



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.12367 of 2011

and

M.P.(MD)Nos.1 and 2 of 2011

Royappan

... Petitioner/Sole Accused

Vs.

State by,

1.The Inspector of Police,
Airport Police Station,
Trichy.

(Crime No.155 of 2010)

.. 1st Respondent/Complainant

2.Jiledar yadav

Inspector,
Exe-CISF,
ASG, Trichy.

..2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in C.C.No.223 of 2011, on the file of the learned Judicial Magistrate No.VI, Trichy and quash the same.

For Petitioner : Mr.N.Sankar Ganesh

For Respondent No.1 : Mr.K.Anbarasan
Government Advocate (Crl.side)

For Respondent No.2 : Mr.D.Saravanan
Senior Panel Counsel for
Central Government

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet filed in C.C.No.223 of 2011, on the file of the learned Judicial Magistrate No.VI, Trichy, for the offence under Section 25(1)(A) of the Arms Act, 1959, in Crime No.155 of 2010 on the file of the Airport Police Station, Trichy.



2. The case of the prosecution is that on 25.02.2010, the second respondent/defacto complainant was informed by the Inspector of Police, CISF, who was in-charge of X-ray department at the Airport that while the petitioner's baggage was scanned, he found 0.5 live Round (0.38 SPL 01 SME), two bullets image and immediately the defacto complainant informed to the first respondent and the same was recovered from the bag of the petitioner in the presence of the first respondent as well as one David Jeyaraj, who is the Manager of Air Asia and the enquiry revealed that the petitioner was not aware of the same. Thereafter, the first respondent registered a case against the petitioner under Section 25(1)(A) of the Arms Act, 1959, in Crime No.155 of 2010 on the ground that the baggage of the passenger by name, Saiman Muthiraiyar Royappan in Flight No.AK232, seat No.151 contained 05 live round two bullets at Trichy Airport. On enquiry, the petitioner informed that the said package was given by his daughter from Malaysia through his friend and the bullets belonged to his son-in-law, who is in the police service with the Government of Malaysia and it was mistakenly kept by his son-in-law in the petitioner's bag. Subsequently, the petitioner was arrested and released on bail. As against the impugned charge sheet, the present petition is filed.

3. The learned counsel for the petitioner though raised several points in support of his plea for quashing the charge sheet, the most important of which, is the absence of sanction under Section 39 of the Arms Act, 1959. Accordingly, he prayed for quash of the charge sheet filed in C.C.No.223 of 2011, on the file of the learned Judicial Magistrate No.VI, Trichy. In support of his contention, he relied upon the decision of the Hon'ble Allahabad High Court in **Nanhey vs. State** reported in **1978 Cri L J 1001**, wherein in paragraph No.5, it has been held as follows:

" 5. I have heard the learned Counsel for the applicant at sufficient length and have also perused the record of the case. I find that the sanction for the prosecution of the applicant in this case is not in accordance with law and, therefore, this revision must succeed. Under the Arms Act, a person can be prosecuted only after the District Magistrate has given the necessary sanction for his prosecution. This sanction is not intended to be nor is an automatic formality; it is absolutely essential that the provisions in regard to sanction should be observed with complete strictness. The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence



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before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In the case before us, the sanction given by the District Magistrate runs as follows:

"Sanction for prosecution under Section 25 of the Arms Act of the accused Nanney for the alleged unlawful possession of one country made gun and 2 live cartridges is accorded."

A reading of the above sanction will show that the District Magistrate gave the sanction for the prosecution of the applicant without considering the evidence that was available against him. Obviously, therefore, he gave the sanction without applying his mind to the facts and circumstances of the case. Such a sanction is no sanction in the eyes of law. The prosecution of the applicant in the absence of a proper sanction was not in accordance with law and this Court has, therefore, no option but to acquit him."

4. He further relied on yet another judgment of the Hon'ble Andhra Pradesh High Court in **S.Mange Naik vs. State of Andhrapradesh** reported in **2002 Cri.LJ 2892**, wherein in paragraph Nos.5 and 6 it has been held as follows:

" **5. Section 39 of the Arms Act reads as follows:**

"39. Previous sanction of the district magistrate necessary in certain cases: No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate."

6. Thus, as per Section 39, no prosecution can be instituted without the previous sanction of the District Magistrate. The sanction as contemplated under Section 39 of the Act is not an empty formality and it is introduced to safeguard the persons against any false or frivolous prosecution. When once a sanction order is issued by the District Magistrate, somebody on behalf of the Department shall come before the Court and mark the same as an exhibit. In the instant case, on a reading of the judgment of the trial court, it is clear that the sanction order, though obtained from the District Magistrate



concerned, has not been marked as an exhibit and the same cannot, therefore, be used as evidence. Without exhibiting the sanction order in court as per the provisions of Evidence Act, it is not safe to rely on the sanction order which is there in the record. May be that the sanction order is inserted into the record. This point was, however, not canvassed before the trial court."

5. Per contra, the learned Government Advocate (Crl. side) would submit that the Law Enforcing Agency had conducted investigation in a proper manner and found all the allegations levelled against the petitioner is proved. After investigation, the Law Enforcing Agency sent request for sanction. Despite the request made to the District Collector for granting sanction under Section 39 of the Arms Act, the District Collector did not sanction the prosecution. To support his contention, he relied on a decision of the Hon'ble Supreme Court in **Bakhshish Singh Brar vs. Gurmej Kaur and another**, reported in 1988 SCC (Cri)29, at paragraph No.5, it has been held as follows:

" 5.This Court in the aforesaid decision had occasion to consider this aspect. The case is instructive and illustrative how a balance has to be struck between the need for speedier trial of criminal offenders and at the same time protecting public servants or police officials in the discharge of their duties without obstructions. There the appellant had filed a complaint against his superior officer, in the Postal Department under sections 323 and 502 of I.P.C. alleging that when the appellant went with a certain complaint to the second respondent, the said respondent kicked him in his abdomen and abused him by saying "Sale, gunde, badmash" The said respondent filed an application under section 197 of the Cr. P.C. praying that the Court should not take cognizance of the offence without the sanction of the Government, as required by section 197 of the Cr. P.C. It was further contended that the alleged acts, if at all done by the accused were done while discharging his duties as a public servant. The trial Magistrate dismissed the application. The High Court allowed the revision application of the said respondent. This Court on appeal held that at that stage, the Court was concerned only with one point, viz., whether on facts alleged in



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the complaint, it could be said that the acts were done in purported exercise of his duties. Applying the test laid down in the decisions of the Federal Court and this Court to acts complained of, viz., kicking the complainant and abusing, could not be said to have been done in the course of the performance of the duty by the said respondent. The facts subsequently coming to light during the course of the judicial enquiry or during the course of the prosecution evidence at the trial might establish the necessity for sanction, it was observed. This Court noted that it might be possible for the said respondent to place materials on record during the course of the trial for showing what his duties were and also that the acts complained of were so interrelated with his official duty, so as to attract the protection afforded by section 197 of the Cr. P.C. This Court reiterated that the question whether sanction was necessary or not might have to depend upon from stage to stage having regard to the facts and circumstances of the case. This Court allowed the appeal and allowed the trial to proceed without the sanction."

6. I have heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl.side) appearing for the first respondent and the learned Senior Counsel appearing for the second respondent and perused the materials available on record.

7. The entire issue involved in this case is in narrow campus that whether the prosecution obtained sanction under Section 39 of the Arms Act, 1959, from the District Magistrate or not. The fact remains that the prosecution did not show any sanction order obtained from the District Magistrate concerned and if obtained, the same was not produced before this Court to establish the compliance of Section 39 of the Arms Act, 1959. Without obtaining the permission covered under Section 39 of the Arms Act, 1959, launching prosecution does not arise. Accordingly, the decisions cited by the learned counsel for the petitioner are squarely applicable for the case on hand.

8. On perusal of the entire records, it is seen that the two bullets recovered by the Law Enforcing Agency was originally belonged to the petitioner's son-in-law, who is working as Sergeant in Royal Malaysian Police. Actually, the said bullets are



belonged to the department of Malaysian Police for their own official use. However, the said bullets were inadvertently kept in the petitioner's bag, which was given by his daughter. Without intention, the petitioner carried out the baggage. In the present case, the petitioner is in possession of two bullets in his bag and the Law Enforcing Agency, thereby with the consent of the petitioner, recovered the said bullets which were carried out by the petitioner without his knowledge. In the issue of *mens rea*, an issue cannot be decided by invoking Section 482 Cr.P.C.

9. On perusal of the decisions cited supra on the side of the petitioner, it is categorically held that prosecution instituted without the previous sanction of the District Magistrate as per Section 39 of the Arms Act, 1959, is bad in law. The said judgments are squarely covered for the case on hand. Hence, I have no hesitation to set aside the complaint and the charge sheet filed by the Law Enforcing Agency. Accordingly, the charge sheet filed in C.C.No.223 of 2011 on the file of the learned Judicial Magistrate No.VI, Trichy, is hereby set aside and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.VI,
Trichy.

2. The Inspector of Police,
Airport Police Station,
Trichy.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.N.Sankar Ganesh , Advocate in SR No. 92505

+ 1 cc TO Mr.D.Saravanan , Advocate in SR No. 92018

PJL

AE/SV/SAR1/09.02.2018/6P/6C