

Ms. Pallavi d/o Santprasad Satsangi ...Petitioner
vs.

- Ms. Mallika Ajay Ingale for the Petitioner.
Mr. K.V. Saste, APP for Respondent No.1-State.

DATE : NOVEMBER 29, 2016

1. Heard the learned counsel appearing on behalf of the petitioner and the learned APP appearing on behalf of the State.

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The petitioner is a Software Engineer in Information Technology and her husband also is having the same qualification. She and her husband were residing in US for three years from 2009 to 2011. Thereafter, they settled in Bangalore.

While the petitioner was traveling back from Mumbai to New York by flight No. 9W-228, one bullet (.40" hollow pointed pistol cartridge having head stamp marking FEDERAL 40 S & W) was found in one of her bags at Chhatrapati Shivaji International Airport. A criminal case under the Arms Act was lodged by the Security Officer.

3. According to the petitioner, her husband used to take part in shooting sports in Wichita (Kansas, USA) and inadvertently, this bullet remained in his bag and continued to be there. This bullet was not discovered on a couple of journeys made by the petitioner carrying the same bag belonging to her husband. The explanation given by the petitioner was not accepted and the said complaint was lodged against her. The petitioner is now seeking quashing of the said criminal complaint and also quashing of the proceedings arising out of the said First Information Report which is pending in the Court of

Metropolitan Magistrate, 22nd Court, Andheri, Mumbai vide CC. No. 730/PW2014.

4. The learned counsel appearing on behalf of the petitioner submits that the petitioner was not aware of the existence of the said cartridge in her bag and as such, possession of said cartridge was not conscious possession within the meaning of Sections 3 and 25 of the Arms Act. She submits that the Police had not taken any steps for recording statement of her husband who had taken part in the sports tournament in Wichita, USA. She submitted that therefore, even if the averments made in the complaint and the statements of the witnesses recorded by the Police are accepted at its face value, Sections 3 and 25 of the Arms Act would not be made applicable. The petitioner or her husband have never come to the adverse notice of the Police either in USA or in India.

5. The learned APP appearing on behalf of the State, on the other hand, submits that the issue as to whether the possession was conscious possession or not would be decided at the stage of trial, and this Court therefore, while exercising its writ jurisdiction under Article

226 of the Constitution of India, should not decide the said issue and interfere with and set aside the First Information Report or the charge sheet.

6. After having heard the counsel for both the parties at length, we are of the view that this is a case which clearly reveals that the possession obviously was not conscious. The cartridge obviously remained in petitioner's baggage inadvertently. It is not in dispute that the petitioner was not carrying any weapon such as a pistol or a revolver.

7. It is well settled that while exercising its power under Article 226, the Court has to examine the facts of the case and consider whether the averments made in the complaint, by itself, would tantamount to an offence with which the petitioner is charged.

8. A bare perusal of Sections 3 and 25 of the Arms Act would clearly reveal that 'possession' obviously refers to conscious possession and not unconscious possession and that inadvertent and unconscious possession of a bullet by itself would not fall within the parameters

for the said offence. The Apex Court, in the Case of *Sanjay Dutt vs State Through C.B.I. Bombay (II)*, reported in (1994) 5 SCC 410, has an occasion to consider the definition of the word 'possession' and the Apex Court has observed in that context that possession means possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. The Apex Court, therefore, has observed that there is a mental element in the concept of possession. This Court had an occasion to consider a case of similar nature where the petitioner, a woman named Nurit Toker, an Israel inhabitant, was also found in possession of one bullet. The Division Bench of this Court in the judgment delivered by Justice A. M. Khanwilkar (as he then was) in Criminal Writ Petition No. 3569 of 2011, decided on 18.11.2012, was pleased to take a similar view and quashed the complaint filed against the said petitioner.

9. We are satisfied with the stand taken by the petitioner that she was not aware of the existence of one single live cartridge in her baggage. Unfortunately, the Police had not taken care to call her husband and to double check whether in fact he had taken part in the

said shooting tournament in Wichita, USA. Had they taken that trouble and had they found that in fact he had taken part in the said tournament, they would have realized the correctness or otherwise of the statement made by the petitioner. Taking an overall view of the matter, we are satisfied that this is a fit case where this Court should exercise its writ jurisdiction under Article 226 of the Constitution of India and also use its inherent power under Section 482 of the Criminal Procedure Code and quash the criminal complaint which is registered vide LAC No.22 of 2013 at Sahar Police Station at the instance of the Security Officer Yogesh Bagde and also the consequent proceedings which have been initiated on the basis of the said First Information Report and which are now pending in the Court of Metropolitan Magistrate, 22nd Court, Andheri vide CC. No. 730/PW2014. The writ petition is, therefore, allowed in terms of prayer clause (a) and is accordingly disposed of.

(Ms. NUTAN D. SARDESSAI, J.)

(V. M. KANADE, J.)