



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3542 OF 2023

Santosh Narayan Gayakwad
Age: 23 years, Occu.: Labourer,
R/o. Agricultural farm of
Mr. Yambal, Shiradshahapur,
Tq. Aundha Nagnath, Dist. Hingoli.

.. Applicant

Versus

1. The State of Maharashtra
Through Kurunda Police Station,
Tal. Aundha Nagnath, Dist. Hingoli.
2. Yuvraj Dattarao Gavli
Age: 39 years, Occu.: Service -PSI,
Address at – Kurunda Police Station,
Tal. Aundha Nagnath, Dist. Hingoli

.. Respondents

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Mr. Dhiraj R. Jethliya, Advocate for the applicant.
Mr. V. K. Kotecha, APP for respondent No.1/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 28 FEBRUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.283 of 2023 dated 05.08.2023 registered with Kurunda Police Station, Taluka Aundha Nagnath, District Hingoli and later on, by way of

amendment, for quashing the proceedings in R.C.C. No.153 of 2023 pending before the learned Judicial Magistrate First Class, Aundha Nagnath for the offences punishable under Sections 6 and 28 of the Arms Act, 1959.

2. Heard learned Advocate Mr. Dhiraj R. Jethliya for the applicants and learned APP Mr. V. K. Kotecha for respondent No.1/State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that it is lodged by P.S.I. Yuvraj Gavali attached to Kurunda Police Station, District Hingoli after he had received secret information while on patrolling around 23.17 hours on 04.08.2023. Thereafter, taking two panchas with him he went to Shiradshahapur with the police party in the field of one Ratnakumar Madhavrao Yambal and seized the instrument which is like firearm. At that time, the applicant was found sleeping there and he was carrying that weapon besides his pillow. Question was asked to the applicant. Then he says that it is a fake i.e. imitation firearm which he is carrying only to create terror in the mind of people. According to

the informant, applicant could not give satisfactory answer for keeping the said firearm with the accused and, therefore, the weapon was seized. The said weapon is described as gun having wooden handle. It had one barrel to the gun and it had wooden trigger. During the course of investigation, panchanama of the spot has been carried out. Notice was given to the present applicant. The seizure panchanama was carried out and statements of three police persons have been recorded. According to the prosecution, the accused has committed offence under Sections 6 and 28 of the Arms Act. Section 6 punishable under Section 28 of the Arms Act deals with licence for the shortening of guns or conversion of imitation fire-arms into fire-arms. It provides that no person shall shorten the barrel of a fire-arm or convert an imitation fire-arm into a fire-arm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder. The explanation to Section 6 states that the expression "imitation fire-arms" means anything which has the appearance of being a fire-arm, whether it is capable of discharging any shot, bullet or other missile or not. It is to be noted that from the FIR as well as entire contents of the charge-sheet, especially even the statements of witnesses,

it can be seen that the prosecution is not coming with a case that the applicant has shortened the barrel of the fire-arm or in any way converted the imitation fire-arm into a fire-arm. Therefore, ingredients of Section 6 of the Arms Act are not at all attracted. After the fire-arm was seized, the informant or the investigating officer has not sent the said weapon for the report from ballistic expert. If the barrel was not shortened or that weapon was not converted from imitation fire-arm to fire-arm then the question of holding a licence for the same will not arise at all. Section 28 of the Arms Act provides that whoever makes or attempts to make any use whatsoever of a fire-arm or an imitation fire-arm with intent to resist or prevent the lawful arrest or detention of himself or any other person shall be punishable with imprisonment. The explanation to Section 26 of the Arms Act says that the expression "imitation fire-arm" has the same meaning to it as in Section 6. Thus, it can be considered that possession of imitation fire-arm is not punishable unless it is shown that the barrel has been shortened or it has been converted to the fire-arm and the licence is not there or that imitation fire-arm is used to resist or prevent the lawful arrest or detention of himself or any other person. The facts of the case are absolutely not like this.

There was no hurdle for the informant to send the said arm for its inspection by an expert. Interestingly, only the so called imitation firearm has been seized and not its bullets. Whether those bullets were there with the applicant at the relevant time or not is absolutely not stated. Therefore, ingredients of none of the Sections is hereby attracted and, therefore, it would be an abuse of process of law to ask the applicant to face the trial. Hence, the following order :-

ORDER

I) Criminal Application stands allowed.

II) The FIR bearing Crime No.283 of 2023 dated 05.08.2023 registered with Kurunda Police Station, Taluka Aundha Nagnath, District Hingoli as well as the proceedings in R.C.C. No.153 of 2023 pending before the learned Judicial Magistrate First Class, Aundha Nagnath for the offences punishable under Sections 6 and 28 of the Arms Act, 1959, stand quashed and set aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm