



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2489 OF 2024

Vilas Dhondu Sapkale,
Age-60 years, Occu:Business,
R/o-Shanti Nagar, Near Kamal Ganpati Hall,
Bhusawal, District-Jalgaon.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
[Through Bhusawal City Police-Station,
Bhusawal, District-Jalgaon,
- 2) Bhushan Liladhar Chaudhari,
Age-39 years, Occu:Police Constable,
R/o-Bhusawal City Police Station,
Bhusawal, District-Jalgaon.

...RESPONDENTS

...
Mr. Swapnil S. Patil Advocate for Applicant.
Ms. R.P. Gour, A.P.P. for Respondent No.1.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 30th AUGUST, 2024

ORDER :

1. Present Application has been filed under Section 482 of the Code of Criminal Procedure for quashing the First Information Report (for short "the FIR") vide Crime No. 238 of 2023

registered with Bhusawal City Police Station, Bhusawal, District-Jalgaon and the Charge-sheet No.25 of 2024 dated 31st July 2024 i.e. proceedings bearing R.C.C. No. 271 of 2024 pending before learned Judicial Magistrate, Bhusawal, for the offence punishable under Section 3 punishable under Section 25 of the Indian Arms Act and Section 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicant as well as learned APP for respondent No.1. Respondent No.2 is the police constable attached to Bhusawal City Police Station who has lodged the FIR in his official capacity and therefore, it is not necessary to issue separate notice to him in the present matter.

3. Learned Advocate appearing for the applicant has submitted that the applicant was not travelling from the vehicle in which the Country made Pistol and five live cartridges were allegedly found. The said vehicle i.e. Zylo bearing No. MH-19-BJ-8199 is owned by the present applicant but only on that count the applicant cannot be prosecuted.

4. Learned APP strongly opposes the application and submits that since the charge-sheet is now filed and Country made Pistol with five live cartridges was found in the vehicle of the applicant,

let the applicant face the trial. It is upon him to prove that he had no knowledge about such weapon concealed in his vehicle.

5. At the outset, we would like to say that merely because two persons were found travelling in the vehicle in which allegedly the firearm was found, police cannot invoke Section 34 of the Indian Penal Code and as regards the present applicant is concerned; perusal of the contents of the charge-sheet would show that the present applicant was not travelling from the said vehicle. Therefore, question of invoking Section 34 of the Indian Penal Code against him, will not arise.

6. Now, as regards offence under Section 3 of the Indian Arms Act, which deals with licence for acquisition and possession of firearms and ammunition and it is made punishable under Section 25 of the Indian Arms Act is concerned, definitely the said Section 3 prohibits a person from having possession or carrying any firearm or ammunition unless he holds a proper licence issued in accordance with the provisions of the Indian Arms Act and rules thereunder. However, we will have to read those Sections along with Section 39 of the Indian Arms Act, which provides that no prosecution shall be instituted against any person in respect of any offence under section 3 without the

previous sanction of the District Magistrate. Now, perusal of the charge-sheet would show that no such prior sanction has been obtained for prosecuting the applicant. The instructions which appears to have been received in writing from the investigating officer to the learned APP, would show that the only part which according to him is remaining, is the forensic report of the firearm as the said has been sent for its analysis at Forensic Science Laboratory, Nagpur. He has absolutely not stated anything regarding the previous sanction. When the said Section 39 of the Indian Arms Act prohibits prosecution without the sanction, it contemplates that such sanction should be part of the charge-sheet and such defect then cannot be cured later on. Therefore, there is inherent defect in the prosecution of the applicant.

7. Further Section 3 of the Indian Arms Act puts prohibition on acquisition, having in possession or carrying any firearm or ammunition without licence. Out of this, as against the present applicant which was tried to be invoked, is not clear from the charge-sheet. Even for acquisition the person should be found possessing the same in any manner. Merely because the vehicle belongs to the applicant, it cannot be stated that Section 3 of the Indian Arms Act gets attracted against him. Definitely, the case

is within the parameters laid down in *State of Haryana and others vs. Ch. Bhajanlal and others, AIR 1992 SC 604* and therefore, the Application deserves to be allowed. Hence the following order:-

ORDER

(I) The Application stands allowed.

(II) The First Information Report vide Crime No.238 of 2023 dated 9th November 2023 registered with Bhusawal City Police Station, Bhusawal, District- Jalgaon, the Charge-sheet No.25 of 2024 and the proceedings of R.C.C. No. 271 of 2024 pending before learned Judicial Magistrate, Bhusawal, for the offence punishable under Section 3 punishable under Section 25 of the Indian Arms Act and Section 34 of the Indian Penal Code stands quashed and set aside as against present applicant – Vilas Dhondu Sapkale.

[SANDIPKUMAR C. MORE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG24