

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4141 of 2017
and Crl.M.P.No.3075 of 2017

Benhur Fernandas Raja,
S/o.Rajasekar

... Petitioner/Accused

Versus

1.The State

Rep. by the Inspector of Police,
J-1, Saidapet Police Station,
Chennai - 15.

2.Sasikala,

The Principal,
Government Mens Arts College (Autonomus),
Nandanam,
Chennai - 35

... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings of the First Information Report in Crime No.2655 of 2015 pending on the file of the first respondent Police and quash the same.

For Petitioner : Mr.M.Sarfudeen Ali Ahamed

For R1 : Mr.K.Prabakar

Additional Public Prosecutor

O R D E R

The petitioner, who is an accused in Crime No.2655 of 2015 for the offence under Section 25(1A) of Arms Act, 1959, has filed this quash petition.

2. The gist of the case is that the Principal of the Government Mens Arts College(Autonomous), Chennai -35, lodged a complaint stating that on 29.10.2015 at about 10.30 am., near the College library the petitioner and other group of students attempted to attack each other. Based on the information, the defacto complainant along with other college personnel gone there and found Benhur Fernandas Raja, B.Com 2nd year student

having 12 inches knife in his hand. He was caught and other students ran away from that place. Thereafter, the student was produced before the Police and lodged complaint, seeking safety and security for the other students in the College. The respondent Police registered a case against the petitioner for the above offence.

3. The learned counsel for the petitioner submitted that the petitioner has nothing to do with the above offence, he is falsely implicated in the present case. When the petitioner was preparing for his examination near the library there was some fight between two groups of students seeing the defacto complainant and others they ran away, the petitioner who was no way connected to the occurrence was caught. No weapon was seized from the petitioner. At the time of occurrence the petitioner was 21 years old young boy and he had no bad antecedents.

4. The learned counsel for the petitioner further submitted that due to the pendency of the above case the petitioner's future is at cross road. He is unable to complete his college course. The petitioner lost his father the bread winner and his mother is a housemaid. The petitioner is working as a helper in the construction sites to sustain himself. The petitioner is the first person in his family who had reached the college, due to the above case he lost his future. He further submitted that in this case no weapon was seized from the petitioner, produced before the Lower Court. Hence the allegations that petitioner was in possession of weapons is totally false. He also submitted that the petitioner has filed an undertaking affidavit showing remorse and in future he will not involve himself of any such acts.

5. The learned Additional Public Prosecutor submitted that the petitioner was caught by the College personnel and produced by the defacto complainant before the Police along with arms. Based on the complaint of the Principal, the case was registered. It is also learned an enquiry is pending against the petitioner. The petitioner had no bad antecedents apart from the above case. It is due to the above case the petitioner is unable to complete his College course and to get a degree. Further due to the pendency of the Criminal Original Petition, investigation in this case could not be completed and charge sheet is yet to be filed.

6. Considering the rival submissions and perusal of the materials it is seen that there is no dispute that the petitioner is a student who was studying B.Com in Government Mens Arts College (Autonomus), Chennai - 35 and he was near the library on the date 29.10.2015, when the semester examinations was in progress. The only point to be considered is that

whether the petitioner had any prohibitory arms with him and the same was seized. In this case, according to the complaint it is seen that the petitioner was found with one foot knife. For better appreciation, Sections 2(c), 7 and 25(1A) of the Arms Act, 1959 are extracted hereunder:

"2(c)-"arms" means articles of any description designed or adapted as weapons for offences or defence, and includes firearms, sharp-edged and other deadly weapons, and parts of, and machinery for manufacturing arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons;"

7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition-No person shall-

(a) acquire, have in his possession or carry; or

(b) use, manufacture, sell, transfer, convert, repair, test or prove; or

(c) expose or offer for sale or transfer or have in his possession for or have in his possession for sale, transfer, conversion, repair, test or proof,

any prohibited arms or prohibited ammunition unless he has been specifically authorised by the Central Government in this behalf."

25(1A) - Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine."

7. It is seen that if any prohibited arms handled in violation of Section 7 of the Arms Act, the person is punishable under Section 25(1A) of the Arms Act. In this case, admittedly the petitioner was not in possession of any prohibitory arms as per Schedule I of the Arms Act. In this case the seized knife is of 12 inches. As per Schedule-I, Blades longer than 9 inches or wider than 2 inches other than those designed for domestic etc are classified as arms. Admittedly, the respondent Police have not stated the length and width of the blades its shape and length of the handle.

8. In view of the these discrepancies and considering the fact that the petitioner is a student and he is of tender age, his life is in cross road and considering the petitioner had not come under adverse notice, the allegations seems to the inherently improbable. On the basis of the facts of the case, this Court is of the view that continuing of the proceedings against the petitioner would amount to abuse of process of law and hence Crime No.2655 of 2015 is hereby quashed.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rst
To:

1.The Inspector of Police,
J-1, Saidapet Police Station,
Chennai - 15.

2.The Public Prosecutor,
High Court, Madras.

+1cc To Mr.M.Sarfudeen Ali Ahamed, Advocate, sr no.29315

Crl.O.P.No.4141 of 2017
and Crl.M.P.No.3075 of 2017

CA(CO)
RMP(07/10/2020)

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