
(2017) 02 KL CK 0060
In the High Court Of Kerala
Case No : Crl. M.C. No. 6886 of 2016

Devasia Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Arms Act, 1959 — Section 21(2)
Arms Rules, 1962 — Rule 46(4)
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2017) CriLJ 2754 : (2017) 2 ILRKerala 688 : (2017) 1 KerLJ 918 : (2017) 1 KLT 994

Hon'ble Judges : Mr. Sunil Thomas, J.

Bench : Single Bench

Advocate : Sri. Abraham Vakkanal (Sr.), Sri. Dijo Sebastian, Smt. Vineetha Susan Thomas and Sri. Sampath V. Toms, Advocates, for the Petitioner; Sri T.R. Ranjith, Public Prosecutor, for the Respondent No. 1; Sri. Noble Mathew and Sri. Jolly George, Advocates, for the Respondent No. 3

Final Decision : Allowed

Judgement

Mr. Sunil Thomas, J.—The second accused in Crime No.1333 of 2014 of Kanjirappally Police Station, aggrieved by the order in C.M.P. No. 1522 of 2015 of Judicial First Class Magistrate Court, Kanjirappally directing further investigation into the offences alleged against the accused under sections 3(1) r/w 25(1-B)(a), 3(2) and 21(1) r/w 25(1-B)(h) of the Arms Act, 1959 has preferred this Crl. M.C.

2. The factual matrix unravelled from the records available is as follows:

The de facto complainant alleged that on 29.10.2014 at 8 a.m. the first accused, who is the holder of a licensed gun, along with his brother, threatened the de facto complainant to cause his murder, by displaying a sword and the gun. On the basis of the complaint lodged, crime was registered as Crime No.1251 of 2014 of Kanjirappally Police Station against both, for various offences. In the meanwhile, de facto complainant filed a private complaint as C.M.P. No. 9778 of

2014 before the Judicial First Class Magistrate Court, Kanjirappally on 17.11.2014 alleging the commission of various offences under the Arms Act by the first accused along with the petitioner herein, arrayed as the second accused. The allegation was that the second accused, who was a licensed dealer of guns, had kept in his possession the licensed gun belonging to the first accused beyond the period of its license and thereby committed the offences punishable under the Act. It is revealed from the facts that the license of the gun of the first accused was to expire on 10.02.2014. He had applied for renewal of it on 23.01.2014 and the application was pending. In the meanwhile, due to the parliamentary election, notification was issued by the District Collector under section 4 of the Arms Act, 1959 and published it on 18.03.2014. Consequently, the gun was deposited by the first accused with the second accused on 17.03.2014. It was alleged that even after the expiry of the license on 10.02.2014, the first accused continued to keep the gun with him till 17.03.2014 and thereafter the second accused had kept it in deposit beyond 30.08.2014. According to the petitioner herein, the licensed dealer could have legally retained the gun only till 30.08.2014. It was alleged that since, after the expiry of the above period, the gun was not deposited in the nearest police station as contemplated under section 21(1) of the Arms Act, 1959, the dealer had committed the offences punishable under section 3 r/w section 25(1)(b)(a) and section 25(1)(b)(h) of the Act.

3. On the basis of the direction given by the court below, investigation was conducted by the police, which registered Annexure-A2 crime No.1333 of 2014 of Kanjirappally Police Station. After the conclusion of investigation, Annexure-A3 report dated 22.11.2014 was submitted recommending dropping of the proceedings. Thereafter, C.M.P. No.1522 of 2015 was filed by the de facto complainant alleging commission of offence punishable under section 46(3)(a)(1) of the Arms Act, evidenced by Annexure-A4. This was investigated by the police on the direction of the court below and Annexure-A5 report dated 29.04.2015 was filed again recommending closure of the investigation. Thereafter, the present application was filed by the complainant as C.M.P. No.1522 of 2015, seeking further investigation. It was allowed by the learned magistrate by Annexure-A6 order, which is challenged in these proceedings.

4. It is pertinent to note that the court below, after considering all the available inputs, directed further investigation to probe whether the offences were made out or not and if it is made out, to state the reasons with relevant provisions under the Arms Act and Rules made thereunder. Prima facie, this order is not legally sustainable, for the reason that when the factual reports were filed before the court below, recommending closure of proceedings, stating the reasons for its conclusion on the basis of the materials gathered, the Court could not have ordered further investigation to probe whether the offences were prima facie made out and to state the reasons with the relevant provisions under the Arms Act. Essentially, duty of the court below was to consider whether the materials gathered were factually considered by the investigating agency and whether

proper investigation was conducted. Without stating so, Court has ordered further investigation on flimsy reasons, which exhibits total non application of mind.

5. The learned senior counsel contended that on legal grounds also, the complaint as against the second accused is not legally sustainable. The crux of the contention of the learned senior counsel was that the petitioner herein had retained the arm only during the period prescribed under the law. Section 3 of the Arms Act prescribes that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in his behalf a license issued in accordance with the provision of this Act and the Rules made thereunder. Section 3(3) refers to a dealer of fire arms. Section 25 of the Act deals with penalties. Under section 21 of the Arms Act, the relevant provisions are as follows:

(1) Any person having in his possession any arms or ammunition the possession whereof has, in consequence of the expiration of the duration of a license or of the suspension or revocation of a license or by the issue of a notification under Section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

(emphasis supplied)

(2) Where arms or ammunition have or has been deposited under sub-section (1), the depositor or in the case of his death, his legal representative, shall, at any time before the expiry of such period as may be prescribed, be entitled-

(a) To receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) To dispose, or authorize the disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal.

Provided that nothing in this sub section shall be deemed to authorize the return or disposal of anything of which confiscation has been directed under section 32.

6. Section 21(1) of the Arms Act creates an obligation on the person in possession of any arms or ammunition to deposit before the officer in charge of the nearest police station "without unreasonable delay", the arm or ammunition, the possession thereof has, in consequence of the expiration of the duration of the license or by notification under section 4 has ceased to be lawful. It is on record that due to parliamentary election, notification under section 4 was issued by the District Collector. In the case at hand, it is clear that the petitioner herein

had held possession after the expiry of the period of license. The crucial question that arises is whether such holding of possession beyond the license period will cast any criminal liability on the petitioner herein. Definitely, section 21(1) creates a duty on the license holder to deposit the arm after its expiry of its validity, to tender before the nearest police station "without unnecessary delay".

7. It was contended by the learned senior counsel that section 21(1) of the Arms Act has to be read along with Rule 46(4) of the Arms Rules 1962, which deals with the period prescribed beyond which the person is not entitled to hold the possession of an arm. Section 46(4) of the Arms Rules 1962 provides as under:

Rule 46(4):- The period within which a depositor or his legal representative may exercise his rights under sub-section (2) of Section 21 shall be

(a) six months from the date of deposit, if the arms or ammunition are deposited as a consequence of contravention by its owner of any provision of the Act or these rules or any condition of the license:

(b) one year-

(i) from the date of deposit, if the arms or ammunition are deposited as a consequence of its possession becoming unlawful under section 21(1) otherwise than as under clause (a), or

(ii) if it is already in deposit, from the date of communication to the owner, of the order revoking, suspending or refusing to renew the license, or

(iii) from the date of notification issued under section 4;

Provided that any period under clause (a) or clause (b) shall be reckoned

8. According to the learned senior counsel, under Rule 46(4), the period within which the depositor or his legal representatives may exercise his rights of subsection (2) of section 21 shall be six months from the date of deposit, if arms or ammunition are deposited as a consequence of contravention by its owner or any provision of the Act or Rules or any condition applied. In other cases, it will be one year from the date of deposit if the arms or ammunition are deposited as a consequence of its possession becoming unlawful under section 21(1), otherwise than as under clause (a). Evidently, in the case at hand, the deposit was made by the petitioner herein consequent to the declaration of election and the notification thereupon under section 4 of the Arms Act. Necessarily, Rule 46(4)(b) is the clause that should apply, contends the learned senior counsel. It is true that pending the deposit, the period had expired. However, the application for renewal was pending and the deposit was made without much delay pursuant to the notification under section 4. In the above circumstances, a reasonable interpretation of the words "without unnecessary delay" as contemplated under section 21(1) has to be reckoned with the period within which the option has to be applied in a case covered by Rule 46(4). In other words, the wording "without unreasonable delay" in section 21(2) will be extended by either six months or

one year as the case may be, in the light of Rule 46(4). Hence, the meaning of the words "unnecessary delay" has to derive its basis from sub-rule (4) of Rule 46 of the Arms Rules. Consequently, in the case at hand, it is Rule 46(4)(b) that applies and not Rule 46(4)(a) as contended by the learned counsel for the de facto complainant. Consequently, the person holding possession is bound to tender the arm with the nearest police station without any reasonable delay within the period prescribed for lawful custody of it, as contemplated under section 21(1) of the Arms Act read with Rule 46(4). Consequently, petitioner herein was bound to deposit, without any much delay, within the extended period of one year from the date of its deposit as contemplated under Rule 46(4) of the Arms Rules. It is clear that the deposit was made on 17.03.2014 and the period expires only on 17.03.2015. The complaint was laid on 17.11.2014. Hence, it is clear that as on the date of filing the complaint even, the period had not expired. Consequently, prosecution against the second accused on the above basis is not sustainable. Crl. M.C is hence only to be allowed. However, this will not preclude the de facto complainant from prosecuting the first accused, if any, if any other offence is made out against him.

9. In the light of above, Crl. M.C is allowed and all further proceedings as against the petitioner herein arising from Crime No.1333 of 2014 of Kanjirappally Police Station stand quashed.