

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.3885 of 2016

P.Gowrishankar

.. Petitioner/Accused

... Vs ...

The Inspector of Police,
Erode South Police Station,
Erode.

(Crime No.1131 of 2000)

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to direct the learned Principal Sessions Judge, Erode Division, to return back the pistol bearing one 6.35 mm/0.25 inch caliber ASTRA semi automatic pistol bearing No.655985, to the petitioner as per order dated 18.02.2002 passed in S.C.No.155 of 2001.

For Petitioner : Mr.Immanuvel Prakasam

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking for a direction, directing the learned Principal Sessions Judge, Erode Division, to return back the pistol 6.35 mm/0.25 inch caliber ASTRA semi automatic pistol bearing No.655985, to the petitioner as per order dated 18.02.2002 passed in S.C.No.155 of 2001.

2. The learned counsel for the petitioner would submit that the petitioner is an accused in S.C.No.155 of 2001 on the file of the learned Principal Sessions Judge, Erode Division, for the offences punishable under Sections 341 and 308 of IPC and Section 4 of Tamil Nadu Public Properties (Prevention of Damages and Loss) Act, 1992 and Section 30 of Arms Act, 1959, and he was acquitted by the learned trial Judge on 18.02.2002 from the charges levelled against him. At the time of acquitting the

petitioner, the pistol, which was marked as M.O.5, was ordered to be confiscated to the State by the learned Principal Sessions Judge, Erode, but, as per Section 32 of the Arms Act, 1959, the confiscation order is void and hence, the petitioner has come forward with this petition for the above stated relief.

3. Resisting the same, the learned Additional Public Prosecutor would submit that since some of the witnesses have been turned hostile, the petitioner was acquitted from the charges. The trial Court has passed an order of confiscation in the year 2002 and the said order has not been challenged by the petitioner, but, the present petition has been filed only in the year 2016 and hence, he prayed for dismissal of the petition.

4. This Court has considered the rival submissions made on both sides and perused the materials available on record.

5. On a perusal of papers, it is seen that a report has been received from the learned Principal District Judge, Erode, wherein, it was stated that the case in S.C.No.155 of 2001 was disposed of on 18.02.2002 and M.O.5-6.35 mm/0.25 inch Caliber ASTRA semi automatic Pistol bearing No.655985, was ordered to be confiscated to the State and hence, the same was handed over to the Inspector of Police, Armed Reserve, Erode, on 30.09.2015. In such circumstances, nothing is in the hands of the Principal District and Sessions Judge. Further, even though the confiscation order was passed on 18.02.2002, the same has not been challenged by the petitioner and therefore, the petitioner is not entitled to receive the Pistol.

6. It is useful to extract Section 32 of the Arms Act, 1959, which reads as follows:-

"32. Power to confiscate.- (1) When any person is convicted under this Act of any offence committed by him in respect of any arms or ammunition, it shall be in the discretion of the convicting court further to direct that the whole or any portion of such arms or ammunition, and any vessel, vehicle or other means of conveyance and any receptacle or thing containing, or used to conceal, the arms or ammunition shall be confiscated:

Provided that if the conviction is set aside on appeal or otherwise, the order of confiscation shall become void.

(2) An order of confiscation may also be made by the appellate Court or by the High Court when exercising its powers of revision."

7. The trial Court has passed the confiscation order on 18.02.2002 and as against the confiscation order, the petitioner has not preferred any revision for setting aside the same. Further, in pursuance of the confiscation order, the Pistol, which was marked as M.O.5, was handed over to the Inspector of Police, Armed Reserve, Erode, on 30.09.2015. The petitioner, without agitating the matter for the past 14 years, has come forward with the present petition seeking a direction to the learned Principal Sessions Judge, Erode, to return back the Pistol to him. Hence, I do not find any merit in this petition.

8. In the result, the criminal original petition fails and the same is, accordingly, dismissed.

Jrl

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge,
Erode Division.
2. The Inspector of Police,
Erode South Police Station,
Erode.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.3885 of 2016

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srg 15/03/2016

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