

Sh. Gaganjot Singh Vs. State

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Court : Delhi

Decided On : Dec-01-2014

Judge : S.Ravindra Bhat

Appellant : Sh. Gaganjot Singh

Respondent : State

Judgement :

\$~2. * IN THE HIGH COURT OF DELHI AT NEW DELHI + % Decided on :

01. 12.2014 W.P.(CRL) 1169/2014 SH. GAGANJOT SINGH Through:
Petitioner Mr. Vivek Sood, Mr. Sanjay Rathi & Mr. Devender Partap Singh,
Advocates. versus STATE Through: Respondent Mr. Sanjeev Bhandari,
Additional Standing Counsel (Crl.) along with ACP R.S. Manku, Inspector Gagan
Bhaskar and SI Randhir Singh, PSIGI Airport. CORAM: HON'BLE MR. JUSTICE
S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S.
RAVINDRA BHAT, J.

(OPEN COURT) 1. The proceedings have been referred to the Division Bench by
an order of the learned Single Judge. The order of reference dated 22.07.2014
sets out point of reference, which is as below:

Whether a cartridge, which is capable of being fired, is a complete ammunition
within the meaning of Section 2(b) of Arms Act or a minor part of ammunition as
referred to in Section 45(d) of the Arms Act?.

2. The brief facts are that this petition was instituted for quashing of the First Information Report (FIR) No.158/2014 dated 12.05.2014 registered at Police Station Indira Gandhi International (IGI) Airport (for offence allegedly committed under Sections 25/54/59 of the Arms Act, 1959 hereafter called the Act). The FIR was registered on account of the petitioners conceded possession of an 8 mm KF live cartridge when he tried to board China Eastern Airlines, Flight No.MU-564. The petitioner is a US citizen and holds passport holder No.470434993. At the time of examination of his baggage, the Police discovered the live cartridge and, consequently, after interrogating the petitioner, lodged the FIR.

3. Contending that he was unaware about the live cartridge in his baggage and that the said piece of baggage, in fact, belongs to his uncle, who has lent it for the journey, the petitioner approached this Court for quashing of the FIR. The petitioner relied upon decisions of two learned Single Judges in separate proceedings being Manuel R. Encarnacion Vs. State Thr. NCT of Delhi & Anr. and Chang Hong Saik Thr. Spa: Arvinder Singh Vs. State & Another, 2012 (130) DRJ504 4. In both the cases, the Courts held - in somewhat analogous or similar circumstances, that the offences alleged were not made out. The learned Single Judge in Manuel R. Encarnacion (supra) was of the opinion that the judgment of the Constitution Bench in Sanjay Dutt Vs. State Through C.B.I., Bombay (II), (1994) 5 SCC410 squarely applied - in that, the allegations did not disclose conscious possession. In the second judgment in Chang Hong Saik (supra), the learned Single Judge was of the opinion that the petitioners conduct and possession of cartridge fell within the exception prescribed under Section 45(d) of the Act.

5. In the order of reference, the learned Single Judge elaborately dealt with the facts of the two judgements of the other Single Judges, i.e. Manuel R. Encarnacion (supra) and Chang Hong Saik (supra). In the present case, the learned Single Judge significantly noticed (in para 9 of the order of reference) that whether the possession of arms and ammunition is conscious, or not, has to vary depending on the facts and circumstances of each case. This itself was a pointer to the learned Single Judges understanding that there is no blanket rule that possession per se constitutes an offence, and that the mental element which

comes with such possession is equally important in order to establish the offence. However, what persuaded the learned Single Judge to make the reference was the principle formulated in Chang Hong Saik (supra). In that case, the Court considered Section 45(d) in the light of the Ballistic Experts opinion, which had clearly stated that the 9 mm Cartridge involved in that case, was live ammunition as defined in Act. The learned Single Judge, in the order of reference, thereafter, proceeded to extract paragraphs 37 to 46 from Chang Hong Saik (supra) and also considered the Ballistic Experts report in the present case.

6. In the present case too, the Ballistic Experts opinion is identical; he has stated that the 8mm/0.31 Cartridge is an ammunition. The learned Single Judge took note of the definition of ammunition under Section 2(b), and after juxtaposing it with Section 45(d) felt that the article seized in the present case, i.e. the live cartridge cannot be termed as a minor part of ammunition. To that extent, she felt that the opinion expressed in Chang Hong Saik (supra) did not accurately reflect the law. In these circumstances, the learned Single Judge referred the question posed before us.

7. Learned counsel for the petitioner urged that though the article seized and subsequently tested in this case is a live cartridge and, therefore, constitutes ammunition, nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence. The first decision that he relied upon was Gunwantlal Vs. The State of Madhya Pradesh, AIR 1972 SC1756 He also relied upon the later and larger Constitution Bench ruling in Sanjay Dutt (supra), which has emphasised that possession must mean possession with the requisite mental element, i.e. conscious possession and not mere custody without awareness.

8. It was submitted that in the light of the declaration of the law by the Supreme Court in Gunwantlal (supra) & Sanjay Dutt (supra), the mere possession of a live cartridge in this case was insufficient even to proceed for framing the charges. Learned counsel submitted that considering that the petitioner is a boy of tender age and, furthermore, a U.S. Citizen, who has to go back to study, no fresh material was gathered during the investigation, or indicated in the charge-sheet,

other than the fact that the Cartridge was recovered from the pouch carried by him, and found to be a live cartridge. The mere circumstance that such article turns out to be an ammunition, cannot establish anything; under the circumstances to relegate the petitioner to a full trial would mean to cause him hardship and undergo uncertainty.

9. Learned Additional Standing Counsel submitted that the petitioner cannot take refuge under the statement of law expressed by the learned Single Judge in Chang Hong Saik (supra). It was pointed out that the learned Single Judge on that occasion omitted to consider the definition of ammunition in Section 2(b) of the Act. It was argued, therefore, that the underlying reasoning which led to the quashing of the FIR on that occasion was based upon a flawed appreciation of a statute. Learned counsel highlighted that in Chang Hong Saik (supra), the Court held that ammunition by itself amounted to a minor ammunition a phrase alien to the statute. Learned counsel submitted that minor parts would refer necessarily to minor parts of arms and ammunition in the light of the definition of arms and ammunition. In these circumstances, urged learned Additional Counsel for the State, the petitioners submission to the extent it relies upon Section 45(d) cannot succeed.

10. Learned counsel, however, did not dispute that the charge-sheet and sanction of the competent authority a copy of which has been produced in Court does not contain any material apart from the FIR and the Ballistic Experts report which point towards the petitioners awareness, or consciousness about the fact that he was in possession of the live cartridge found in the pouch carried by him.

11. In Gunwantlal (supra), the Supreme Court emphasized the necessity for the prosecution to prove that possession of the arm or ammunition is a conscious one:

5The possession of a firearm under the Arms Act in our view 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 none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else.

XXXXXX XXXXXX XXXXXX As we said earlier, 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.

This position was reiterated by the Constitution Bench in Sanjay Dutt (supra):

The meaning of the first ingredient of possession of any such arms etc. is not disputed. Even though the word possession is not preceded by any adjective like knowingly, yet it is common ground that in the context the word possession must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of possession in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has been understood. (See Warner v. Metropolitan Police Commissioner 1969 (2) AC256 and Sambasivam v. Public Prosecutor, Federation of Malaya. 1950 AC458)

12. As noticed previously, a solitary cartridge which on examination by expert has been confirmed to be a live one -was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be cartridge and consequently it is ammunition, by itself, that is insufficient to point to suspicion much less reasonable suspicion of petitioners involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal (supra) and Sanjay Dutt (supra).

13. So far as the specific point referred to this Court is concerned, we may straightaway set out the definition of ammunition as in Section 2(b) of the Arms Act: (b) "ammunition" means ammunition for any firearm, and includes-(i) rockets, bombs, grenades, shells [and other missiles]. (ii) articles, designed for torpedo service and submarine mining. (iii) other articles containing, or designed or adapted to contain, explosive fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not, (iv) charges for firearms and accessories for such charges, (v) fuses and friction tubes, (vi) parts of, and machinery for manufacturing ammunition, and (vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf; It would be immediately apparent that there can be even parts of ammunition. The question which the Court would have to consider in a given case is whether the article seized is an arm or ammunition. The expression arms are defined in Section 2(c) as: "arms" means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharpedged and other deadly weapons, and parts of, and machinery for manufacturing, arms

14. Section 45 excepts certain classes of arms or ammunition from the rigors of the Act. Section 45(d) reads as follows:

45. Nothing in this Act shall apply to XXXX XXXXXX XXXXXX (d) the acquisition, possession or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person.

15. In *Chang Hong Saik* (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge cannot be used for the purpose without fire arms" and then proceeded to state though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it

is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act.

(emphasis supplied) 16. The structure of Section 45(d)- is that it is only minor parts of arms or ammunition that are not intended to be used along with complementary parts which can be excluded from the application of the Act. There cannot be any question as to which category a live cartridge falls into; it is clearly whole or entire or ammunition, given the inclusive nature of the definition under Section 2(d). The reasoning in *Chang Hong Saik* (supra), in this Courts opinion, has proceeded without appreciation of Section 2(b) and the fact that there is no term as minor ammunition in that provision. A single whole cartridge is not a part of an ammunition; it is a whole ammunition, nor can it be called a "minor ammunition". Having regard to the facts of *Chang Hong Saik* (supra), the Court is of the opinion that the interpretation placed upon the expression ammunition, i.e. that the whole live cartridge is a minor ammunition falling within Section 45(d), is plainly contrary to the Act and erroneous. The said view is accordingly overruled. The conclusion, however, in the facts of that case appears to have been warranted, since the police could not disclose any intention on the part of the alleged offender in that case. The reference made to the Division Bench is answered accordingly.

17. The above discussion would ordinarily have resulted in this Court relegating the matter after answering the questions referred to in the manner indicated above. However, having regard to the circumstances, all that remains to be seen is whether the petitioners claim for quashing is merited. Having regard to the earlier conclusion recorded, as far as the facts of this case go, an on an application of the law declared by Supreme Court in *State of Bihar v. Ramesh Singh* AIR 1977 SC2018 and *State of Andhra Pradesh v. Golconda Linga Swamy & Anr.* AIR 2004 SC3967 that the charges can be framed only when there is reasonable suspicion or sufficient material of the alleged offender having committed the offence which is entirely absent in the circumstances of the present case the impugned FIR (FIR No.158/2014) and all proceeding emanating from it deserve to be and is, accordingly, quashed.

18. The writ petition is allowed in the above terms.

19. Dasti. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) DECEMBER01
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