

Settu Vs. Sub-inspector of Police

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Court : Chennai

Decided On : Sep-28-1999

Reported in : 2000CriLJ1072

Judge : A. Ramamurthi, J.

Acts : Arms Act - Sections 25(1); Code of Criminal Procedure (CrPC) - Sections 239 and 482; [Constitution of India](#) - Article 227

Appeal No. : Crl. R.C. No. 993 of 1999 and etc.

Appellant : Settu

Respondent : Sub-inspector of Police

Advocate for Pet/Ap. : V. Raghayachari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Ramamurthi, J.

1. Petitioner/Accused in C. C. No. 273 of 1989 on the file of learned Judicial Magistrate, Polur, has preferred the revision aggrieved against the Order passed in C. N. P. No. 2976/99 dated 30-8-99.

2. The case in brief is as follows: The petitioner/accused has been charged for an offence under Section 25(l)(a) of the Indian Arms Act. Even though sanction has been obtained from the learned District Magistrate, perusal of the sanction Order would go to show that he has not strictly observed the provisions of law. It is mandatory that the provisions have to be scrupulously followed. The copy of the Order has also not been served on the petitioner. Hence, the petitioner filed the application for discharge under Section 239 of the Code of Criminal Procedure. Learned Additional Public Prosecutor opposed the application and after hearing both sides, the learned Magistrate dismissed the petition and aggrieved against this, the present revision has been filed.

3. Heard the learned counsel for the petitioner.

4. Learned counsel for the petitioner contended that non-furnishing of the sanction copy is illegal and went of compliance of the Code of Criminal Procedure. It is contrary to the principles laid down in *Narayana Kani v. State of Kerala* : AIR1960 Ker391 . The judgment relied on by the trial Court is not applicable.

5. There is no dispute that the petitioner was charged for an offence under Section 25(1)(a) of the Indian Arms Act. Learned counsel for the petitioner mainly contended that there is no proper sanction Order in accordance with law and the copy of the sanction Order was also not supplied to him. In support of his contention, he relied on : AIR1960 Ker391 , (*Narayana Kani's* case cited supra) that Section 25(1)(a) has to be complied with. This decision cannot be made applicable because whether a copy was given or not is a matter of evidence. The Order passed by the trial Court indicates that it has been duly complied with. When the point in controversy can be decided only on evidence, I am of the view that this cannot be used as a ground for discharge.

6. Learned counsel for the petitioner further relied on *Pepsi Foods Ltd. v. Special Judl. Magistrate*, 1998 SCC 1400 : : 1998 CriLJ1 wherein it is observed that no doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint

does not make out any case against him and still he must undergo the agony of a criminal trial. There is no dispute about this proposition.

7. Learned counsel for the petitioner further stated that even if the Court comes to the conclusion that the Order passed by the Court below is correct, already the petitioner filed an application to recall P.W. 1 for the purpose of cross-examination in CM.P. 1985/99 and the same was dismissed on 14-6-99 and, as such, a direction can be given to the Court below to give an opportunity. It is necessary to state CM.P. 1985/99 was dismissed on 14-6-99 and there is nothing to show that any revision was preferred against the said Order. The charge-sheet has been filed as early as 1989 and the case is pending without disposal for the last nine years. There is no illegality or infirmity in the Order passed by the Court below and, as such, no interference is called for.

8. For the reasons stated above, the revision fails and is dismissed. However, the Court below can consider the recall of P.W. 1 if it is absolutely necessary and on payment of charges by the petitioner. Consequently, CrI.M.P. No. 8033/99 is also dismissed.