

William Michael Hurt Vs. State

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Court : Orissa

Decided On : Jan-17-2014

Appellant : William Michael Hurt

Respondent : State

Judgement :

HIGH COURT OF ORISSA : CUTTACK CRLMC NO.3358 OF 2013 In the matter of an application under Section 482 of the Code of Criminal Procedure, 1973. -----William Michael Hurtubise . . Petitioner -VersusState of Odisha and others . . For petitioner Opp.parties : M/s. S.K.Gajendra, L.Pradhan and D.P.Das For Opp.Parties : Addl.Govt.Advocate PRESENT : THE HONOURABLE SHRI JUSTICE S.C.

PARIJ.-----

Date of Judgment: 17th January, 2014

S.C. PARIJA, J.This application under Section 482 Cr.P.C. has been filed for quashing of the FIR, registered as Bhubaneswar Airfield P.S. Case No.220, dated 18.09.2013, corresponding to C.T.No.3611 of 2013, pending in the Court of the learned S.D.J.M., Bhubaneswar, under Section 25 of the Arms Act and to refund the cash security of Rs.50,000/- deposited by the petitioner, as a condition for grant of bail and to return his passport and visa, deposited with the learned S.D.J.M., Bhubaneswar. 2 2. The case of the petitioner is that he is a citizen of United States of America (USA. for short) and is an employee of STX Service

Americas, LLC, at their Houston location in the State of Texas in U.S.A., as one of their field service engineers. The petitioner was deployed along with two other engineers of the Company and one technician, to attend the off shore drillship, which is under contract with the petitioners Company, for engine maintenance. The petitioner and other engineers and technicians of the Company were required to perform specialized technical work on the drillship main diesel engines, which have been produced by the group of companies of STX Service Americas, LLC and built into the drillship for providing power for the positioning equipment, the drilling equipment and the vessels accommodations. The petitioner and the other technical staffs of the Company were required to carry out specialized job, which the crews of the drillship are No.experienced enough to perform. The owner of the drillship is a Houston based offshore drilling company. During the period of his deployment for engine maintenance of the drillship, the petitioner would continue to draw his salary from STX Service Americas, LLC, as he continues to be the employee of the said Company. It was planned that the petitioner and his three colleagues will return to Houston in U.S.A., immediately after completing their tasks on board the drillship.

3. The petitioner along with his colleagues left Houston in the State of Texas in USA and via Amsterdam, arrived in New Delhi. From there they boarded a flight to Bhubaneswar and arrived at Biju Pattnaik Airport in Bhubaneswar on 18.09.2013. While the petitioner and his colleagues were 3 about to board the Helicopter to proceed to the place of work in Paradeep, he was detained by the CISF personnel and was informed that during screening of his baggage, 8 nos. of 0.22 mm bullets have been found in his handbag. The petitioner explained to the CISF personnel at the Airport that the bullets may have been left behind in his handbag due to oversight and that he is possessing a Arms Licence issued by the State of Florida in USA and if he is given some time, he can obtain copy of the said Arms Licence by fax. He further pleaded that the 0.22 mm bullets are harmless and is only used for sporting purpose in a Sporting Rifle. The CISF personnel did No.heed to the request and plea and instead handed over the petitioner to the Airfield Police Station, Bhubaneswar and submitted a written report dated 18.09.2013, which reads as under: To The Inspector-in-Charge, Airfield Police Station,Bhubaneswar. Sub: Information of Ammunition detected at SHA of B.P.Airport,Bhubaneswar,Reg.

Sir, It is intimated that, one passenger namely, Mr.William Michael Hurtubise S/o Mr.William Oliver Hurtubise of 14827, Glade brook, Dr.Houston Tx-77068 (USA) Passport No.454978968 was travelling from Bhubaneswa to Rig-plex offshore by Chartered Helicopter of M/s-Global Vectra Helicorp. He was carrying 08 in Nos.0.22 live ammunition in his hand bag which was detected at security hold area during hand bag X-ray screening by Sub-Insp/Exc. Prem Singh at about

08. 05 Hrs. on dt.18.09.2013. The said SI./Exc.brought the matter to security hold in-charge, Insp/Ex S.N.Kumar who questioned the passenger about ammunition and its valid licence. But individual is unable to produce it and told that he is having USA arms licence which is in USA 4 and he is working with ONGC under Contractor Mr.Baker Hughes of Mumbai. The passenger along with 08 in Nos. 0.22 Ammunition (live) produce before you for further legal action as per law. Encl:

1. 08 Nos. 0.22 mm live ammunition

2. Seizure Memo

3. Xerox of Passport No.454978968

4. Boarding pass

5. Written statement of individual Sd/18.9.13 (Insp/E S.N.Kumar) CISF/ASG BBSR BP Airport,BBSR.

4. The said written report was registered as Bhubaneswar Airfield P.S. Case No.220, dated 18.09.2013, under Section 25 of the Arms Act (hereinafter referred to as the Act) and the petitioner was produced before the learned S.D.J.M., Bhubaneswar and was remanded to jail custody. Subsequently, the petitioner has been released on bail by the order of learned Addl. Sessions Judge, Bhubaneswar, in B.A.No.359/1064 of 2013, on executing P.R. bond by depositing cash of Rs.50,000/- with the condition inter alia, that he will deposit the passport and visa before the learned S.D.J.M., Bhubaneswar.

5. The case of the petitioner is that he is an American national employed in STX Service Americas, LLC and had come to India in course of his employment, to attend to the maintenance and repair of the drillship, engaged in off shore drilling by ONGC, in the high sea off Paradeep coast. It is the further case of the petitioner that the 8 nos. of 0.22 mm bullets, 5 which were found in his handbag at the Bhubaneswar Airport, have been left in his handbag due to inadvertent oversight and that he is having a valid Arms Licence issued by the State of Florida in USA, vide licence No.W 1223319, for possessing such ammunitions, photocopy of which has been filed. It is the further case of the petitioner that the said 0.22 mm bullets can only be used for sporting purpose in Sporting Rifles, which is a nonprohibited bore, and as no arm or weapon has been recovered from his possession, no offence is made out under the Act.

6. Learned counsel for the petitioner accordingly submits that as the petitioner is a qualified engineer of STX Service Americas, LLC, USA, who has been deployed by the said Company to work on the drillship, which has been engaged by the ONGC in the high sea off Paradeep coast for drilling operations and admittedly he was travelling from USA via Amsterdam to New Delhi and from there to Bhubaneswar, the detection of 8 nos. of 0.22 mm bullets in his handbag at Bhubaneswar Airport canNo.be said to be a conscious possession.

7. Learned counsel for the petitioner has relied upon a Division Bench decision of the Bombay High Court in Nurit Toker Vs. State of Maharashtra and Ors., 2012 (2) BCR (Cri) 154, where in a similar case, the petitioner therein, who was a citizen of Israel was detained at Mumbai International Airport for carrying two live cartridges (bullets) of 0.1 MM and 0.5 MM, which are compatible with M-16 assault rifle. The petitioner therein was found to be in military service in Israel. She had travelled with the baggage from Israel to Mumbai and was preparing to leave for Kathamandu, 6 as per her pre-planned itinerary, when she was detained at Mumbai International Airport for carrying two live cartridges and charged of offences under Sections 3 and 25 of the Act.

8. The Division Bench of the Bombay High Court relying upon the Constitution Bench decision of the apex Court in the case of Sanjay Dutt V. State through CBI,

Bombay, 1994 5 SCC 410, came to hold that merely because the petitioner was found to be carrying two live cartridges which were detected during screening of her baggage at Mumbai International Airport, the same canNo.constitute conscious possession in order to establish the guilt for commission of offences under Sections 3 and 25 of the Act.

9. Learned counsel for the petitioner has also relied upon a decision of the Delhi High Court in CHAN HONG SAIK THR.SPA Vs. State & Anr., 2012 (3) JCC 1858, where the petitioner therein, who is a citizen of Malaysia was detained at the IGI Airport, New Delhi, for possessing one live cartridge of 9 mm in his handbag without any licence, in contravention of Section 3 of the Act and was accordingly found to have committed an offence punishable under Section 25(1-B) of the Act. The Honble Court considered the fact that the petitioner had travelled to India for a holy pilgrimage along with his fellow passengers and had travelled through different places in India along with his baggage and it was while boarding a flight back to Kuala Lumpur (Malaysia), the security personnel detected one live cartridge. Honble Court also considered the fact that the petitioner therein was a member of the Rifle Club of Malaysia and was a renowned shooter and the live cartridge canNo.be used for any purpose without the fire arm. Taking into 7 consideration the fact that one live cartridge would come under the category of miNo.ammunition as provided under Section 45(d) of the Act, the Honble Court quashed the FIR.

10. Learned counsel for the State while supporting the prosecution initiated against the petitioner under the impugned FIR submits that as the petitioner, who is a citizen and resident of USA, was found in possession of 8 nos. of live 0.22 mm bullets at the Biju Pattnaik Airport, Bhubaneswar, and he did No.possess a valid licence under the Act, he had committed offence under Section 25 of the Act and therefore, the impugned FIR canNo.be faulted. It is further submitted that as the matter is under investigation, no interference is warranted at this initial stage, when all facts are yet to come on record.

11. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the

uncontroverted allegations as made prima facie establish the offence. Section 482 does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*. (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of court, to allow any action which would result in injustice and prevent promotion of justice and in exercise of such powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report or the complaint, the court may examine the question of fact. When a report or complaint is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and

whether any offence is made out even if the allegations are accepted in toto.

12. In the case of *State of Karnataka v. L. Muniswamy & others*, AIR 1977 SC 1489, the Supreme Court has observed that the wholesome power under section 482, Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Supreme Court observed in that case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. The aforesaid ratio of the case has been followed in a large number of subsequent cases of Apex Court and other Courts.

13. The scope of exercise of power under Article 226 of the Constitution and Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice were set out in some detail by the Supreme Court in *State of Haryana and others v. Ch. Bhajan Lal and others*, AIR 1992 SC 604. 10 The Honble Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised : (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the F.I.R.

do No.constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. 11 (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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14. Admittedly, the petitioner is a citizen of USA and employed under STX Service Americas, LLC, USA and had come to India along with his colleagues for carrying out maintenance of the drillship, operating under ONGC in the high sea off Paradeep coast, for oil and natural gas drilling operation. After reaching Bhubaneswar Airport, while the petitioner was boarding the Helicopter to go to Paradeep, the security personnel detained him on the ground that during screening of his baggage, 8 nos. of 0.22 mm live bullets were found in his handbag. The petitioner possess a valid Arms Licence issued by the State of Florida in USA and the 0.22 mm bullets recovered from his baggage can only be used in Sporting Rifles, which is a non-prohibited bore.

15. The plea of the petitioner that he was No.aware of the bullets lying in his handbag and that the same must have been left in the bag due to inadvertent oversight appears to be genuine and bona fide, as no attempt has been made by him to conceal the said bullets No.the said bullets were found hidden in a secret compartment of his baggage to evade detection. Moreover, the petitioner while travelling from U.S.A. via Amsterdam to New Delhi and then to Bhubaneswar, had

passed through several security checks in different Airports abroad and in India before landing in Bhubaneswar and no where the said bullets could be detected.

12 16. The law is well settled that conscious possession is a core ingredient to establish the guilt for the offence under Section 25 of the Act and the apex Court in Sanjay Dutt (supra), while dealing with a case under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, has held that the expression possession occurring in the Section 5 of the said Act must mean possession with the requisite mental element, that is, conscious possession and No.mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession, which means that the possession must be conscious possession. The apex Court has held that only then the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has to be understood.

17. Applying the said principles, as discussed above, to the facts of the present case and considering the attending circumstances, it can be safely said that the petitioner had left behind 8 nos. of 0.22 mm bullets in his handbag by mistake and/or inadvertent oversight, when he started his journey from USA. He was No.aware of its presence in his handbag till it was detected by the security personnel during screening of his baggage at the Bhubaneswar Airport and therefore it was No.a conscious possession. Further, the petitioner holds a valid licence for possessing such bullets, issued by the State of Florida in USA and admittedly no fire arm or weapon has been recovered from him. Therefore, no offence under Section 25 of the Act is made out against the petitioner and allowing continuance of the criminal proceeding against him would be an abuse of the process of Court.

13 18. Accordingly, the impugned FIR, registered as Bhubaneswar Airfield P.S. Case No.220, dated 18.09.2013, corresponding to C.T. No.3611 of 2013, pending in the Court of the learned S.D.J.M., Bhubaneswar, under Section 25 of the Act is hereby quashed.

19. The cash security of Rs.50,000/- deposited by the petitioner as a condition for grant of bail be refunded to him. The passport and the visa deposited with the learned S.D.J.M., Bhubaneswar, be returned to him forthwith. CRLMC is accordingly allowed. . S.C.PARIJA, J.Orissa High Court, Cuttack, Dated the 17th

January, 2014/BBP

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