

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4791 OF 2019

Mrs. Dr. Leena Ashay Nandeshwar,
Age - 44 yrs., Occ.: Doctor,
Flat No.1, Plot No.21, Sayali Apartment,
Sawarkar Colony No.1, Vishrambaug,
Sangli - 416415.

.. Petitioner

Versus

- 1. The State of Maharashtra,**
Through The Principal Secretary,
Home Department, Mantralaya,
Mumbai - 400 032.
- 2. The Commissioner of Police**
Crawford Market, Mumbai- 400 001.
- 3. The Senior Inspector of Police**
Airport Police Station.
SPL. LAC No.8/2016.

.. Respondents

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- Mr. N.U. Khan a/w. Shaba N. Khan, Advocate for the Petitioner
 - Ms. A.S. Pai, PP for the State
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CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.

RESERVED ON : JUNE 10, 2022.

PRONOUNCED ON : JUNE 15, 2022.

ORDER (PER : MILIND N. JADHAV, J.)

1. By the present petition, the Petitioner has prayed for the following relief:-

"a) That, this Hon'ble Court exercising powers under Article 226 of the Constitution of India, 1950 and inherent powers u/s. 482 of Code Criminal Procedure, 1973 be pleased to quash and set aside the proceedings in C.C. No.2892/pw/18 pending on

the file of Id. metropolitan magistrate 66th court Andheri, Mumbai, arising out of SPL. LAC No.8/2016 registered with Sahar Police Station, Mumbai."

2. The above writ petition is filed for quashing of proceedings arising out of Special L.A.C. No.8 of 2016 registered with Sahar Police Station, Mumbai dated 04.12.2016 under sections 3 and 25 of the Indian Arms Act, 1959 (for short "**the said Act**") against the Petitioner. Petitioner is M.D. in Ayurvedic and permanent resident of Sangli. She planned a tour in December vacation to Kochi along with her husband and children; flight tickets from Mumbai to Kochi were booked for 03.12.2016 at 15.20 hrs.; during the security check at the Airport one live cartridge was detected and recovered from the hand baggage of the Petitioner by ASI Daya Ram Meena while screening. Petitioner was directed to open her bag and after opening the bag officers found one "K.F." and "32S&WL" live cartridge. Petitioner informed the security that she had no knowledge as to how the alleged live cartridge was found in her bag and at that stated that the same could pertain to the toy gun of her daughter who might have put it in the bag while playing. Petitioner informed that she had no knowledge or nexus with the alleged cartridge found in her bag. Petitioner further informed that she had no arms licence for holding any weapon. It is pertinent to note that apart from the live cartridge no fire arm or weapon was recovered from the bag belonging to the Petitioner.

3. On the next day i.e. 04.12.2016, First Information Report ("FIR") was registered against the Petitioner under sections 3 and 25 of the said Act. On 05.12.2016, Petitioner visited the police station and furnished further information, *inter alia*, stating that she was a resident of Sangli and adjacent to her residence was a police centre and firing range and the alleged bullet may have been found and picked up by her minor daughter and carried it to her house and kept in her hand bag. This was the only theory put forward by the Petitioner in her defence.

4. On 05.12.2016, Petitioner was arrested and produced before the Metropolitan Magistrate, 66th Court, Andheri, Mumbai and was granted bail. The investigation has been completed and police has filed the chargesheet. A copy of the chargesheet is placed on record at Exhibit "A" to the present writ petition.

5. Mr. N.U. Khan, learned counsel appearing for the Petitioner submits that on a plain reading of the chargesheet, it clearly appears that the Petitioner has disclosed all such necessary and probable information with respect to the live cartridge found in her hand bag; that she had no nexus or knowledge as to how it came to be planted or found in her bag and one of the reason adduced by the Petitioner would be that it was found by her minor daughter in the vicinity of the police training center and firing range next to her residence in Sangli

and may have been picked up and kept in the hand bag. He submits that the Petitioner has never claimed to be unconscious possession of the live cartridge as the Petitioner came to know for the first time about its presence in her hand bag when it got detected during screening; further its presence in the Petitioner's hand bag was not to her knowledge and it was a case of the complete inadvertance and hence the Petitioner's case cannot be covered under the provisions of sections 3 and 25 of the said Act; that the Petitioner and her husband are qualified doctors having no criminal antecedents; both did not possess any arms licence for possessing a weapon; the family of the Petitioner had embarked upon a vacation tour and thus on detection of the live cartridge it cannot be held that the Petitioner was in conscious possession of the same and therefore the Petitioner's plea be considered for quashing of the proceedings.

6. *PER CONTRA*, Ms. A.S. Pai learned PP appearing on behalf of the State has drawn our attention to the chargesheet filed in the present case and contended that during the investigation the Petitioner has also informed that the live cartridge could belong to one of their family friend namely Piyush Thakkar who was in possession of an arms licence and weapon and on further investigation of Piyush Thakkar it was found that the live cartridge did not belong to him as it was not in consonance with his 9mm German Pistol; that the live

cartridge was analyzed by the Forensic Science Laboratory in its report and possession of the same was unauthorized in the hands of the Petitioner; hence, *prima facie* the case for contravention of the provisions of sections 3 and 25(1B)(a) of the said Act was made out against the Petitioner.

7. We have perused the pleadings, copy of chargesheet, Chemical Analysis Report dated 15.05.2017 and the order dated 17.05.2018 issued by the Arms and Ammunition Branch appended to the Petition. Submissions made by the learned counsel are on pleaded lines.

8. In the present case, it is seen that the Petitioner nor her husband possess an arms licence; at the time of recovery of the live cartridge from the hand bag of the Petitioner, no weapon or firearm was found or recovered. From the reading of the chargesheet it is that investigation has been completed from all possible angles. It is seen that Petitioner nor any of her family members possess any arms licence or weapon so as to consider the possibility of the live cartridge as belonging to any of them. Further for the applicability of the provisions of section 3 of the said Act possession of the live cartridge needs to be established as being in "conscious possession" of the Petitioner and that the Petitioner had knowledge of the same being carried in her hand bag. The explanation given by the Petitioner that

her residence in Sangli being adjacent to the police training centre and firing range is not doubted by the prosecution and hence the possibility of the cartridge being picked up by her minor daughter and put in her hand bag cannot be ruled out. It is clear that the Petitioner herself came to know about the presence of the live cartridge in her bag only when it was detected during screening and prior to that the Petitioner had no knowledge about its presence. It is seen that the term "possession" used in sections 3 and 25 of the said Act refer to "conscious possession" and not unconscious possession or inadvertent possession" or possession which is not to the knowledge of the person.

9. The Supreme Court in the case of *Sanjay Dutt Vs. State through C.B.I., Bombay (II)*¹ has clearly held that the possession of the fire arm under the said Act must be conscious possession with the knowledge of and requisite mental element and mere custody without awareness of the nature of such possession cannot fall within the ambit of sections 3 and 25 of the said Act. On the perusal of the chargesheet it is seen that there is no other material or evidence collected by the prosecution so as to indict the Petitioner of having "conscious possession" of the live cartridge. That apart, it is reiterated that only the live cartridge having been found, there was no recovery of any weapon or any firearm from the baggage of the Petitioner.

¹ (1994) 5 SCC 410

10. On going through the entire evidence, we are of the considered opinion that possession of the live cartridge in the hand bag of the Petitioner could not be to mean that she was in conscious possession of the live cartridge and further in the absence of recovery of the fire arm / weapon, benefit of doubt needs to be given to the Petitioner in the facts and circumstances of the present case. Hence, the following order:-

ORDER

- (i) The proceedings in C.C. No.2898/pw/18 pending on the file of Metropolitan Magistrate 66th Court Andheri, Mumbai, arising out of SPL. L.A.C. No.8 of 2016 registered with Sahar Police Station, MUmbai are hereby quashed and set aside;
- (ii) Bail bond, if any, be refunded as per rules.

11. With the above directions, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]