

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 725 OF 2016**

Mr. Siddharth Upendra Singh)
Aged 32 years, Occ: Service)
R/o: D3/601, Umang Homes)
Ivy Estate, Nagar Road,)
Near Lexicon International School)
Vagholi, Pune 412207) **..Applicant**

Versus

The State of Maharashtra)
(through Sahar Police Station)) **..Respondent**

Ms Anita M Bafna for the Applicant
Mrs. P. P. Shinde APP for the Respondent State

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 18th JULY, 2018**

ORAL JUDGMENT (PER R. M. SAVANT, J.)

1 Rule, with the consent of the Learned Counsel for the Petitioner and the Learned APP, made returnable forthwith and heard.

2 The above Criminal Application has been filed for quashing of the proceedings bearing No.2374/PW/2014 arising out of the LAC No.14/2013 registered for the offence punishable under Sections 3 and 35 of the Indian Arms Act, 1959 (for short the Arms Act)

3 The Petitioner is an Electronic Engineer and we are informed that he is working in a private concern in Kharadi in Pune. On 22-8-2013, the Petitioner was going on a business tour to New York. It seems for the said purpose the Petitioner took the bag of his father and kept his belongings i.e. the clothes etc., therein. During the security check at the Sahar International Airport a live cartridge was detected whilst the Petitioner's baggage was being auto screened which was under the base chain of the bag. In view of the said live cartridge being detected, the police registered a LAC with Sahar Police Station bearing No.14/2013 for the offences punishable under Sections 3 and 25 of the Arms Act. The Petitioner applied for bail which was granted and therefore the Petitioner is presently on bail.

4 The background of the said live cartridge being found is that the Petitioner's father had applied for a Gun Licence to the licensing authority in Kanpur sometime in the year 1984. The Petitioner's father was granted a licence pursuant to which he bought a licenced pistol from Kanpur along with the live cartridges. The said licence was renewed by the Petitioner's father from time to time. It seems that in the year 2006 the Petitioner's father sold the licenced weapon and bought a new licenced revolver along with 10 cartridges. The said licenced revolver it seems was sold by the Petitioner's father sometime in the year 2011. As indicated above the Investigating Agency i.e. Sahar Police Station has completed the investigation and filed the

charge sheet in the Trial Court under Sections 3 and 25 of the Arms Act, the same now bears Criminal Case No.2374/PW/2014. As indicated above the Petitioner has approached this Court for quashing of the proceedings on the ground that the ingredients of the offence under Sections 3 and 25 of the Arms Act are conspicuously absent in the present case.

4 Heard the Learned Counsel for the Petitioner Ms Anita Bafna and the Learned APP Mrs. P P Shinde.

5 The Learned Counsel for the Petitioner would contend that the essential ingredient for the offence punishable under Sections 3 and 25 of the Arms Act is the conscious possession of the ammunition. It was the submission of the Learned Counsel that in the instant case the said ingredient is conspicuously absent. The Learned Counsel sought to place reliance on the following judgments of the Division Benches of this Court. The last of which is in Criminal Writ Petition No.323 of 2017 dated 6-4-2018 to which one of us R. M. Savant J. was a party.

1] 2012 All MR (Cri) 942 in the matter of Nurit Toker v/s. State of Maharashtra and others.

2] MANU/MH/3492/2017, in the matter of M.A. Latif Shahrear Zahedee v/s. The State of Maharashtra and ors.

3] Unreported decision dated 29/11/2016 in Criminal Writ Petition No.2912 of 2016 in Ms. Pallavi d/o Santprasad Satsangi v/s. The State of Maharashtra and anr.

4] Unreported decision dated 6/4/2018 in Criminal Writ Petition No.323 of 2017 in Mrs. Rachelle Joel Oseran Vs. The State of Maharashtra & Ors

6 The underlying principle laid down in the aforesaid judgments is that mere possession of the fire arm or ammunition would not constitute a offence under Section 3 and 35 of the Arms Act and that the essential ingredient is the knowledge of possession or power or control over the arm or ammunition when not in actual possession. The said judgments have been elaborately referred to in Mrs. Rachelle Joel Oseran's case which is the last in line of the Division Bench judgments. In our view, the judgments of the Division Benches of this Court (Supra) would apply on all fours to the facts of the present case.

7 In the light of the legal position which has been enunciated in the said judgments we are of the view that no useful purpose would be served in proceeding with the case in question registered for the offences punishable under Sections 3 and 25 of the Arms Act. This is a case wherein the Petitioner cannot be said to have consciously possessed the cartridge in question and that the cartridge has remained in the bag which was belonging to the father of the Petitioner who as indicated above had a licenced weapon. The Petitioner has no criminal antecedents neither has any unlicensed fire arm or weapon been recovered from the Petitioner. Hence in the facts and circumstances of the present case, the above Petition is required to be allowed and is accordingly allowed. Rule is accordingly made absolute in terms of prayer clause (a).

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]