

**Matadin Vs. State**

**Matadin Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/503152](http://sooperkanoon.com/503152)

**Court :** Madhya Pradesh

**Decided On :** Jul-02-1979

**Reported in :** 1980CriLJ186

**Judge :** J.P. Bajpai, J.

**Appellant :** Matadin

**Respondent :** State

**Judgement :**

ORDER

**J.P. Bajpai, J.**

1. If 'A' holding a gunny bag comes out of his house with 'B' and requests 'B' to hold the gunny bag for a while so that he may close the doors and put a lock and 'B' in compliance with his request holds the gunny bag so as to enable 'A' to close and lock the doors, can it be said that 'B' acquired possession of the incriminating articles, if any, found in the bag? In my opinion, the answer will be in the negative, unless there is something more to show that 'B' was conscious and aware of the incriminating articles and that he had control over the same so as to regulate its use, custody or manner of disposal. Therefore, in the meanwhile, if police officers appear on spot and recover the gunny bag from 'B', while he was holding the same for enabling 'A' to lock the doors of his house, and the bag is found to contain arms and ammunition, 'B' could not be held liable for the offence

punishable under Section 25(1)(a) of the Arms Act for acquiring or possessing arms without a licence.

2. In the case giving rise to this re-Vision, the facts and circumstances as found by the learned Magistrate and affirmed by the Sessions Court were that the applicant accused was seen coming out of the house of Vasudeo. Vasudeo was initially carrying a gunny bag containing some articles. He handed over the gunny bag containing the articles to Matadin, the present applicant and was engaged in closing the doors and locking the same. In the meantime, the police party reached the spot and seized the gunny bag from the possession of the present accused applicant who was holding it while Vasudeo was busy in locking the doors. It appears that the prosecution being aware of the fact that in order to successfully implicate the accused Matadin, it was essential to establish the fact of knowledge and conscious possession of the prohibited fire arm and the ammunition, made an effort to introduce the story that prior to actual search and seizure, one constable Babusingh had seen the present applicant and Vasudeo sitting inside the room, counting the cartridges and the gun was lying near them. This story has been found to be a concocted piece of evidence by both the Courts below and the same has been rejected. The Courts below have found it as a fact that at the time of the seizure, the accused was found holding the gunny bag which on being opened, was found to contain a rifle of prohibited bore and 10 rounds of cartridges and that undisputedly Matadin, the accused, had no licence. Even according to the witnesses for the prosecution, the accused was seen coming out of the house of Vasudeo. Initially, Vasudeo was carrying the gunny bag. After coming out of the house, he handed over the same to the present accused and started closing and locking the doors of the house. While he was doing so, the police party appeared on the spot and effected the seizure of the gunny bag from the hands of the accused.

3. The contention put forth before this Court on behalf of the applicant accused has sufficient force and deserves to be accepted. The argument was that in order to implicate one for the offence under Section 25(1)(a) of the Arms Act, the prosecution must establish conscious intelligent possession of the prohibited arm or ammunition with the accused which has not been done in the present case.

4. After going through the material on record and after hearing the learned Counsel for the State, I am of the opinion that the contention put forth by the accused applicant has sufficient force. Even according to the prosecution, the gunny bag was initially being carried by Vasudeo, who has not been prosecuted. According to the testimony of the witnesses for the prosecution itself, the gunny bag was handed over by Vasudeo to the applicant because he wanted to close and lock the doors of the house. If on a request being made by Vasudeo, the applicant accused held the gunny bag for some time to enable Vasudeo to close and lock the doors of the house, he cannot be said to have acquired or possessed the arm or ammunition so as to make him liable for the offence contemplated by Clause (a) of Section 25(1) of the Arms Act, for the reasons that firstly there was nothing on record to show that he was conscious of the contents of the gunny bag, and secondly, even if he was able to see the contents in the bag, it cannot be said that he was exercising any control over the weapon or ammunition by simply holding the gunny bag for a few minutes in the context of the aforesaid circumstances.

5. One who is not aware of the fact that he is possessing a weapon without a licence, by no stretch of imagination, he can be said to commit an offence under Section 25(1)(a) of the Act. Ignorance of the fact of possession can always be put forth as a valid defence by the accused charged under Section 25(1)(a) of the Act. Thus, in sum and substance, the legal position is that 'Cognus' without the 'animus' is ineffective', but once there is animus then it will not matter whether possession is actual or constructive, mediate or immediate, direct or indirect or exclusive or joint. In the present case, I do not find any ground borne out from the facts and circumstances as found out by the Courts below to draw a legitimate inference that the accused was guilty of the offence of possessing the prohibited arms and ammunition. The accused had no power over the weapon so as to direct its custody, production, use or disposal in any manner. It was a case of nothing but compliance of a request made by Vasudeo to hold the gunny bag for a moment so as to enable him to close and lock the doors of the house. This does not indicate any control or power or ability of the applicant accused to regulate the keeping or possession or use or disposal of the weapon and the ammunition in question.

6. The conviction of the applicant is, therefore, absolutely illegal and perverse and if allowed to stand, it will result in miscarriage of justice, It is accordingly set aside and the applicant accused is acquitted of the charge. The conviction and sentence imposed by the Courts below are set aside and the accused applicant stands acquitted. The revision succeeds.

7. The directions given by the trial Court regarding confiscation of the rifle and 12 rounds of cartridges are, however, upheld.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**