

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 08.03.2018]

[Pronounced on : 27.06.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.7800 of 2011

and

M.P.No.1 of 2011

M.Chinnathambi ... Petitioner/Accused - 2

... Vs ...

State Rep. by Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings against A.2, who is the petitioner herein connected in C.C.No.117 of 2010 pending trial on the file of the learned District Munsif-cum-Judicial Magistrate, Pochampalli.

For Petitioner : Mr.P.Ezhil Nilavan

For Respondent : Mr.T.Shanmuga Rajeswaran,
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed by the petitioner/A.2 seeking to quash the proceedings in C.C.No.117 of 2010 pending trial on the file of the learned District Munsif-cum-Judicial Magistrate, Pochampalli.

2. The case of the prosecution is that on 17.02.2006 at about 8.00 a.m. at Koorampatti Ponnagar, near the cow shed of one Magesh, S/o. Vellaiyan, who is A.1 in this case, when the police party conducting surprise check in order to prevent the prohibition offences, found that A.1 has concealed a smooth bore Single Barrel Muscle Loading gun in his cow shed. When the police party seized the said gun, A.1 replied that it was belonging to him but he had no license for that. Thereafter, the Sub-Inspector of police had registered an FIR against the first accused under Section 25 (1) (A) of the Arms Act. Later,

based on the confession statement of A.1, this petitioner has also been arrayed as A.2 and now, he is facing the above case.

3. Learned counsel appearing for the petitioner/A.2 would submit that the petitioner was formerly president of Chouttahalli Panchayat and he is having very high reputation in that locality. He is prominent DMK Party Activist and he is a Senior Citizen aged about 70 years. He is having KPM 30 SBML type Gun lincense down from 12.02.1974. The petitioner was also periodically once in three years renewed the license issued by the authorities. Even on 01.01.2009, it was renewed till 31.11.2001 by the District Revenue Officer, Krishnagiri. The petitioner also handed over his SBML Gun No.KPM 30 to the Sub-Inspector of Police, Kaveripattinam on 03.03.2011 in connection with the forthcoming assembly elections 2011. The petitioner did not know the first accused Magesh at any point of time. The possession of license and gun by the petitioner is known to everybody in that locality. Since A.1/Magesh was in possession of illegal gun, he has showed this petitioner to the police as if he had handed over the gun to A.1. The police also registered the above case as if A.1 was in possession of A.2's gun. The petitioner, therefore, has not committed any offence whatsoever and he has been falsely implicated.

4. Learned counsel appearing for the petitioner/A.2 would further submitted that the petitioner's name does not find place in the FIR. But based on the alleged confession statement of A.1, the petitioner was robed in and there is no evidence on record to connect the petitioner with the alleged crime and hence, proceedings against him may be quashed.

5. Learned Government Advocate (Crl.Side) submitted that on 17.02.2006 at about 08.00 hours at Koorampatti Ponnagar, near the cow shed of the first accused within the limits of Nagarasampatti police station, while the sub-Inspector of Polie, Nagarasampatti police station and his party were conducted a surprise check in order to prevent the offences under Tamil Nadu Prohibition Act, they found that A.1 was found in possession of smooth bore single barrel muzzle loading gun belonging to A.2 without any valid licence as enumerated in Section 3 of the Arms Act, 1959.

6. Learned counsel appearing for the petitioner/A.2 would contend that the other proceedings in respect of A.2 cannot be allowed to permit, since the same is abuse of process of law. Learned counsel also has drawn my attention to the statements of witnesses given by L.W.1-Madhu, L.W.2-Krishnan, L.W.3-Devaraj and L.W.4-Raja and would contend that none of the listed witnesses have spoken about the petitioner/A.2 and he is having a valid gun license and during the Central Election also, he has deposited the gun before the sub-Inspector of Police,

Koorampatti, Krishnagiri, and due to political reason, a false case has been foisted against the petitioner.

7. Learned counsel for the petitioner also filed a copy of the proceedings dated 05.03.2010 issued by the District Revenue Officer, Krishnagiri, which would go to show that the petitioner is having a valid gun license and the same has been renewed for a further period of 3 years commencing from 01.01.2009 to 31.12.2011.

8. After going through the records and the statements of witnesses and also the final report filed by the respondent police before the learned District Munsif-cum-Judicial Magistrate, Pochampalli, it is seen that none of the listed witnesses have deposed regarding the alleged ownership of the petitioner herein, who is arrayed as A.2. Furthermore, none of the listed witnesses have stated about the alleged relationship as projected by the prosecution that this petitioner/A.2 has given the gun in the custody of A.1. As rightly pointed out by the learned counsel for the petitioner, the petitioner/A.2 is the legal politician and he is also having valid gun license which is being renewed from time to time and it also appears that during the local election, A.2 has surrendered his gun to the police as could be seen from the typed set of papers that has been filed before the Court. Thus, this Court finds that the petitioner herein/A.2 is a gun license holder and his license has been regularly renewed from time to time as required under the Arms Act and there is no positive evidence from any of the witnesses viz., L.Ws.1 to 5 regarding the alleged prosecution except the confession statement of the co-accused and hence, I am of the considered opinion that since there is no positive material to prosecute the petitioner herein/A.2, who is having valid gun license, the continuance of the proceedings against him is not sustainable in law.

9. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.117 of 2010 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Pochampalli, against the petitioner/A.2, is hereby quashed. The learned District Munsif-cum-Judicial Magistrate, Pochampalli, is directed to take up the case in C.C.No.117 of 2010 and dispose the same within a period of twelve weeks from the date of receipt of a copy of this order.

The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

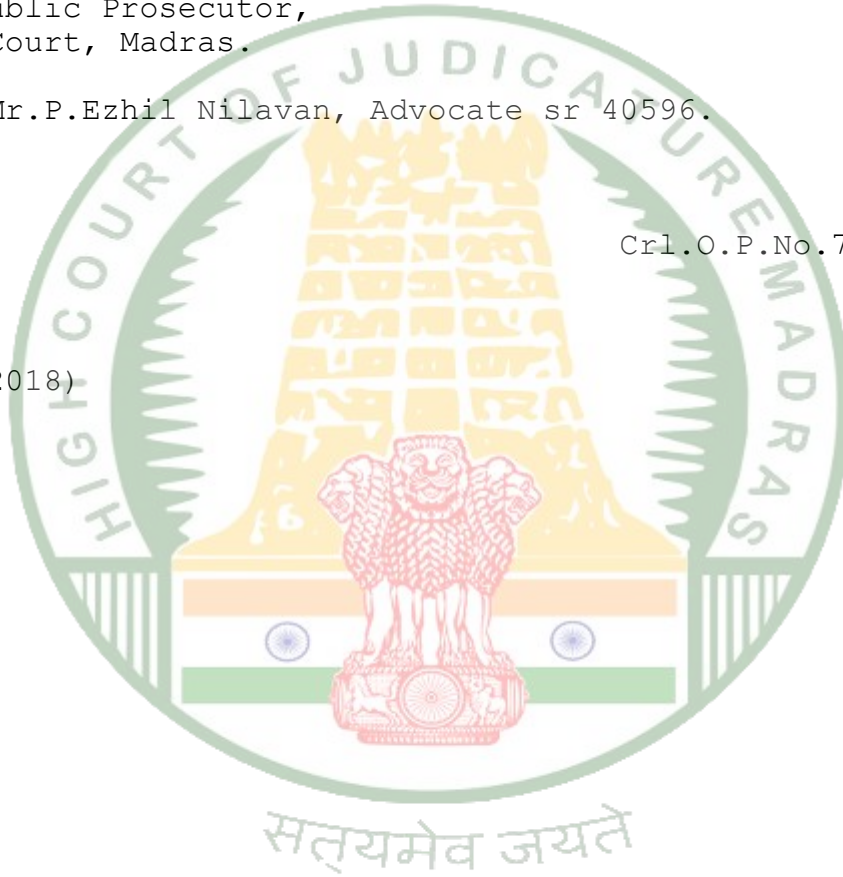
Jrl

To

1. The District Munsif-cum-Judicial Magistrate,
Pochampalli.
 2. The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
 3. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.P.Ezhil Nilavan, Advocate sr 40596.

Crl.O.P.No.7800 of 2011

NMI (CO)
SP(06/07/2018)



WEB COPY