under Section 482, Cr. P.C. to quash investigation and further directions were given to limit the power under Section 482, Cr. P.C. for rarest of rare cases. Even in a recent judgment dated 5-11-1996 a Hon'ble single Judge of this High Court had observed in the case of Renu Chopra v. State of U.P. as reported in 1997 (34) All Cri C 684 that the power under Section 482, Cr.P.C. for quashing of criminal case by the High Court could be exercised only if allegations made in the FIR or complaint did not disclose commission of offence. In the last mentioned judgment, however, no reference was made to the judgment in Ram Lal Yadav's case.

16. In Ram Lal Yadav's case, reference was made to a decision of the Privy Council in Khwaja Nazir Ahmad's case as reported in . It was observed in Khwaja Nazir Ahmad's case that Section 561A, Cr. P.C. (now Section 482, Cr. P. C.) could not be invoked to quash an investigation by police in a cognizable case as it was within the statutory right of the police to investigate. But a caution was given in this very case law that if the first information report did not disclose any offence or at least a cognizable offence, the police did not get the statutory right and in such a case the judiciary could intervene under Section 561A, Cr. P.C. There was another provision in the old Cr. P.C. under Section 491 thereof akin to the powers of Habeas Corpus which have now been deleted. In Ram Lal Yadav's case, concerning the utterances of caution that were there in Khwaja Nazir Ahmad's case, a direction was given that in a case where the FIR did not disclose commission of an offence the investigation was liable to be quashed not under Section 482, Cr. P.C. but under Article 226 of the Constitution. The Full Bench also referred to the decision of the Supreme Court in the case of S.N. Sharma v. Bipin Kumar Tewari : 1970 CriLJ764 , to quote from that judgment, that the procedure had given to the police unfettered power to investigate all cases where they suspected commission of a cognizable offence and in appropriate cases an aggrieved person can always seek remedy by invoking the power of the High Court under Article 226 of the Constitution under which the High Court could always issue a writ of mandamus restraining the police officer from misusing his legal powers, if at all, the High Court is convinced that the powers have been exercised mala fide.

17. The subsequent decisions of the Supreme Court from the case of Bhajan Lal : 1992 CriLJ527 and thereafter, however, speak about the powers under Article 226 and under Section 482, Cr. P.C. together. This question was also taken up by me in a bunch of cases and I have already opined in those cases that the law enunciated by the Supreme Court is the law of the land and, accordingly, even on the face of the Full Bench decision, the law of the land is to be followed.

18. Without any further deliberation on this point, it may therefore be held that while the High Court would certainly have a power to intervene in investigation under Section 482, Cr. P.C. it could be exercised in the rarest of rare cases and,

that too, if the FIR does not disclose a cognizable case. Thus, every case is to be seen on its own merits. The High Court is having power both under Section 482, Cr. P.C. which is an inherent power to do justice and under Article 226 of the Constitution to protect the rights of its citizens against arbitrary State action. There may not be any differentiation between these two powers when it comes to the question of quashing an unnecessary criminal proceeding, although the right of the police to investigate a case must always be accepted as a statutory one.

19. The allegations in those cases, as indicated above, are either for possession or for dealing with arms beyond the sanctions of the Arms Act. In this context, it is necessary to go through the relevant provisions of the Arms Act and the Rules made thereunder. In addition to offences under the IPC prosecution has been sought for in these different cases under Sections 5, 11, 25, 29 and 33 of the Arms Act. One prosecution is there for offences under Section 8(2) read with Rule 25 of the Arms Rules also. Section 3 of the [Arms Act, 1959](#), requires that no person shall acquire or have in his possession or carry any fire-arm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the Rules made thereunder. Section 5 deals with licences for manufacture, sale etc. of arms and it requires that no person shall use, manufacture, sale, transfer, convert, repair, test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or prove any fire-arm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the Rules made thereunder. There are certain types of arms which are defined as prohibited arms and there is a restriction, under Section 7, of acquisition or possession or manufacture etc. of prohibited arms, unless specially authorised by the Central Government in this behalf. Thus, Section 3 requires a licence for a holder of a gun and Section 5 requires a licence for manufacture, sale etc. i.e. a licence as a dealer. Section 7 requires that if it is a prohibited arm, in addition to the aforesaid licence, there should be special authorisation by the Central Government in this behalf. Section 8 prohibits sale or transfer of fire-arms not bearing identification marks. Under this section, no person is to obliterate, remove, alter or forge any name, number or other identification marks, stamp or otherwise shown on a fire-arm. Clause (2) of this section requires that no person shall sell or transfer any fire-arm which does not bear the name of the maker,

manufacturer's number or other identification mark, stamp or otherwise shown thereon in a manner approved by the Central Government. Clause (3) of this section requires that whenever any person has in his possession any fire-arm without such name, number or other identification mark or on which such name, number or other identification mark has been obliterated, removed, altered or forged it would be presumed that he had obliterated etc., number or other identification mark.

20. Section 13 speaks of grant of licences by the licensing authority. A licensing authority has been defined to be an officer or authority empowered to grant or renew licences under the Rules made under the Arms Act and includes the Government. A licensing authority on receipt of an application for licence is required to call for a report of the officer-in-charge of the nearest police station and only thereafter could grant or refuse a licence. A licence under Section 3 for possession of a fire-arm is to remain in force for a period of three years from the date on which it is granted and may be renewed thereafter. A licence may be revoked under certain conditions as enumerated in Section 17 of the Act.

21. Chapter 5 of the Arms Act deals with offences'. Section 25 makes provision for punishment of manufacture, sale, transfer etc. of an arm in contravention of Section 5. It also makes punishable acquisition or possession of an fire-arm in contravention of Section 3. Section 29 speaks of an offence of knowingly purchasing arms etc. from unlicensed persons or for delivery for arms etc. to persons not entitled to possess the same. All the offences under the Arms Act have been made cognizable within the meaning of Code of Criminal Procedure. The offences are, therefore, open to be investigated by police even without an order of the Magistrate.

22. The Arms Rules have been framed in exercise of powers under Section 44 of the Arms Act read with other provisions. The learned counsels in the course of their arguments drew my attention to Rule 25 requiring identification marks of fire-arms. Under this rule, a manufacturer of a fire-arm is to get every fire-arm manufactured by him stamped so show distinctly the makers name and registered trade mark if any. The serial number of the weapon and proof mark. Sub-rule (2) of

Rule 25 requires that when an imported fire-arm kept for sale by a dealer does not bear the manufacturer's name, such distinguishing mark of the importer as allotted by the State Government shall be engraved on the barrel and on other parts as shown in column 2 of the table under sub-rule (1). If a barrel bears more than one mark, the distinguishing marks shall be affixed to the number appearing in the original invoice. When the manufacturer's number appears only on the trigger guard or other replaceable part, the number shall be engraved on the part shown in the column 3 of that table. Sub-rule (3) requires that a person who has in his possession any fire-arm which does not bear distinctly a manufacturer's name, number or other identification marks as mentioned in sub-rule (1), shall get the identification mark stamped on the fire-arm consisting of such distinct letters as may be prescribed for the purpose by the State Government and the serial number of the possessed licence in the arms register of the licensing authority and the year of stamping. It was argued on behalf of the learned counsels that in the cases where violation of Section 8(2) of the Arms Act was alleged, no material has been brought on record to show that for the allegedly imported arm, any distinguishing mark of the importer has been allotted by the State Government or any distinct letter has been prescribed for that purpose by the State Government. 'Prescribed' means prescribed by Rules and it was for the prosecution to show that any such distinct letters have been prescribed as required under Rule 25(3).

23. As indicated above, a licence either for acquisition or possession or for dealing in arms is to be given by the licensing authority in accordance with the provisions of the Act and the Rules made thereunder. The term licensing authority also means the officer or authority empowered to grant or renew licences under the Rules. Rule 4 states that licences under Chapter 2 of the Act may be granted or renewed for such purposes and by such authorities, in such form and be valid for such period and in such area as are specified in Schedule II, subject to such conditions as are in the Schedule and in the licence. A reading of this provision indicates that Schedule II really indicates who would be the licensing authority for what purpose and in which form a licence is to be given and how far it would be valid in point of time and local extent. Schedule II states that for acquisition and possession, the Central Government in the Home Ministry may grant a licence for the whole of India or any special area. The District Magistrate is also empowered

to issue a licence for acquisition and possession only throughout the district or his area or jurisdiction or any specific part of his jurisdiction. If it an acquisition or possession for sport, protection, target practice or display, the District Magistrate could issue a licence for the area throughout the district, but not for the whole of the State. This position of law was explained and confirmed by Hon. G. P. Mathur, J. of this High Court in the case reported in 1995 All LJ 928. The Court dealt with a licence granted to the petitioners by the Dy. Commissioner of a particular district in Nagaland, and the licence was said to be valid for 'all-India,' i.e. throughout India. This was held to be without jurisdiction and such endorsement in the licence was held to be of no consequence and wholly invalid for the use in the State of Uttar Pradesh.

24. Common question of law regarding jurisdiction and offences if any, have been stated. The individual cases may now be looked into to say if any of these cases is the rarest of rare one calling for interference under Section 482, Cr. PC. or if any of the applicants is entitled to protection against arrest during investigation.

25. The applicant Om Prakash Tewari faces an allegation that the licence on the basis of which he had been in possession of the arm, was obtained by manipulation of records. His licence stood cancelled and it is alleged that he did not surrender his arms. In my view, there is scope of further investigation in the case and this case may not be one of no evidence and, as such, the FIR cannot be quashed. The case of Vidyawati has been dealt with thoroughly in my order recalling the interim order, as indicated in the opening paragraphs of this judgment describing her case. She happens to be the partner of a firm dealing in arms licences for the reasons for which the interim order stood cancelled, the FIR may not also be quashed. The case against Ashiq-ur-Rehman is based on a licence from Nagaland. Whether the licence issued by the District Magistrate, Nagaland was genuine or forged is a matter for investigation, but, under the law, the licence could not be valid for the State of Uttar Pradesh and in this case also the FIR could not be questioned. For Mohd. Nazim, it has been indicated that no offence under Section 8(2) of the Arms Act was made out as there was no declaration by the State Government as required under Rule 25(2) and (3). The applicant claimed to be a bona fide purchaser of two pistols, one from Indore and the other from M/s.

S. N. Sahu and thereafter he had sold these two pistols to two customers. Materials are there to show that despite notice from the District Magistrate, Allahabad he failed to give the required details of the arms and he had submitted an explanation that he could not submit the required information because his sale registers for particular period were seized in connection with another case. His document at Annexure-10 speaks of purchase of . one 30-bore pistol from Mirajuddin, an arms dealer at Indore. The paper at Annexure-II allegedly issued from the office of the District Magistrate, Indore, but the main body of Form-20 does not indicate the purchase of that pistol. In this case also there is scope of further investigation into the arms deal and this case also may not be one of the rarest of rare cases calling for quashing the FIR. For Indra Lal, again, his alleged licence is from Nagaland. Whether it was genuine or forged, it could not have been operative in the State of Uttar Pradesh. For this reason, no interference under Section 482, Cr. PC. is called for. The applicant Markandey Misra had a licence from Allahabad only. It is alleged that he had shown himself to be a person residing at Strachey Road, Civil Lines, Allahabad, but his real residence is at Vindhya Chal and there are criminal cases against him at Vindhya Chal. He obtained the licence, it is alleged, on suppression of fact as he had never resided in Strachey Road. If the origin of the licence, as alleged, is tainted with suppression of facts, certainly there is scope for investigation. It is alleged that after getting information from the arms dealer about sale of four pistols to four persons, all of them were noticed. Three had surrendered their weapons immediately but Markandey Misra did not. I am reluctant to interfere in his case also.

26. So far the application of Mohd. Nazim for transfer of his case to CBI is concerned, a case law was cited before me, as reported in : 1997 CriLJ63 . It was held herein that the accused was not entitled to a hearing in deciding the agency to be entrusted with the investigation. If even thereafter the accused desires that investigation should be conducted by any other agency, it is open for him to move the proper authority and the High Court in its powers under Section 482, Cr. P.C. will not direct a change in the investigation.

27. In relation to the question of protection against arrest, I am of the view that when the Court has refused to interfere with the investigation, in the normal course it should not interfere with the power of the police to arrest a particular person. It would be sufficient to refer to the decision of the Supreme Court in Joginder Kumar's case, wherein the norms and mores of arrest by a police officer have been laid down. It is expected that the police officers would know the law of the land enunciated by the Supreme Court and would follow the same. There may not be any specific direction in this regard as every case would depend on its own merits and on the developments during investigation and there cannot be any blanket direction staying the arrest for any particular period or even till the submission of the charge-sheet.

28. All the applications are, therefore, rejected for the prayers made therein. Interim orders, if any, passed in individual cases are hereby vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com