

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.R.C.No.950 of 2020

The 17th Battalion,
The Jammu and Kashmir Rifles,
Rep.by the Rifles man,
Mr.Nachhatar Singh,
S/o.Sohan Singh. Petitioner

Vs.

State rep.by
The Inspector of Police,
(Law and Order)
S-5, Pallavaram Police Station,
Pallavaram,
Chennai - 600 043.
Crime No.485 of 2019. Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 of Cr.P.C. to revise or modify the conditional order and set aside the impugned order dated 22.01.2020 made in C.M.P.No.5 of 2020 on the file of the Judicial Magistrate Court - 2, Tambaram, Kanchipuram District.

For Petitioner : Mr.T.Benny Ebenezer

For Respondent : Mr.C.Raghavan
Government Advocate

O R D E R

The petitioner is a sepoy in the 17th Battalion, Jammu and Kashmir Rifles, Postal Index, having Service Number 13783162N and presently stationed in Pallavaram. During stationing at Pallavaram Camp, Havildhar Praveen Kumar Joshi and in-charge Constable Jagseer Singh had some fight between them. The Jagseer Singh in-charge constable was in possession of INSAS Rifle (Butt No.239) Fire Arm with Magazine - I, Live Cartridges 5.56 MM (INSAS)-10 Nos. and Empty Cartridges - 6 Nos. which was produced before the Judicial Magistrate - I Court. The said Jagseer Singh shot dead Havildhar Praveen Kumar Joshi and thereafter, he shot himself and committed suicide.

2. The petitioner herein is a sepoy who witnessed the crime and lodged complaint. Thereafter, Crime No.485 of 2019 came to be registered under Sections 174 Cr.P.C. and 302 IPC. He further submitted that after investigation, the case is closed as "further action dropped". Thereafter, the petitioner filed a petition in CrI.M.P.No.5 of 2020 seeking return of property since the property belongs to army and the camp is set to move out from Pallavaram to Kashmir. Hence, he filed a petition before the Judicial Magistrate Court - II, Tambaram, Kanchipuram District, seeking return of case property. The trial Court granted return of said property with the following conditions:

(i) The petitioner shall execute bond for a sum of Rs.1,00,000/- for his official capacity.

(ii) The petitioner should produce the property as and when required by this Court in the same condition and the photos have to be filed.

(iii) The petitioner shall file an affidavit that he will not dispose the INSAS Rifle (Butt No.239) Fire Arm with Magazine - I, Live Cartridges 5.56 MM(INSAS) - 10 Nos. and Empty Cartridges - 6 Nos.

3. The petitioner aggrieved on the condition No.1, for executing the bond for Rs.1,00,000/- approached this Court.

4. Learned Government Advocate submitted that on the complaint given by the petitioner a case was registered in Cr.No.485 of 2011 under Sections 174 Cr.P.C. and 302 IPC on 04.10.2019 and on the same day, the INSAS Rifle (Butt No.239) Fire Arm with Magazine - I, Live Cartridges 5.56 MM(INSAS) - 10 Nos. and Empty Cartridges - 6 Nos., were seized from the scene of occurrence and taken as case property. After investigation, the case is closed as "further action dropped".

5. RCS notice served to the respondent and thereafter, the case closed in R.C.S.No.26 of 2019 dated 13.12.2019, hence, nothing survives in Cr.No.485 of 2019.

6. Considering the submissions made and on perusal of the materials, it is seen that case in Cr.No.485 of 2019 has been closed as "further action dropped" and R.C.S.No.26 of 2019 dated 13.12.2019 has been filed. Admittedly, the Rifle and Cartridges belongs to 17th Battalion of Army. The 17th Battalion is on transfer to Kashmir and they intended to move by 10.11.2020.

7. In view of the same and considering the facts of the case, this Court is inclined to set aside the condition No.(i), execution of bond for a sum of Rs.1,00,000/- in the impugned order dated 22.01.2020 made in C.M.P.No.5 of 2020, alone; other conditions to be complied.

With the above modification, this petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
(Law and Order)
S-5, Pallavaram Police Station,
Pallavaram,
Chennai - 600 043.
2. The Judicial Magistrate Court - II,
Tambaram,
Kanchipuram District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Thomas T Jacob, Advocate Sr.35570

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