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CrI.O.P.(MD)No.2120 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD).No.2120 of 2022

in

CrI.M.P(MD).No.1587 of 2022

Bhogadi Lakshmi Lavanya

... Petitioner

Vs.

1.The State Rep. By its
Inspector of Police,
Perungudi Police Station,
Madurai.

2.Shift Incharge,
Inspector /Exe,
Office of Deputy Commandant/CASO,
Madurai Airport Central,
Industrial Security Force (Ministry of Home Affairs),
CISF Unit, Madurai.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to impugned FIR in Crime No.463 of 2020 dated 04.06.2020 pending on the file of the respondent police and quash the same as illegal.



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For petitioners	: Mr.M.Jerin Mathew
For R1	: Mr.B.Nambiselvan Additional Public Prosecutor
For R2	: Mr.P.Subbiah Central Government Senior Panel Counsel

ORDER

This Criminal Original Petition is filed to quash FIR in Crime No. 463 of 2020 dated 04.06.2020 pending on the file of the respondent police.

2. The case of the prosecution is that the petitioner was travelling from Madurai Airport to Chennai towards her residence at Andhra Pradesh. When the petitioner and her baggage were checked at the Madurai Airport, it was found by the Office of the second respondent that 02 live ammunition and 07 EFC were found in the bags of the petitioner. When the second respondent sought for the license from the petitioner, she had no license for the same and the live ammunitions were seized. Thereafter, the first respondent police registered the FIR in Crime No. 463 of 2020 for the offences under Section 25(1B)(a) and 3 of Army Act, 1959.



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3. The learned counsel for the petitioner submitted that the petitioner is working as a Personal Assistant with one Mathavan, S/o.Subbiah, No.66.T. Block, 11th Street, Anna Nagar, Chennai. The said Mathavan earlier engaged in Financial activity and presently, is doing Farming activities in 250 acres at Tirunelveli and the petitioner is managing the farming activities at Tirunelveli. The said Mathavan is having a valid gun license in license No.528/595/K4 and the same was also renewed periodically. While the matter stood thus, the petitioner on her way to residence at Andhra Pradesh had booked ticket from Madurai to Chennai. The petitioner had taken all her belongings in the bag of his employer Mr.Mathavan for convenience without any knowledge of the presence of the said bullets in the bag.

4. At the time of checking, she knows the presence of the said bullets in the bag and she was not able to make any answers to that effect. Thereafter, the petitioner produced before the Judicial Magistrate Court No.VI, Madurai and the gun license of Mr.Mathavan was produced. The learned Judicial Magistrate on verification of the gun license issued in favour of Mr.Mathavan, had declined to remand the petitioner.



5. The learned counsel for the petitioner submitted that the petitioner was falsely implicated in this case and she has no intention to commit such offence to carry the bullets in the bag while travelling from Madurai to Chennai. He has also submitted that the similar issue was discussed by the Hon'ble Delhi High Court, wherein the order of Apex Court case reported in 1972 2SCC 194 was referred to by the Delhi High Court and the accused was acquitted from the charges. He further submitted that the same benefit may also be extended to this petitioner and prays for quashment of FIR.

6. The learned counsel for the petitioner also referred to Sections 10 and 12 of the Aircraft Act, 1934 and the same is extracted as follows:

“ If any person contravenes any provision of any rule made under clause (1) of sub-section (2) of section 5 prohibiting or regulating the carriage in aircraft of arms, explosives or other dangerous goods, or when required under the rules made under that clause to give information in relation to any such goods gives information which is false and which he either knows or believes to be false or does not believe to be true he, and if he is not the owner, the owner also (unless the owner proves that the offence was committed without his



knowledge, consent or connivance) shall be punishable with imprisonment which may extend to two years and shall also be liable to 2[fine which may extend to 3[one crore rupees]].”

7. The learned Central Government Senior Panel Counsel submitted that admittedly, the Airport Officials inspected the petitioner's bag and they found the above said bullets and the petitioner states that without knowing the same, the petitioner carried the bullets in her bag.

8. The relevant paragraph reported in **2020 3 AD (Delhi) 33** in the case of **Rasleen Kaur @ Rasleen Gulati Vs. State (Government of NCT of Delhi)**, is extracted as follows :

“10. The observations of the Hon'ble Supreme Court in "[Gunwantlal Vs. State of Madhya Pradesh](#)" 1972 2 SCC 194 whereby it has been held that for possession of a fire arm under the [Arms Act, 1959](#) must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over the weapon with it being observed to the effect:-

“the possession of a firearm under the Arms Act must have, firstly the element of



consciousness or knowledge of that possession in the person charged with such offence and secondly, where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues besides physical possession being in someone else. The first pre- condition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or not in possession of the thing in question. In this view it is difficult to postulate as to what the evidence will be. If the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when



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it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver", make it apparent that where the petitioner was not aware of the presence of the three live cartridges in her baggage and had no knowledge of the same till it was detected by the security personnel during the screening of the baggage at the security check, it can be safely inferred that the said possession does not fall within the ambit of conscious possession."

9. In view of the above said categorical decision rendered by the Hon'ble Supreme Court, this Court is inclined to quash the proceedings in Crime No.463 of 2020 against the petitioner. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

01.02.2024

Index : Yes/No
Internet : Yes/No
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To

1. Inspector of Police,
Perungudi Police Station,
Madurai.
2. Shift Incharge,
Inspector /Exe,
Office of Deputy Commandant/CASO,
Madurai Airport Central,
Industrial Security Force (Ministry of Home Affairs),
CISF Unit, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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