

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.7580 OF 2023

BETWEEN

DR. SIDDAIAH S.

... PETITIONER

(BY SRI SANDESH J. CHOUTA, SENIOR ADVOCATE
FOR SRI RAJASHEKAR S , ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY R T NAGAR POLICE STATION,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA
BANGALORE - 560 001

2 . H M VISHWANATHA

... RESPONDENTS

(BY SRI B. LAKSHMAN, HCGP FOR R1
SRI C.V. NAGESH, SENIOR ADVOCATE FOR
SRI SANDEEP PATIL, ADVOCATE AND
MS. SWAMINI GANESH MOHANAMBAL, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.37805/2022 ON THE FILE OF THE XXXII ACMM BENGALURU, REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 7 OF RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT 1988, PURSUANT TO THE FILING OF THE COMPLAINT IN CR.NO.161/2021 OF R.T. NAGAR POLICE AND GRANT SUCH OTHER AND FURTHER RELIEFS AS THIS HONBLE COURT DEEMS FIT AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 5.10.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.37805/2022 arising out of Crime No.161/2021 registered by the R.T. Nagar police station and charge sheeted for the offence punishable under Section 7 of Religious Institutions (Prevention of Misuse), Act, 1988 (herein after referred as 'Act') now pending on the file of XXXII Additional CMM, Bengaluru.

2. Heard the arguments of Sri.Sandesh Chouta, learned senior counsel for the petitioner, learned High Court Government Pleader for respondent No.1-State and Sri.C.V.Nagesh, learned senior counsel for the respondent No.2.

3. The case of the petitioner is that the respondent No.2 one Vishwanath, Secretary of the Taralabalu Kendra have filed the first information on 9.8.2021, before the Commissioner of Police, Bengaluru. Inturn the same was referred to the R.T. Nagar police through DCP-North. Accordingly, FIR has been registered. It is alleged by the informant, that the Taralabalu Kendra is a religious institution established and maintained by Sri.Taralabalu Kendra Jagadguru Brihanmath, Sirigere, Chitradurga District and the petitioner was working as Honorary Secretary from 2004 to 2021. The executive committee of the institution reconstituted and the informant is the present Secretary of the Taralabalu Kendra. After he assumed charge, he came to know that the petitioner was being previous Secretary staying in the Kendra, was possessing a pistol since 2017 by furnishing address of the Taralabalu Kendra and had kept the pistol in the premises of the Kendra, which is a religious institution, by possessing and preserving pistol in the premises which is prohibited and is an offence under Section 3(c) and 4 of

the Act which is punishable under Section 7 of the Act. Keeping the pistol is prohibited in this religious institution. A notice was issued to the petitioner on 20.02.2020, to surrender the pistol to the police, as it was not allowed to carry a weapon into the religious institution, but he has refused to surrender. A complaint also was lodged by the Mutt Secretary on 19.3.2020 to the R.T. Nagar police, but no action was taken and hence she has lodged complaint to the Commissioner of police, but so far no FIR has been registered and no investigation took place. Hence, he has filed another complaint to the Commissioner of police for taking action. After registering the complaint, the police registered the FIR and the same was challenged by the petitioner by filing CrI.P.No.6395/2021, before this court for quashing the FIR, which came to be dismissed on 8.3.2022 and permitted the police to investigate the matter. Accordingly, now police have investigated the matter and filed the charge sheet. Once again the petitioner is before this court by challenging the charge sheet.

4. Sri. Sandesh Chouta, learned senior counsel for petitioner has strenuously contended that there was dispute between the senior pontiff and junior pontiff and due to which the petitioner has been falsely implicated in this case. The secretary also filed one more case before the Mysuru police, Saraswathipura, for the offence punishable under Section 406 of IPC, which was registered in Crime No.96/2021, where the police have filed 'B final report'. He further contended, the petitioner obtained license for possession of the pistol. Accordingly, the police verified the spot where he has given the address of the Mutt. Thereafter, report has been sent by the RT Nagar police. Accordingly, the license has been granted, as per the Arms Act. If a license was given to an address, he must keep the arms at the address given by the police under a safe locker and if he removes the arms, without the knowledge of the police, it will be an offence under the Arms Act 1959. The license has been granted under Section 13 of the Arms Act, 1959. Even the police could have rejected the license, if the conditions was not fulfilled

under Section 14 of the Arms Act and when any law had prohibited for keeping the possession of the pistol or arms, there is no contravention of the provisions of Section 3, 4 and 5 of the Arms Act. Therefore, the license has been duly granted by the police authority, such being the case, keeping the pistol in the address given at the institution, there is no violation and there is no prohibition under the law.

5. Learned senior counsel also contended as per Rule 10 of the Arms Rule 2016, the prescribed form is provided and place has been identified and license is given. Therefore, it cannot be said the petitioner violated any law and in accordance with Arms Act, he is in possession of the Arms Act and the address given to the police has been identified by the place of depositing the pistol. Such being the case, the petitioner cannot shift the place of safe locker, which will be an offence under the Arms Act. Therefore, he has contended, the possession is in accordance with the Arms Act. Therefore, no offence has

been committed by the petitioner, in order to face the trial for the offence punishable under Section 7 of the Act.

6. Learned senior counsel also contended various pontiff in Karnataka are having possession of pistol by obtaining license, the police will provide license to VIPs as well as the pontiffs. Therefore, there is no offence committed by the petitioner. He further contended that the Arms Act is Central Act, which permits the person to possess the arms with license, whereas the State Act prohibits, both the acts must be read harmoniously. If any law prohibits, the police could have refused the license but they had granted the license which is not prohibited under the Arms act. Whereas, it was also not prohibited in the State Act. Therefore, there is no ingredient to attract any of the offences. Therefore, prayed for quashing the criminal proceedings.

7. Per contra, learned senior counsel appearing for respondent No.2, seriously objected and contended that the license was obtained for possession, whereas sections

3 and 3(c) and 4 of the Act prohibits carrying the weapons into the religious institutions, which is punishable under Section 7 of the Act and knowingly he had kept weapons for more than 4 years. In spite of directing the petitioner to surrender the weapon to police, he has not surrendered. The complaint was also filed to Commissioner of Police, they have not registered the case. The petitioner by using the influence obtained the license without permission of the Management or the pontiff, he is only a Manager of the institution and he himself will not permit the others to bring weapons to the institution, such being the case, he cannot carry the weapon inside the religious institution. There are eye witnesses to the case, where they have categorically stated, the petitioner brought the weapons inside the institution, if at all any plea of ignorance, that has to be considered after the trial and he can plead for defence in the trial. Therefore, learned senior counsel contended, there is no material produced to show the petitioner is a junior pontiff and he has misappropriated the property of the Mutt. A case is already pending in

Mysore court. The 'B final report' has been challenged. The petitioner shown address of the institution as residential house, there is a prohibition in the Act for keeping or carrying the weapon inside the religious institution, which is punishable under Section 7 of the Act. Therefore, matter required for trial, court cannot quash the proceedings at this stage.

8. Learned senior counsel also contended the petitioner ought to have approached Magistrate for discharge under Section 239 of Cr.P.C., where the documents available before the Magistrate to verify, but those documents were not part of the charge sheet. Therefore, prayed for dismissal of this petition.

9. Learned High Court Government pleader also objected the petition and adopted the arguments of learned senior counsel for respondent no.2

10. Learned senior counsel for the petitioner also relied upon Hon'ble Supreme Court reported in **(2008) 14 SCC** in case of **Rukmini Narvekar Vs Vijaya Satardekar**

and Ors another judgment reported in **(2005) 1 SCC 568** in case of **State of Orissa Vs Debendra Nath Padhi**. Also in another case, reported in **1992 Supp(1) SCC 335** in case of **State of Haryana and Ors Vs Bhajanlal and Ors**.

11. Learned senior counsel for the respondent relied upon judgment of the Hon'ble Supreme Court reported in **(2010) 11 SCC 607** in case of **K.Neelaveni Vs State represented by Police and others**.

12. I have perused judgment of Hon'ble Supreme Court, relied by both the counsel in respect of quashing the criminal proceedings, filing discharge applications either under sections 227 or 239 of Cr.P.C and also the judgment of Hon'ble Supreme Court in **Bhajanlals' case** stated supra. The Hon'ble Supreme Court in **Bhajanlals' case** at **para 102(7)** categorically held if "a criminal proceeding is manifestly attended with a mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking the vengeance on the accused

and with a view to spite him due to private and personal grudge", the court can quash the criminal proceedings. Likewise, in the ***K.Neelaveni's case*** Hon'ble Supreme Court has held the accused shall approach the Magistrate for seeking discharge under Section 239 of Cr.P.C, instead of getting quashing the criminal proceeding under Section 482 of Cr.P.C., by keeping the principle laid down by the Hon'ble Supreme Court, in all the case. Now come to the case of the prosecution, which reveals, as under:-

13. It is an admitted fact, the petitioner was the Honorary Secretary of the Taralabalu Kendra, which is a religious institution. It is also an admitted fact, the petitioner has obtained the license from the police authorities for possessing the pistol by showing his address said to be residing at 3rd floor in Tarala Balu Kendra, RT Nagar, Bengaluru. The copy of the license also produced by the learned senior counsel for the petitioner, wherein it clearly reveals, the police authorities had granted the license for possessing or keeping the weapon, pistol in the address shown in the application filed by the petitioner. It

is also revealed from the records, there was dispute arisen between the petitioner and the management of the religious institute and a fresh committee was constituted by removing the petitioner as Secretary from the Trust. It is also an admitted fact, previously the petitioner approached this court for quashing the FIR by filing the Crl.P.No.6395/2021 and this court by detailed order dismissed the petition on 08.03.2022, permitted the police to investigate the matter. Accordingly, the police investigated the matter and filed the charge sheet. The contention of the petitioner is that, he has obtained the license from the police department by filing necessary application and the same was granted to him. Accordingly, he has obtained the license for keeping the pistol for self protection, as per the documents produced by the petitioner. Admittedly, the petitioner shown the address as Taralabalu Kendra, 3rd main road, 2nd Block, RT Nagar, Bengaluru. He was also permitted to keep cartridges and pistol in the said address, the license was issued by the competent authority under the Arms Act. Every year he

has got renewed the same. Learned senior counsel has contended that as per Form Nos.2, 3 and 4 of the Rule 4, he has complied all the requirements and obtained the license. The Section 13 of the Arms Act, empowers the authority for issuing license. As per 14 of the Arms Act, the authority can even refuse the license on the ground, if where such license is required by a person, who the licensing authority has reasons to believe to be prohibited by Arms Act or by any other law for the time being in force, from acquiring, having in possession or carrying any arms or ammunition. On reading of the section 14 (1)(b)(i)(1) of Arms Act, it clearly prohibits for issuing license, if any other law prohibits for acquiring or having possession and carrying of ammunition. Now coming to the provisions of the present Act, Section 3 and 4 of the Act reveals as under;

"3. Prohibition of use of religious institutions for certain purposes.—No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution—

(a) for the promotion or propagation of any political activity; or

(b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or

(c) for the storing of any arms or ammunition; or

(d) xxxx

(i) xxxx

*4. Restrictions on carrying arms and ammunition into a religious institution.—**No religious institution or manager thereof shall allow the entry of any arms or ammunition or of any person carrying any arms or ammunition into the religious institution:***

Provided that nothing in this section shall apply to—

(a) the wearing and carrying of a Kirpan by any person professing the Sikh religion; or

(b) any arms which are used, as part of any religious ceremony or ritual of the institution as established by custom or usage."

14. On bare reading of Section 3 (c) of the Act, there is a prohibition for storing ammunition in the Religious Institutions and as per Section 4 of the Act, there is restriction for carrying the arms into the Religious Institutions, where it categorically defines no Religious Institution or Manager shall allow the entry of any arms or ammunition or of any person carrying any arms into the

Religious Institutions and the said restriction is not available to the Kirpan wearing by the Sikh and carry ammunition for their religious ceremony as per their customs. Therefore, when the petitioner being himself was the Manager, he shall not allow any person carrying any arms or ammunition into the Religious Institution. There is a bar for carrying the weapons to the institution, such being the case, he is also not exempted from carrying any weapons to the Religious Institutions and to keep weapon in the Religious Institutions. Therefore, the restriction for carrying the weapons or arms is not only to the other persons, but also to the Manager and other person in the Institution, except by obtaining any permission regarding any threat to life of the said person.

15. Herein this case, the petitioner has admittedly not obtained any permission from the President of the Religious Institutions and there is no threat to his life for getting an armed force like a gun man for the purpose of the protection, but he has taken the gun as self protection in the year 2017, without the knowledge and permission of

the head of the institution. If at all, the petitioner claims he is ignorant of Section 3 and 4 of the said Act, that he has obtained the license from the police and used it, but 'the ignorance of law is not an excuse' to the petitioner and the petitioner already committed the offence under Section 3 (c), 4 of which is punishable under Section 7 of the Act. Such being the case, he has to face the trial and whatever defense available, he can plead the same in the Trial Court. That cannot be a ground for quashing the criminal proceedings and charge sheet against him under Section 482 of Cr.P.C.

16. Learned senior counsel for the respondent has rightly contended the license etc., produced in the petition were all not forming part of the charge sheet and the license and other permission given by the police can be used as defense and confront to the Investigating Officer in the cross examination and for the purpose of appreciation, the Trial Court may consider the documents of the defense. But the fact remains that the petitioner being Manager or Honorary Secretary, he has stored and

carried the weapon to the Religious Institutions, which is prohibited under Section 3(c) and 4 of the Act.

17. That apart, there are eye witnesses and they have given statement before the police that, they saw the petitioner while bringing the gun to the proceedings and into the institution and the same came to the knowledge of the complainant, very recently. Therefore, the complaint came to be filed before the Commissioner of police, but no action was taken and prior to that a complaint was given to R.T. Nagar police and they have not registered FIR. Subsequently, one more complaint was filed before the Commissioner of Police on 9.8.2021. There is reference available in the complaint regarding filing of the complaint and inspite of the request made by the mutt for surrendering the weapon, the petitioner has not surrendered the same and kept in his possession for almost one year. Thereafter, it was surrendered, even while surrendering the weapon, the petitioner has stated he wants to sell the arms until finding the purchaser, he wants to deposit the weapon to the police station. Even

otherwise, he is not ready to say he cannot carry the weapon into the Religious Institution. Though he has surrendered, but he has stated, for the purpose of selling the weapon, he is surrendering and not stated he has been ousted from the institution by the Management of the Tarala Balu Kendra. Therefore, the grounds urged by the learned senior counsel for the petitioner cannot be acceptable. On the other hand, there are no sufficient materials placed on record for framing of charge. Hence, I hold petition is devoid of merits and liable to be dismissed.

Accordingly, this petition is hereby ***dismissed***.

**Sd/-
JUDGE**

AKV