

(2002) 04 MAD CK 0103

In the Madras High Court

Case No : Criminal Original Petition No. 3936 of 2002

Anthony Harry

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Arms Act, 1959 — Section 25(1)A, 5

Arms Rules, 1962 — Rule 3, 4

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 324

Citation : (2002) 04 MAD CK 0103

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : D. Stephen, for the Appellant; Abudu Kumar Rajaratnam, Govt. Advocate (Criminal Side), for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Petitioner, who is an accused in C.C.No.2997 of 2000 on the file of XV Metropolitan Magistrate, George Town, Chennai has filed this petition u/s 482 of Criminal Procedure Code to quash the proceedings against him.

2. The case in brief is as follows:- The petitioner is serving as Inspector of Police, Nandambakkam, Chennai. The respondent police charge sheeted him u/s 324 IPC read with section 25(1)A of Arms Act, 1959 on the allegation that he has caused simple injury on the hand of one Viramuthu at Police Quarters, New Washermanpet on 04.01.2000 at 5.30 pm. He was initially suspended from service and later, the suspension was revoked and he was reinstated. The departmental charges were framed and the same was quashed by the Tamil Nadu Administrative Tribunal as there is no basis for the charges.

3. The learned Government Advocate (Criminal Side) contended that there is prima facie material to proceed against the petitioner and the points raised by the petitioner are not sufficient to quash the proceedings.

4. Heard the learned counsel for the parties.

5. The point that arises for consideration is whether the proceedings in C.C.No.2997 of 2000 is liable to be quashed ?

6. Point: It is admitted that the petitioner is serving as Inspector of Police, Nandambakkam, Chennai and he was charged u/s 324 IPC read with 25(1)A of Arms Act. Learned counsel for the petitioner contended that on the face of the records, no prima facie case is made out to proceed against him. There is no legal evidence to connect him with the crime. The forensic expert has opined that the gun is 0.17 inch caliber and the pellet alleged is 0.22 inch caliber and hence that the pellet was not fired in the alleged weapon. Moreover, the gun 0.17 inch caliber needs no license as per schedule given in the Arms Rules, 1962 and no offence is made out under the Arms Act also. The private doctor, who treated the victim, also has given an opinion that the pellet was only shown to him. The alleged air gun is only spring loaded and not at all a fire arm as defined in the Arms Act. The Station General diary of Manali New Town Police Station filed in the court will disclose that the petitioner was away during the alleged occurrence. Since the prosecution amounts to a misuse of process of law, it is liable to be quashed.

7. The respondent filed a counter and the learned Government Advocate (Criminal Side) contended that the petitioner already filed a petition to quash the first information report in Crime No. 9 of 2000 before this Court and it was dismissed. Similarly, the petitioner also filed a petition u/s 239 of Criminal Procedure Code before the learned XV Metropolitan Magistrate and it was also dismissed. Now, again the petitioner has approached this Court u/s 482 of Criminal Procedure Code only for the purpose of dragging the proceedings. The police report filed u/s 173 of Criminal Procedure Code and the documents submitted clearly revealed a prima facie case against the petitioner / accused. The prosecution has relied on the statement of witnesses and the statement and certificates issued by medical officer, who treated the injured. The Deputy Commissioner of Police, Washermanpet recovered the Air-gun from the possession of the accused in the presence of independent witnesses. Possession of air-gun without license by the accused is established. Further, Rule 3 and category III(d) in Schedule 1 of the Arms Rules 1962 classified that "Air-gun" is an arm. Rule 4 and item No.2 in schedule II of the Arms Rules 1962 described about the grant of license to the air-gun. Hence, the registration of first information report and investigation under the provisions of the Arms Act are fully correct. The x-ray picture will be produced into the court by the doctor at the time of giving evidence. The doctor, who treated the victim, opined that the injuries sustained by the body of the victim would have been caused by the pellets. After the commission of the offence, the petitioner was absconding and not reported for duty, evading arrest. Special police teams were formed and the accused was nabbed. The available materials are sufficient to frame charge against him.

8. Section 5 of the Arms Act relates to license for manufacture, sale, etc., of arms and ammunition. According to sub-section (1), no person shall use, manufacture, sell, transfer, convert, repair, test or prove, or any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made thereunder. Section 25 of the Arms Act relates to punishment for certain offences. It is also clear from the Schedule I, of Arms Rules, 1962 Category III (d) refers to Air-guns and muzzle-loading guns. Similarly in Schedule II, Category IV relates to the licensing authority and the license shall be granted in the appropriate form to the purpose for which it is applied. In view of the aforesaid Rules, it is prima facie clear that the air-gun also comes within the definition of fire arm and the license is required.

9. Learned counsel for the petitioner next contended that the report of the expert based upon the inspection of the air-gun indicated that the pellet was not fired in that 0.17 inch caliber air-gun. Learned counsel also pointed out the discrepancy in the evidence of the doctor, who examined the victim in the first instance and also the statement given by the victim. According to the doctor, when he treated him, blood was oozing from the hand and he was sent to Balaji Nursing Home for the purpose of taking x-ray. Again the doctor had seen him and at that time, a pellet was produced by the victim before the doctor. Learned counsel further stated that there are entries in the general diary to show that the petitioner was away from some other place in connection with some investigation and therefore, he could not have been present and used the fire arm. I am of the view that these are matters that can be thrashed out only on the basis of the evidence. The investigation authorities had collected materials and had also seized an air-gun from the petitioner in the presence of independent witnesses. The provisions under the Arms Rules clearly indicate that the license is also required and admittedly the petitioner has not taken any license. Further more, the private doctor, who had immediately seen the victim, had noticed blood oozing from the hand and he had advised him to take x-ray in a nursing home. Now, the petitioner is charged with the offence u/s 324 IPC also. Under the circumstance, the contentions now raised by the petitioner are not sufficient to quash the proceedings. The materials and the documents collected during investigation pointed out an accusing finger against the petitioner and, as such, he has to necessarily face the trial. Moreover, the petition filed by the petitioner for quashing the first information report was already dismissed by the Court. After filing of the charge sheet, admittedly the petitioner filed a petition to discharge him from the case and it was also dismissed.

10. Learned counsel for the petitioner further stated that the departmental proceedings initiated against him had ended in his favour; but a perusal of the order of the Tribunal is otherwise. It is seen from that order, a misrepresentation has been made on behalf of the petitioner that the criminal case ended in acquittal. It is only under such circumstances, the Tribunal has passed an order that the applicant can go and appear before the Disciplinary Authorities and

produce the copy of the judgment in support of his contention that he has been acquitted in the criminal case. If really he has been acquitted, charge No.1 also cannot be further proceeded with because the Enquiry Officer cannot come to any contra conclusion than what has been arrived at in the criminal case. The observation made by the Tribunal would clearly indicate that only by a wrong representation, the order has been obtained by the petitioner. Now, the petitioner has filed the present petition to quash the proceedings pending against him, whereas it was represented before the Tribunal as if he was acquitted in the criminal case. Under the circumstance, taking into consideration of the entire material, I am of the view that the petitioner is a person, who had no respect for truth and he will go to any extent to achieve his object. Hence, the point is answered accordingly.

11. For the reasons stated above, the petition is devoid of any merit and accordingly, it is dismissed. The trial court is directed to dispose of the case as early as possible. Consequently, Crl.M.Ps.No.1141 and 2029 of 2002 are closed.