

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 28TH DAY OF MARCH 2023 / 7TH CHAITHRA, 1945

CRL.MC NO. 922 OF 2023

C.C. NO.236/2021 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,

MATTANNUR, KANNUR

FIR NO.6/2019 OF AIR PORT POLICE STATION, MATTANNUR, KANNUR

PETITIONER/ACCUSED:

SHANTANU YADAV RAO HIRE

AGED 54 YEARS

SAI BUNGLOW, K.J.METHA SCHOOL ROAD,

NEAR CHOVAN MALA, NASIK ROAD,

NASIK,MAHARASHTRA., PIN - 422101

BY ADVS.

T.ASAF ALI

T.Y.LALIZA

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682031
- 2 THE STATION HOUSE OFFICER,
AIR PORT POLICE STATION,
MATTANNOOR, KANNUR DIST.
KERALA, PIN - 670702

SRI.VIPIN NARAYAN,PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28.03.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C No.922 of 2023

Dated this the 28th day of March, 2023

ORDER

Would a live cartridge seized from the bag of a passenger during the security check at the airport without seizure of any corresponding fire-arm amount to an offence under the Arms Act, 1959 (for short 'the Act') arises for determination in this case.

2. Petitioner is a businessman from Maharashtra. He possesses a license to possess arms within his State. His daughter is a Commandant Pilot, serving in Air India stationed at Kannur in Kerala. On 04.04.2019, while waiting to board the flight from Kannur Airport to return to his home State after spending time with his daughter, his baggage, when subjected to screening was detected with a live cartridge of 0.32 calibre. Though petitioner claimed ignorance of the live cartridge and how it came to be in his bag, an FIR was registered as Crime No.6 of 2019 of Airport Police Station, Mattannur, alleging

offences punishable under sections 3 and 25(1B)(a) of the Act. After the final report was filed, the Judicial First Class Magistrate's Court, Mattannur, took cognizance of the offence as C.C. No.236 of 2021.

3. Petitioner alleges that he has an unblemished track record and has never been involved in any criminal case in his entire life, and is also holding an arms licence valid within the State of Maharashtra. Petitioner contends that he was not in conscious possession of the ammunition for attracting the offence under section 25 of the Act. It was also contended that a single live cartridge without a corresponding fire-arm is a minor ammunition which is protected under clause (d) of section 45 of the Act, and hence an offence is not at all made out. Petitioner also contended that even if it is assumed that there was any recovery of a live cartridge, the same was not within the knowledge of the petitioner, and it must have remained in the bag, inadvertently.

4. I have heard Sri. Asif Ali, learned counsel for the petitioner and Sri. Vipin Narayanan learned Public Prosecutor.

5. For the purpose of reference, section 2(b) and section 25(1B)(a) of the Act are extracted below:

"2. Definitions and interpretation.-(1) In this Act, unless the context otherwise requires,—

(a) xxx

(b) "ammunition" means ammunition for any fire-arm, and includes,—

- (i) rockets, bombs, grenades, shells and other missiles,
- (ii) articles designed for torpedo service and submarine mining,
- (iii) other articles containing, or designed or adapted to contain, explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with fire-arms or not,
- (iv) charges for fire-arms and accessories for such charges,
- (v) fuses and friction tubes,
- (vi) parts of, and machinery for manufacturing, ammunition, and
- (vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf."

"25. Punishment for certain offences.-

(1-B) Whoever-

(a) acquires, has in his possession or carries any fire-arm or ammunition in contravention of section 3; or
..... (other sub-clauses omitted as not relevant)
shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than two years.

(1-C) Notwithstanding anything contained in sub-section (1-B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall

not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.--For the purposes of this subsection, disturbed area means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification under section 24-A or section 24-B."

6. In the decision in **Gunwantlal v. State of Madhya Pradesh** [(1972) 2 SCC 194], a Constitution Bench of the Supreme Court in the context of section 25(1)(a) had observed as follows:

"The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house."

7. The aforesaid judgment further went on to hold that the first pre-condition for an offence under section 25(1)(a) is the element of intention, consciousness or knowledge with which a

person possesses the fire-arm before it can be said to constitute an offence and secondly that possession need not be physical possession but can even be constructive possession.

8. Possession of a fire-arm under section 25 of the Act means conscious possession involving a mental element. Mere custody, without any element of consciousness or knowledge of that possession, cannot amount to an offence under the Act. It is settled law that the possession of a fire-arm under the Arms Act must have the element of consciousness or knowledge of that possession on the person charged with such offence. Further, even if he has no actual physical possession, if he nonetheless has power or control over the weapon, his possession will amount to a conscious possession, even if the actual possession is with a third party.

9. In the instant case, though petitioner's bag contained a single live cartridge, which was recovered during the security check at the airport, a corresponding fire-arm was not recovered. The absence of a fire-arm in any of the bags of the petitioner indicates that there was no conscious possession of the live cartridge. Absence of recovery of a fire-arm and the presence of a single live cartridge indicates that there was no

intention to possess or, in other words, no animus possidendi. In the absence of any animus possidendi, an offence under section 25 of the Act cannot be made out.

10. In the decisions in **Golap Saikia v. State of NCT of Delhi & Another** (2017 SCC OnLine Del.7680) and in **Narendra Kumar Gupta v. State of NCT of Delhi** (2021 SCC Online Del. 2335), the Delhi High Court had held that where a person is not conscious of ammunition in his possession, an offence under section 25 of the Arms Act could not be made out. It was also held in those two cases that in the absence of a fire-arm recovered from the petitioner, there was no threat to anyone at the Airport, and the recovery of a single cartridge does not prove that the petitioner had the intention to possess a fire-arm.

11. The statements of witnesses do not indicate that the prosecution has a case that the petitioner possessed a live cartridge with the conscious intention to possess it. No corresponding fire-arm or weapon was recovered either from the petitioner or from any other passenger. In the absence of a corresponding fire-arm, the petitioner cannot be said to have committed an offence under section 25 of the Act.

12. As held in the decision in **State of Haryana and**

Others v. Bhajanlal and Others (1992 Suppl 1 SCC 335), where the admitted allegations in the final report do not make out an offence, the continuance of the prosecution against the accused amounts to an abuse of the process of court and the inherent jurisdiction can be exercised to quash the proceedings. In view of the above discussion, this court is of the opinion that the presence of the live cartridge alone recovered from the baggage of the petitioner without a corresponding fire-arm indicates that there was no conscious possession of a fire-arm by the petitioner. Hence prosecution of the petitioner in C.C. No.236 of 2021 on the files of the Judicial First Class Magistrate's Court, Mattannur, is an abuse of the process of court and is hereby quashed.

This criminal miscellaneous case is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF CRL.MC 922/2023

PETITIONER'S/S' ANNEXURES

- Annexure A-1 CERTIFIED COPY OF FIR NO.06/2019 DATED 4-4-2019 OF MATTANOR AIR POROT POLICE STATION.
- Annexure A-2 CERTIFIED COPY OF FINAL REPORT DT. 19-2-2021 FILED BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, MATTANNUR.
- Annexure A-3 MEMO OF EVIDENCE PRODUCED TOGETHER WITH FINAL REPORT.
- Annexure A-4 TRUE COPY OF THE ARMS LICENSE DATED 5-3-2017 ISSUED BY THE COMMISSIONER OF POLICE, NASIK CITY, MAHARASHTRA, TO THE PETITIONER, WHICH IS VALID UPTO 04-03-2020.
- Annexure A-5 CERTIFIED COPY OF THE STATEMENT OF CHARGE WITNESS NO1 BY NAME S. PARASURAMAN.
- Annexure A-6 CERTIFIED COPY OF THE STATEMENT OF THE CHARGE WITNESS BY NAME ANEESHKUMAR
- Annexure A-7 CERTIFIED COPY OF THE STATEMENT OF THE CHARGE WITNESS BY NAME RAHULKUMAR, INSPECTOR, CISF.
- Annexure A-8 CERTIFIED COPY OF THE STATEMENT OF THE CHARGE WITNESS BY NAME GEORGE XAVIOR.
- Annexure A-9 CERTIFIED COPY OF THE STATEMENT OF THE CHARGE WITNESS BY NAME SIMINIL.K.B.
- Annexure A-10 CERTIFIED COPY OF THE FORENSIC LABORATORY REPORT DT.20-9-2019.
- Annexure A-11 CERTIFIED COPY OF THE SEIZURE MAHAZAR DT.4-4-2019 IN PROOF OF THE SEIZURE OF LIVE CATRIDGE.

Annexure A-12

**CERTIFIED COPY OF THE PROPERTY LIST
DT.5-4-2019.**

Annexure A-13

**CERTIFIED COPY OF THE SEIZURE MAHAZAR
DT.4-4-2019 IN PROOF OF THE SEIZURE OF
VALID ARMS LICENSE OF THE PETITIONER.**