

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

Crl.MC.No. 3437 of 2015 ()

CC 3344/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THRISSUR

PETITIONER/ACCUSED:-:

**VARKEY, AGED 59 YEARS, S/O.DEVASSY,
KAROTTUPARACKAL HOUSE, PUTHUR VILLAGE,
PONNUKKARA P.O., ERNAKULAM - 680 306.**

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT/COMPLAINANT:-:

**STATE OF KERALA
THROUGH THE S.I. OF POLICE, PEECHI POLICE STATION,
THRISSUR DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. C.K. SURESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE A1:** TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.1143/2014 IN C.C.NO.3344/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THRISSUR DATED 20.07.2014.
- ANNEXURE A2:** TRUE COPY OF THE M.P.NO.4293/2014 IN CRIME NO.1143/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THRISSUR DATED 23.07.2014.
- ANNEXURE A3:** TRUE COPY OF THE ORDER IN CRL.M.P.NO.4293/2014 IN CRIME NO.1143/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THRISSUR DATED 12.08.2014.
- ANNEXURE A4:** THE TRUE COPY OF THE FINAL REPORT IN CRIME NO.1143/2014 IN C.C.NO.3344/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THRISSUR DATED 16.08.2014.
- ANNEXURE A5:** TRUE COPY OF THE SUMMONS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.III, THRISSUR DATED 21.08.2014.
- ANNEXURE A6:** TRUE COPY OF THE LICENCE OF RIFFLE ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE DATED 26.08.2013.
- ANNEXURE A7:** TRUE COPY OF THE CERTIFICATE ISSUED BY KERALA STATE RIFFLE ASSOCIATION FOR GETTING BRONZE MEDAL IN THE KERALA STATE SHOOTING CHAMPIONSHIP.
- ANNEXURE A8:** TRUE COPY OF THE CERTIFICATE OF PARTICIPATION ISSUED BY THRISSUR DISTRICT RIFFLE ASSOCIATION IN THE THRISSUR SHOOTING CHAMPIONSHIP 2014-2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3437 of 2015

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Dated this the 29th day of June 2015

O R D E R

The petitioner herein is the accused in Crime No.1143/2014 of Peechi Police Station, registered for offence under Sec.20 of the Arms Act. The Police after investigation has submitted Anx.A-4 final report/charge sheet in the impugned Crime No.1143/2014 of Peechi Police Station, which has led to the institution of Calendar Case, C.C.No.3344/2014 on the file of the Judicial First Class Magistrate's Court-III, Thrissur. Anx.A-5 is the summons issued by the Magistrate's court against the petitioner to answer the charge under Sec.20 of the Arms Act. The allegation is that the Police party had seized a sporting rifle belonging to the petitioner while on patrol duty.

2. It is pointed out that the petitioner had made application before the jurisdictional Magistrate for grant interim custody of the sporting rifle seized in connection with the crime in question and thereupon, the Magistrate as per Anx.A-3 order dated 12.8.2104

had ordered interim custody to be granted to the petitioner. The learned Magistrate has also made the following observations in paragraph 5 of Anx.A-3 said order, which reads as follows:

“5. From the report of the S.H.O. It is evident that he is having no idea as to how he shall proceed in the matter. Which section of Arms Act is to be incorporated is also not known to the S.H.O. Petitioner has produced the licence for possessing the weapon with him. Moreover, for adding a section of law in the records, the rifle need not be kept in the court custody and it can be released to the petitioner.”

3. It is not disputed that the the petitioner is the licensed owner of the sporting rifle in question. The gist of the prosecution case is that the said rifle along with its cover, ammunition in 15 numbers and a magazine were found lying in an abandoned state near N.H.47 at western side of Kombazhakaradikkundu road. That those items were seen by the Sub Inspector of Police, Peechi Police Station and his police party during night patrol at 4.45 a.m. on 20.7.14. Thereupon the same was seized, which led to the registration of Anx.A-1 crime. According to the petitioner, three dogs belonging to the petitioner's friend had ran away while opening the door of its cage and the petitioner and his friend ran in opposite direction in search of the dogs and that the petitioner had carried his licensed sport rifle along with him, since it was dark.

That when he reached near the national highway, suddenly a jeep stopped near him and apprehending that they had come to rob him, the petitioner ran away, but accidentally the sports rifle slipped from his hand. That the same could not be traced out and later it was learnt that the Police had seized the sports rifle in connection with the aforementioned crime.

4. The main contention of the petitioner is that the sole offence charged against the petitioner is one under Sec. 20 of the Arms Act. That the said provision is only a preventive section and it is not an offence punishable under the Arms Act and therefore it is contended that the continuation of the prosecution against the petitioner to answer charge under Sec.20 of the Arms Act is not maintainable and that he is having due licence for possessing the said rifle and no other offences under the Arms Act are made out.

5. Heard both sides.

6. Sec.20 of the Arms Act reads as follows:

“Sec.20:Arrest of persons conveying arms, etc., under suspicious circumstances:– Where any person is found carrying or conveying any arms or ammunition whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are or is being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any Magistrate, any police officer or any other public servant or any person employed or working upon a railway,

aircraft, vessel, vehicle or any other means of conveyance may arrest him without warrant and seize from him such arms or ammunition.”

7. Incidentally it should also be noted that Anx.A-6 is the licence possessed by the petitioner for the sporting rifle. Anx.A-7 evidences that the petitioner is a member of the Kerala State rifle Association and has participated in shooting championship. Anx.A-8 would evidence that the petitioner had participated in the Thrissur District Shooting Championship 2014-15 conducted by the Thrissur District rifle Association.

8. A plain reading of Sec.20 of the Arms Act would make it clear what is envisaged therein is that where any person is found carrying any arms or ammunition whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are or is being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any Magistrate, any police officer etc. may arrest him without warrant and seize from him such arms or ammunition. Therefore even if a person, who is having license for an arm or ammunition, is found carrying them in such a manner or under such circumstances as to afford just grounds of suspicion that the same

are or is being carried by him with intent to use them or that the same may be used in unlawful purposes, etc., competent authority is empowered to arrest such a person and seize arms or ammunition.

9. If the arms or ammunition were not having proper licence, then appropriate action would be taken for being involved in any other penal offence in that regard as may be envisaged in Arms Act or any other law in that regard. In the instant case, it is indisputable that the petitioner is possessing licence for that sporting rifle. The prosecution has no case that the petitioner might have used it for any unlawful purposes. Prima facie, it is to be noted that merely because the petitioner had taken the licensed arm and is found to have been suspected with the intent to use that arm by itself is not a penal offence either in the Arms Act or any other law. The prosecution has no such case that the aforestated situation is the one covered in the instant case, would attract any other offence in the Arms Act or any other law. The court below has clearly observed in para 5 of Anx.A-3 order that from the report of the Station House Officer it is evident that the prosecution is having no

idea as to how to proceed in the matter or as to which section or provision of the Arms Act is attracted as an offence in the facts of this case.

10. More importantly, on going through the Anx.A-4 final report/charge sheet, the allegation raised therein against the petitioner is that he was seen to carry the above said sporting rifle presumably for hunting animals or for any other purposes etc. There is no other specific or precise allegation against the petitioner that the petitioner was seen to have carried that licensed gun for hunting purpose by giving precise details as to whether the animal sought to be hunted is a wild animal, killing of which is prohibited or as to what exactly is the other purposes attributed or alleged in the FIR. The prosecution has no case that the place of occurrence in question was in the vicinity of any Forest area for the likely presence of any wild animal. The prosecution is not clear as to whether the petitioner was intending to use the licensed gun for hunting a wild animal or a domestic animal or as to what exactly is the "other purpose" alleged therein. So the prosecution is not clear in that manner and therefore it cannot be said in the absence of precise

allegations supported by cogent materials that the petitioner intended to use his licensed gun for hunting an animal, which is prohibited as per the provisions of law as in the Wild Life Act or such other law, as to how and why any offence is made out. Since the prosecution is not clear on this, they have loosely used the words, "hunting of animals or other purposes" in the impugned final report. Even if it is assumed that Sec.20 is a penal offence by itself, still no offence is made out in the facts of this case. Moreover, it is a fact that the petitioner's gun is licensed as per Anx.A-6 and that he is a member of the Kerala State Rifle Association as evident from Anx.A7 and that he has participated in the Thrissur District Shooting Championship as evidenced by Anx.A-8. These aspects would clearly indicate that there are sufficient materials showing the bona fides of the petitioner, which would justify exercise of discretionary jurisdiction conferred on this Court under Sec.482 of the Code of Criminal Procedure, on the facts of this case.

11. Accordingly, this Court is of the considered opinion that the continuation of the impugned criminal proceedings against the petitioner will amount to abuse of process of court. In this view of

the matter, it is ordered that the impugned Anx.A-4 final report/charge sheet filed in the impugned Anx.A-1 Crime No. 1143/2014 of Peechi Police Station, which has led to Calendar Case, C.C.No.3344/2014 on the file of the Judicial First Class Magistrate's Court-III, Thrissur, pending against the petitioner and all further proceedings arising therefrom stand quashed.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge