

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 100 OF 2022**

Keshav Parti

... Petitioner

Versus

State of Goa, Thr. Public Prosecutor & anr.

...Respondents

Mr. Nikhil Deelip Pai, Advocate *for the Petitioner.*

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Respondent-State*

CORAM: B. P. COLABAWALLA, J
DATED : 9th JANUARY 2023

ORAL ORDER

1. The above petition is filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.), seeking to quash and set aside the impugned order dated 06.05.2022, passed by the learned Additional Sessions Judge (FTC-I), South Goa, Margao, in Criminal Revision Application No. 34 of 2021. The other prayer sought is for quashing Criminal Case No. 1264/AOA/2019/A, before the Court of Judicial Magistrate First Class at Vasco Goa.

2. In this case, on 10.02.2019, at 00.05 hours, while the accused was travelling from Dabolim Airport, Goa, he was found carrying one live ammunition (bullet) of 7.65 mm caliber cartridge in his baggage.

Admittedly, he was not having any valid documents or license to carry the same. The said fact came to be known at the Domestic Security Hold Area, X-BIS No.2 machine, Dabolim Airport, Goa, while his baggage was scanned for security purpose. Thereafter, according to the prosecution, the CFSL report and the very fact that live ammunition was recovered from the possession of the accused, established a *prima facie* case against the accused. In these circumstances, the prosecution prayed to frame the charges against the accused under Section 3 read with Section 25 of the Arms Act, 1959. The Accused, on the other hand, prayed for a discharge.

3. Accordingly, the Trial Court framed the aforesaid point for determination and answered the same in the affirmative (i.e. in favour of the accused) by its order dated 18.02.2021 :

<u>POINT FOR DETERMINATION</u>	<u>FINDING</u>
Whether the Accused is entitled for being discharged from the present prosecution for the offence punishable under Section 3 read with Section 25 of the Arms Act?	In the affirmative

4. The learned Trial Court *inter alia* recorded that the Investigating Officer had recorded the statement of one Mr. Simran Singh Dhillon (a friend of the accused), and who the Accused claims, had given him the live bullet as a gift and without the Accused or the said Simran being aware that the same is live ammunition. When the Investigating Officer recorded the statement of the said Simran, he

remained completely silent on the above fact. In the statement made by Simran Singh Dhillon, it was recorded that the Accused had requested, through one Kapil Sawhney, to arrange any person who is holding a firearm and ammunition license and to provide a copy of the same, which, according to Simran, was sent by his friend Sukhanpreet Sandhu over his mobile phone through Whatsapp. The learned Trial Court was of the opinion that, in such a situation, the Investigating Agency was required to conduct a thorough inquiry into such a fact and also question the said Simran Singh Dhillon about the veracity of the statement of the accused whether it was he who had given the bullet as a key-chain to the Accused. According to the Trial Court, such inquiry was incumbent to bring on record material to the effect that the possession of the live bullet was “*conscious possession*”. Considering the fact that the Accused had specifically stated that it was the friend (Simran Dhillon), who had given the key-chain and their acquaintance is also not been denied by the friend, the possibility of believing the version of the Accused cannot be ruled out, was the finding of the Trial Court. The learned Trial Court also was of the opinion that since the Accused did not possess any weapon which would compliment and aid in using the bullet, also gets the present case under the ambit of Section 45(d) of the Arms Act, 1959. For all the aforesaid reasons, the learned Trial Court discharged the Accused from the prosecution.

5. Being aggrieved by the order of the Trial Court dated 18.02.2021, the State preferred a Criminal Revision Application under Section 397 of the Cr.P.C. before the Court of Additional Sessions Judge, FTC-1, South Goa, Margao. The Sessions Judge, by the impugned Order, quashed and set aside the order of the Trial Court dated 18.02.2021 and directed that the charges shall be framed against the Accused for offences punishable under Section 3 read with Section 25 of the Arms Act, 1959. The Sessions Court therefore remanded the matter back to the Trial Court to proceed with the case in accordance with law. It is this order of the Sessions Court that is assailed in the present Petition.

6. I have heard the learned Counsel appearing on behalf of the Petitioner as well as the Additional Public Prosecutor appearing for the State. I have also closely examined and perused the orders passed by the Trial Court as well as the impugned order passed by the Additional Sessions Judge, FTC-I, South Goa, Margao. From the record, as on today, other than the word of the Accused, that he was given a replica of a bullet by Mr. Simran Singh Dhillon and that he was unaware that the same was a live bullet, there is absolutely nothing on record to show that he was not in "*conscious possession*" of the said bullet. In fact, the Investigating Authorities recorded the statement of the said Mr. Simran Singh Dhillon on 06.02.2019. Mr. Dhillon does not even mention in the said statement that he had

given the said bullet as a replica to the Accused. This was the only explanation given by the Accused and which is not found in the statement of the said Mr. Simran Singh Dhillon. In these circumstances, I find that the Sessions Court was correct in coming to the conclusion that apart from the aforesaid explanation, there is nothing on record to account for possession of the live bullet. In the absence of any explanation, the Trial Court, and in my view, correctly so, held that the Accused was carrying the said bullet with the requisite mental element. After carefully going through the order passed by the Sessions Court, I find absolutely no infirmity in the same. As correctly held by the Trial Court, apart from the word of the Accused, there is absolutely nothing on record as on today to establish that the Accused was not in "*conscious possession*" of the live bullet. The fact that the live bullet was found in possession of the Accused is not in dispute. In such circumstances, I am in agreement with the findings of the Sessions Court that the Accused could not have been discharged by resorting to the provisions of Section 239 of the Cr.P.C. and would have to face trial.

7. In view of the foregoing discussion, I do not find that any case is made out to interfere with the impugned order, either under Article 227 of the Constitution of India, or under Section 482 of the Cr.P.C. The Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

8. It is needless to clarify that any observations made by the Sessions Court regarding mental state of the Accused are only *prima facie* and tentative and shall not be binding on the Trial Court as and when the matter proceeds to trial.

9. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J