

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**OWP No. 496/2011
CMA Nos. 687/2011 & 866/2011.
OWP No. 497/2011
CMA Nos. 2030/2011 & 688/2011
And
OWP No.540/2011
CMA Nos.559/2012 & 759/2011
Contempt(OWP) No.48/2011**

Date of Decision: **11.07.2012**

M/s Fouji Gun House	v.	State of J&K & ors
M/s Singh Gun House	v.	State of J&K & ors
M/S Suresh Armoury	v.	State of J&K & ors.

CORAM:

Mr. JUSTICE J. P. SINGH.

Appearing counsel:

For Petitioner(s) : M/s S.C. Gupta & B.S.Soodan, Advocates.
For Respondent(s) : Mr. Gagan Basotra, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes. |
| ii) | Whether to be reported
in Digest/Journal | : Yes. |
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JUDGMENT

M/Ss Fouji Gun House, Singh Gun House and Suresh Armoury have filed these Writ Petitions seeking quashing of District Magistrate Jammu's Communication dated 3-3-2011 whereby their licences for Sale and Keep of arms were recommended for cancellation, besides orders dated 13-04-2011 in

terms whereof their business premises were searched and material lying therein including arms and ammunition seized, in exercise of powers under Section 22(1)(b) of the Arms Act, 1959, (hereinafter referred to as the “Act”).

Raising common questions of fact and law on the exercise of powers under Section 22 of the Arms Act by the District Magistrate, these Petitions were taken up for joint consideration treating, at the State-respondents’ counsel’s request, the respondents’ Response to Writ Petition OWP No. 497/2011 as their Response to Writ Petition OWP Nos. 496/2011 & 540/2011 as well.

At the hearing of the Petitions, learned counsel for the petitioners did not press the petitioners’ relief in the Writ Petitions seeking quashing of District Magistrate’s Communication dated 3-3-2011 to the Principal Secretary to Government, Home Department, and rightly so, because until final decision had been taken by the Competent Authority under the Arms Act on the District Magistrate’s recommendations, no cause would accrue to the petitioners to question the District Magistrate’s recommendations.

These Petitions, therefore, survive for consideration only insofar as the petitioners' challenge to District Magistrate, Jammu's Orders dated 13-04-2011 was concerned.

The orders passed by the District Magistrate on 13-04-2011, whereby the business premises of the petitioners were ordered to be searched and the material including arms and ammunition seized, are questioned, *inter alia*, on the ground that the learned Magistrate had erred in issuing orders under Section 22 of the Arms Act, *without specifying the period* for which it had to remain in force, as required by the provisions of Section 22(1) of the Act. It is further urged that the District Magistrate's orders were unwarranted on the facts and circumstances in which they were stated to have been issued.

Considered the submissions of the learned counsel for the parties and perused the provisions of the Arms Act.

To deal with the submissions made at the Bar by the learned counsel for the parties, regard needs to be had to the provisions of Section 22 of the Act, which, for facility of reference, is reproduced hereunder:-

22. *Search and seizure by magistrate.- (1) Whenever any magistrate has reason to believe-*

(a) that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose, or

(b) that such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety,

The magistrate may, after having recorded the reasons for his belief, cause a search to be made of the house or premises occupied by such person or in which the magistrate has reason to believe that such arms or ammunition are or is to be found and may have such arms or ammunition, if any, seized and detain the same in safe custody for such period as he thinks necessary, although that person may be entitled by virtue of this Act or any other law for the time being in force to have the same in his possession.

(2) Every search under this section shall be conducted by or in the presence of a magistrate or by or in the presence of some officer specially empowered in this behalf by the Central Government."

Perusal of the above quoted provisions of Section 22 of the Act reveals that power under Section 22(1)(b) may be exercised by a Magistrate, on his belief, for reasons to be spelt out, that any person residing within the local limits of his jurisdiction, *could not be left in possession of any arm(s) or ammunition without danger to the Public Peace or Safety.* In other words, before power under Section 22(1)(b) of the Act be exercised, the Magistrate is to be satisfied that continuance of the possession of any arms and ammunition with any person would endanger the Public Peace or Safety. After recording such satisfaction, as indicated above, the Magistrate may pass orders for Seizure of arms and ammunition and detention thereof in safe custody, *for such period as he may think necessary so to do.* From the plain reading of the provisions of Section 22(1)(b) of the Act, it, therefore, appears that the power

exercisable by the Magistrate under the aforementioned Section, is, in essence, preventive in nature and the order passed pursuant to the exercise of such power, Time circumscribed.

With the above exordium of the power contemplated by the provisions of Section 22 of the Act, the orders questioned by the petitioners in the Writ Petitions need to be noticed to examine as to whether or not they satisfy the requirements contemplated for exercise of power under Section 22. One of such orders is reproduced hereunder for reference.

“Office of the District Magistrate, Jammu.
Order
U/s 22(1)(b) of Arms Act, 1959

Whereas, SSP, Jammu, has reported vide his letter no. 8275-78/ dated 24.2.2011, that FIR no. 18/2011 under section 420/467/468/471-RPC, 3/25 Arms Act has been lodged with Police Station Janipur, regarding recovery of fake gun licenses;

Whereas, he has reported the strong and active involvement of Singh Gun House and Suresh Armory, Jammu in the fake gun license scandal, unearthed recently, and that they have sold guns against fake gun licenses;

Whereas, both the firms, who are in a very sensitive business, having implications on public peace and National Security, aware of the fact that a Sub Divisional Magistrate is not the competent authority to issue Gun Licenses under the Arms Act, have indulged in these sales. As per the SSPs report there is, patently, complicity, collusion, abetment and a nexus between the firms, their owners/management and other accused in the above case;

Whereas, the possibility of the weapons sold by the aforesaid firms against the fake licenses reaching the hands of anti-national elements cannot be ruled out;

Whereas, it has also been reported in the media that several people have taken up jobs as security guards in India on the basis of these fake licenses;

Whereas, such an activity can have repercussions on a national level and cannot be allowed to go unfettered;

Whereas, SSP Jammu has submitted a detailed report and strongly recommended for the cancellation of the Sale and keep license of the aforesaid firms/shops

Whereas, based on the material and facts it can be concluded that the said firms cannot be left in the possession of arms and ammunitions held by them, without danger to public peace, public order and public safety and their operation needs to be stopped;

Therefore, in the above backdrop, substantiated by facts and after considering the report of SSP, Jammu, I am of the considered opinion to invoke the powers delegated under section 22(1)(b) of Arms Act 1959 and order that the premises of Singh Gun House Residency Road, Shaheedi Chowk, Jammu be thoroughly searched, and material including arms and ammunition be seized and then be taken over by SDPO under his safe custody under the supervision of Er. Subash Singh Chib, Tehsildar Jammu, Executive Magistrate Class-I.

Sd/-
District Magistrate,
Jammu”

Perusal of the order reveals that the District Magistrate had taken action against the petitioners for their alleged act of selling guns to persons whose licenses were stated to have been issued by a Magistrate having no competence so to do. This apart, the complicity of the petitioners in selling guns on the basis of invalid and fake licenses too was suspected. Yet another reason that appears to have weighed with the District Magistrate in issuing the order is that the possibility of the sold guns falling in the hands of the anti-national elements could not be ruled out. The order additionally records that the guns sold by the petitioners to the persons holding fake and invalid licenses had been used by some persons in taking jobs as Security Guards in India.

The order, therefore, demonstrates that the action had been taken by the learned District Magistrate against the petitioners for

their act of selling guns to persons who would not possess valid and genuine licenses and the possibility of reaching the sold guns, the anti-national elements, could not be ruled out.

It, therefore, comes out that what had weighed with the District Magistrate in contemplating exercise of power under Section 22, was the possibility of the sold guns coming to the hands of anti-national elements which would affect Public Peace or Safety. In other words, the orders do not appear to have been issued on the ground that there was likelihood of such use of arms and ammunition, in possession of the petitioners, that may endanger the Public Peace or Safety.

The factor regarding possibility of reaching the sold guns in the hands of anti-national elements, cannot be equated and treated synonymous, with the likelihood of such use of arms and ammunition that may endanger the Public Peace or Safety, which is the *sine qua non*, for exercise of power under Section 22(1)(b) of the Act. The order further reveals that it was an *Absolute Order* of seizure of guns and ammunition, And not a *Time Bound Order* as contemplated by the law framers while enacting Section 22 of the Act.

The learned District Magistrate appears to have acted in haste, in invoking the provisions of Section 22 of the Act, which were not attracted in the facts and circumstances of the case because the learned District Magistrate has not spelt out reasons indicating likelihood of the use of arms and ammunition, in possession of the petitioners, endangering the Public Peace or Safety. Even if, the Magistrate were to pass orders under Section 22 of the Arms Act, had there been some or other material to believe that leaving of arms and ammunition in possession of the petitioners would endanger Public Peace or Safety, he was required to record reasons in support thereof and additionally specify the period for which the arms and ammunition were to be kept in safe custody.

Therefore, there being no material with the learned Magistrate, that the guns and ammunition, in possession of the petitioners, which they were otherwise licensed to keep for Sale under the provisions of the Act, if allowed to remain in their possession, would endanger the Public Peace or Safety; the exercise of power under Section 22 of the Act was unwarranted additionally because the learned Magistrate had omitted to specify

the period for which the guns and ammunition were to remain in safe custody.

From the facts and circumstances appearing in the order of the learned District Magistrate, it appears that he had intended to proceed against the petitioners for their alleged acts of omission and commission in selling arms and ammunition to persons holding fake/invalid licenses for alleged violation of the terms and conditions of the licenses; but rather than having resort to the other provisions of the Act that empower him, *inter alia*, to initiate action for Suspension, Variation and Revocation of licenses, he took resort to the provisions of Section 22 of the Act, which exercise, in the facts and circumstances of the case, was ***unwarranted and even otherwise illegal*** being in violation of the provisions of Section 22 of the Act.

The orders passed by the learned District Magistrate on 13.04.2011 taking in possession the arms and ammunition of the petitioners are, therefore, liable to be quashed.

These Petitions, accordingly, succeed and are therefore allowed setting aside District Magistrate, Jammu's orders dated 13.04.2011 whereby the arms and ammunition in possession of the

petitioners were seized. A direction shall issue to District Magistrate, Jammu to restore the seized material to the petitioners.

In view of the orders passed in the Petitions, there may not be any justification to proceed further in COA (OW) No. 48/2011 which shall stand disposed of accordingly.

(**J. P. Singh**)
Judge

JAMMU:

11.07.2012

Naresh/Pvt. Secy.