

Beni Chand vs The District Magistrate, Banda And Anr. on 2 February, 1953

Equivalent citations: AIR1953ALL476, AIR 1953 ALLAHABAD 476

JUDGMENT

Agarwala, J.

1. This is a petition under Article 226 of the Constitution praying that the order of, suspension of the licences for holding fire-arms passed by the District Magistrate of Banda be quashed and the District Magistrate of Banda may be directed to refrain from giving effect to the order. The facts shortly stated are these.

2. The petitioner belongs to a well-known family of Banda, his ancestors having served as treasurers to the Nawab of Banda and later as the first treasurer to the British Government. He was the senior Vice-Chairman of the Banda District Board and also of the Banda Municipal Board. He was also a Special Magistrate and Extra Assistant Recruiting Officer of the district of Banda during the two world wars and was also one of the premier landlords of Banda. As a reward of the services rendered by him, he was awarded a revolver as a "sword of honour" in the Durbar of 1918. Originally he was exempted from the operation of the Arms Act, but after the enforcement of new Rules under the Arms Act, a life licence had been granted to him in respect of the revolver and a D. B. B. L. gun. On 6-11-1951 one Deonath is alleged to have thrown acid over Dr. Shyam Lal. The petitioner and another person, namely, Sri Shyama Charan Bajpai, M.L.A., were also considered to have been in conspiracy with Deonath in the throwing of the acid over Dr. Shyam Lal. They were prosecuted under Section 120B read with Section 324, Penal Code. The case against Deonath as well, as against the petitioner and Sri Shyama Charan Bajpai is still pending in the Court of a Magistrate of Banda.

3. The applicant's case is that he has been falsely implicated in that case on account of the political rivalry between him and Dr. Shyam Lal.

4. On 14-2-1952 the police reported that as the petitioner was involved in a "heinous" offence, it was neither safe nor proper to leave the firearms with the petitioner and Shyama Charan Bajpai and hence it was requested that the firearms licences of the petitioner and Shyama Charan Bajpai may be suspended during the pendency of the case, This report was forwarded by the Superintendent of Police to the District Magistrate with the following note :

"I agree with the S. O. Kotwali. There seems to be no justification in leaving the firearms with the accused when they are being prosecuted in such a callous and heinous offence."

"The District Magistrate thereupon passed the following order :

"Licences are suspended pending disposal of the cases. They should be deposited." It is this order which is questioned as having "been made by the District Magistrate without jurisdiction and liable to be quashed. The order seems to have been passed under Section 18, Arms Act which runs as follows : "18. Any licence may be cancelled or suspended-

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such licence may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such licence; or

(b) by any Judge or Magistrate before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act; and the Central Government may by a notification in the Official Gazette cancel or suspend all or any licenses throughout the State or any part thereof."

5. The petitioner not having been convicted of any offence as yet, Clause (b) of Section 18 obviously does not apply in his case. The only clause under which his firearms could be suspended was Clause (a). Under Clause (a) the conditions upon which the authorities mentioned in that section can exercise the power of suspending firearms are (a) that they must give reasons in writing and (b) that the order must be necessary for the security of the public peace. In the present case the order passed by the District Magistrate does not disclose any reasons whatsoever; much less does it disclose that the order was necessitated by reasons of the security of the public peace.

6. It was urged by learned counsel for the State that the report of the Station Officer, Kotwali, and the note of the Superintendent of Police save reasons and that it must be deemed that the District Magistrate approved of those reasons and that it should be assumed that they 'formed part of the District Magistrate's order. We are not prepared to accept this contention. The statute requires that the authority suspending or cancelling a licence must himself record the reasons why the order has been passed; and further it should appear from the order that it was passed because it was necessary for the security of the public peace to do so. None of these two essential ingredients mentioned in Section 18 is to be found in the order under question,

7. We, therefore, think that in this case the order was passed without jurisdiction. We accordingly quash it. It is not necessary to issue a writ of mandamus directing the District Magistrate not to give effect to his order because the order having been quashed it cannot be given effect to.