

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2568 OF 2022

Ms. Bosky Ramanlal Patel

... Petitioner

Versus

1. State of Maharashtra
2. The Director Inspector
General (CISF)

...
... Respondents

Mr. Raja Thakare, Senior Advocate with Harsh Parte with Prachi Parte or the Applicant.

Mr. K. V. Saste A.P.P. for the Respondent No.1.

Dr. Satish Naykinde i/b Naveen Chomal for the Respondent No.2.

**CORAM : REVATI MOHITE DERE &
S.M. MODAK, JJ.**

DATE : 12TH OCTOBER 2022

ORDER (PER S. M. MODAK, J.)

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1-State. Dr.Satish Naykinde, learned counsel waives notice on behalf of

the respondent No.2.

3. On 2nd February 2022, at 22.00 hours, the petitioner was flying to New York, by Flight No.UA-830, when the security guard belonging to Central Industrial Security Force (CISF) checked her baggage, and found one live cartridge in her handbag. The security guard Kutumbhrao C. Kanchapogu inquired with her about the cartridge, however, the petitioner failed to give a satisfactory explanation. Accordingly, the local police i.e. the Sahar Police Station, Mumbai, were informed, who registered an offence punishable under section 3 read with 25 of the Arms Act, as against the petitioner.

4. The petitioner is facing prosecution for violating the provisions of the Arms Act, for possessing a bullet in her handbag on 2nd February 2022. The petitioner is working as a Director Global for Procurement at G. E. Electricals, USA.

5. Learned Senior Counsel Shri Thakare submitted that the ingredients necessary to constitute an offence of section 3 of the Arms Act are not made out. According to him, it is not mere

possession, but 'conscious possession' which is pre-requisite to attract section 3 of the Arms Act and only then can a person be prosecuted under section 25 of the Arms Act. According to him, on 20th January 2022, the petitioner came to India on account of the sudden demise of her mother and on 2nd February 2022, she went to the Chhatrapati Shivaji Maharaj Airport, to catch a flight to New York, USA. According to him, the petitioner was not at all aware how the cartridge came in her hand bag. In order to buttress his submission, learned Senior Counsel relied upon the following judgments:

- (i) *Tamas Sen Vs. The Police Inspector, CISF Bengaluru International Airport*
- (ii) *Mrs. Dr. Leena Ashay Nandeskar Vs State of Maharashtra and Others., Writ Petition 4791/2019 dated 10/6/2022*

6. According to learned Senior counsel for the petitioner, the said judgments are squarely applicable to the facts of the present case.

7. As the FIR was lodged by the personnel belonging to the CISF, the Director Inspector General, CISF, was made a party

respondent.

8. Learned APP submitted that the FIR was registered on the complaint of the CISF personnel. Learned Advocate for the respondent no.2, submitted that the petitioner was found with a cartridge in her handbag and there is no reason to disbelieve the security guard. He placed for our perusal a circular dated 4th July 2017, issued by the Ministry of Civil Aviation, Government of India. He invited our attention to clause no.3 which deals with “Course of action”, to be followed, if any arms or ammunition is found with any passenger, at the Airport.

9. According to him, there are two contingencies. One is possessing the arms or ammunition with license, and the second is, without license. According to him, present contingency is covered under the second category. He, as well as the learned APP have not placed any reliance on any observations, different from the the observations made in the above two referred judgments.

10. On this background, it will be material to consider the provisions of section 3 of the Arms Act. Any person is prohibited from possessing as well as carrying any fire arm or ammunition, unless, he holds a license in that behalf.

11. In the case of **Tamas Sen** (supra), there was prosecution for possessing a live bullet in the handbag. The said bullet was noticed by the Police Inspector of CISF, at the Bengaluru International Airport. After analysis, it was found to be a live cartridge. The High Court of Karnataka was pleased to quash the FIR. It was held that the element of 'conscious possession' is important. The observations made by the Hon'ble Supreme Court in case of **Sanjay Dutt Vs. State, Through CBI, Bombay** reported in **(1994) 5 SCC 410** were relied upon. The Division bench of this Court, in the case of **Dr. Leena Nandeshwar** (supra) also emphasized on 'conscious possession'. The FIR and charge-sheet were also quashed in that case, after noting that the petitioner therein was not found to be in conscious possession of the cartridges. The petitioner therein was found with two live cartridges. They were found in her

handbag at the time of screening. It was held that mere custody was not sufficient, unless accompanied by animus to possess. The petitioner therein, was not holding a license to possess a weapon.

12. The observations in above referred judgments are very much relevant for deciding the issue involved before us. It is true, that the investigation is yet not complete, however, from the averments in the FIR, it is difficult to infer that the petitioner had knowledge about the cartridge being kept in her baggage. Mere possession, without knowledge is not sufficient to attract the provisions of section 3 r/w 25 of the Arms Act, unless and until there is material to show that the petitioner possessed it knowingly.

13. No doubt, the first informant, who is a personnel of the CISF, has reported the matter to the local police station, as per their internal circular but once the offence is registered, it is the bounden duty of the police, to point out the material/show that possession was conscious. Admittedly, the petitioner does

not hold an arms license. Admittedly, at the time of recovery of the live cartridge from the petitioner's handbag, no weapon was found or recovered. For the applicability of section 3 of the Arms Act, it is necessary to show that the petitioner was in 'conscious possession' of the same and that the petitioner had the requisite knowledge/mens rea of the same being carried in her handbag. The petitioner has given an explanation, as evident from the FIR, that she did not know how it came into her bag and had absolutely no knowledge about the presence of the live cartridge in her bag. As noted in several judgments, the term 'possession' used in section 3 and 25 of the Arms Act refers to 'conscious possession' and not unconscious possession/inadvertent possession. Nor does the said term, refer to possession, which is not to the knowledge of the person. In the facts, in the absence of the requisite mens rea, it is difficult to infer that the petitioner was in conscious possession of the live cartridge in her handbag. Since the same is amiss/lacking, we find no reason to continue the prosecution. Even, if it is allowed to be continued, it will be abuse of the process of law. Hence, we are inclined to exercise our power

under section 482 of the Code of Criminal Procedure. Hence, the following order is passed :

- (a) Petition is allowed.
- (b) The FIR, bearing Special LAC No.14 of 2022 registered with the Sahar Police Station, Mumbai, for the offences punishable under section 3 read with 25 of the Arms Act, is quashed and set aside.

14. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

15. All concerned to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.