

HIGH COURT FOR THE STATE OF TELANGANA

CRIMINAL REVISION CASE No.2309 of 2015

Between:

Karan Sajnani

... Petitioner

AND

The State of Telangana, Rep. by its Public Prosecutor, High
Court, Hyderabad and another ...Respondents

DATE OF ORDER: 25th July, 2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether HER Lordship wish to see the fair copy of the Judgment? | Yes/No |

JUVVADI SRIDEVI, J

*** THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

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Between:

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The State of Telangana, Rep. by its Public Prosecutor, High

Court, Hyderabad and another

...Respondents

! Counsel for the Petitioner: Ms. Zainab Khan, learned counsel,
representing Sri T.Bala Mohan Reddy

**! Assistant Public Prosecutor for
the Respondents-State:** Smt.S.Madhavi

>HEAD NOTE:

? Cases referred

1. 2018 SCC OnLine Del 10218
2. 2023 SCC OnLine Bom 1775

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.2309 OF 2015

ORDER:

This Criminal Revision Case is filed by the petitioner-accused No.1 seeking to set aside the impugned Order dated 08.09.2015 in Criminal Miscellaneous Petition No.3408 of 2014 in C.C.No.299 of 2014 passed by the learned VIII Metropolitan Magistrate, Cyberabad at Rajendranagar, presently pending on the file of the learned XXV Additional Judicial Magistrate of First Class, Rangareddy District at Rajendranagar (for short 'the learned trial Court'), registered for the offence under Section 25(1)(A) of the Arms Act, 1959, (for short 'the Act').

02. Heard Ms. Zainab Khan, learned counsel, representing Sri T.Bala Mohan Reddy, learned counsel for the petitioner and Smt.S.Madhavi, learned Assistant Public Prosecutor for the State-respondents. Perused the record.

03. Brief facts of the case are that the petitioner-accused No.1 and accused No.2 are friends. On 21.01.2011, the petitioner-accused No.1 celebrated his birthday at

Calcutta, during which accused No.2 gifted one 380 live ammunition to the petitioner-accused No.1 for the purpose of using the same as a locket for a neck chain. The petitioner-accused No.1 kept the said live ammunition in his bag and subsequently travelled to Hyderabad by train to attend a marriage. After attending the marriage, on 13.02.2011 at around 10:00 hours, the petitioner-accused No.1 arrived at Rajiv Gandhi International Airport, Shamshabad, along with his luggage, intending to return to Calcutta. During the security check at the airport, the aforementioned live ammunition was found in his bag. For which, a case was registered against the petitioner-accused No.1 in FIR/Crime No.51 of 2011 for the offence punishable under Section 25(1)(A) of the Act.

04. Upon completion of the investigation, the charge sheet was filed before the learned Magistrate. Aggrieved by the allegations leveled against him in the charge sheet, the petitioner-accused No.1 filed an application seeking discharge. However, the learned Magistrate dismissed the said discharge petition by way of the impugned Order dated 08.09.2015.

05. Aggrieved by the said dismissal of the discharge application, the petitioner-accused No.1 preferred the present Criminal Revision Case.

06. Learned counsel for the petitioner-accused No.1 submitted that the petitioner has no connection whatsoever with the alleged offences. The learned Magistrate failed to appreciate that there is no record or material to show that the alleged live ammunition was seized from the possession of the petitioner. It is further submitted that there is no element of intention, knowledge, or conscious possession on the part of the petitioner so as to attract the provisions of the Arms Act. Mere custody or possession of live ammunition, does not constitute an offence under the said Act. It is contended that the charge sheet has been filed by the Police without conducting proper investigation, and no incriminating material has been collected during the course of investigation to implicate the petitioner. The contents of the charge sheet, even if taken at face value, do not disclose the essential ingredients necessary to make out the alleged offence against the petitioner.

07. With the above submissions, the learned counsel for the petitioner-accused No.1 while praying to set aside the impugned order, he relied upon a decision rendered by the High Court of Delhi at New Delhi in ***Birendra Shukla v. The State (Govt. of NCT of Delhi) and another***¹, wherein it was held at Paragraph Nos.7, 9, 10 that:

“7. It is a settled proposition of law that possession under Section 25 of the Arms Act refers to not only physical possession but also the requisite mental element i.e. mens rea of conscious possession. Mere custody without mens rea would not constitute an offence under the Arms Act. Conscious possession of a fire arm/ammunition is a necessary ingredient of the statutory offence entailing strict liability on the offender.

9. In the absence of the conscious possession of live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act would not be applicable and it would be justified to end all such proceedings to secure the ends of justice.

10. Perusal of the record shows that the subject case is clearly covered by the decisions referred to above and the principle of law laid down by the Supreme Court. There isn't sufficient evidence or reasonable ground of suspicion to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. There is no material on record to show that the petitioner was conscious of the possession of the live cartridge.”

¹ 2018 SCC OnLine Del 10218

08. Further, he relied upon a decision rendered by the High Court of Bombay at Goa in ***Manohar Singh Dasauni v. State of Goa, Through Verna Police Station***² wherein at Paragraph No.11 held that:

“11. In the case of M.A. Latif Shahrear Zahedee v. State Of Maharashtra, (supra), the Division Bench of this Court again dealt with a similar question wherein the petitioner therein was found in possession of live cartridges and was prosecuted for the offence under Sections 3 and 25 of the Arms Act. The contention of the petitioner was that he has offered valid explanation for the five live cartridges and one empty cartridge found in his toilet kit pouch. He produced arms licence issued to his brother. The Court observed that such possession cannot be called as conscious possession as required under Sections 3 and 25 of the Arms Act. It was also observed that bare perusal of Sections 3 and 25 of the Arms Act clearly reveals that the term “possession” used therein refers to conscious possession and not unconscious possession or inadvertent possession. Mere possession of the firearm or ammunition would not constitute offence under Sections 3 and 25 of the Arms Act. The essential requirement is the knowledge of possession or power or control over the arm or ammunition when not in actual possession.”

09. On the other hand, learned Assistant Public Prosecutor appearing for the State-respondents contended that there are triable issues in the matter and there is no illegality or irregularity committed by the learned Magistrate in

² 2023 SCC OnLine Bom 1775

dismissing the discharge application filed by the petitioner-accused No.1. Hence, there are no grounds to interfere with the impugned Order passed by the learned Magistrate and prayed to dismiss this Criminal Revision Case.

10. A bare perusal of the contents of the charge sheet reveals that the Police have mechanically invoked Sections 25(1)(a) and 25(1-A) of the Act, the former being cited on the first page and the latter on the concluding page. However, the sole allegation against the petitioner-accused No.1 is that he was found in possession of live ammunition, which was allegedly recovered from his bag during security checking at Rajiv Gandhi International Airport, Shamshabad. There is no further material indicating any misuse or unlawful intent associated with such possession. In view of facts and circumstances of the case, it is relevant to extract Sections 25(1)(a) and 25(1-A) of the Act, which reads as under:

“25(1)(a) Whoever (a) [manufactures, obtains, procures,] sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

25(1-A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition

in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than [seven years but which may extend to fourteen years] [Inserted by Act 42 of 1988, Section 5 (w.e.f. 27.5.1988.) and shall also be liable to fine.”

11. A plain reading of the aforesaid provisions of the Act, indicates that Section 25(1)(a) prescribes the penalty for manufacturing, selling, transferring, converting, repairing, testing, or possessing any firearm or ammunition in contravention of the provisions of Section 5 of the Act. In essence, this provision pertains to unauthorized dealings in arms and ammunition. On the other hand, Section 25(1-A) specifically relates to the illegal possession, acquisition, or carrying of prohibited arms or ammunition in violation of Section 7 of the Act. It mandates a minimum punishment of seven years' rigorous imprisonment, which may extend to fourteen years, thereby reflecting the gravity of offences involving prohibited arms or ammunition.

12. A bare perusal of Section 25 of the Arms Act, 1959 clearly indicates that the term “possession” as used therein contemplates *conscious possession*, and not mere inadvertent or unconscious possession. Mere physical custody of a firearm or ammunition, without the requisite

mental element, does not attract the penal provisions of Section 25 of the Act. The essential requirement to constitute an offence under this provision is the existence of *mens rea*, i.e., knowledge of such possession or control over the firearm or ammunition, even in the absence of actual physical possession. The term “possession” under Section 25 encompasses both physical control and conscious awareness. Thus, mere custody without *mens rea* would not amount to an offence under the Act. Conscious possession is a necessary ingredient to establish criminal liability under this statutory provision. In the present case, there is no material on record to indicate that the petitioner–accused No.1 had conscious knowledge of the possession of the live ammunition. Further, there is no sufficient evidence or reasonable ground to suspect that the petitioner knowingly carried the said ammunition with the requisite mental intent.

13. Furthermore, a careful examination of the impugned order reveals that the learned Magistrate failed to consider whether the allegations, as stated in the charge sheet, *prima facie* constituted the alleged offence or not. The impugned order does not reflect any proper or cogent

reasoning for rejecting the discharge application filed by the petitioner. The learned Magistrate appears to have passed the order in a mechanical manner without applying judicial mind.

14. In view of the foregoing discussion, this Court is of the considered opinion that the mere recovery of live ammunition, in the absence of any cogent evidence establishing conscious possession or the requisite *mens rea*, is insufficient to attract the penal provisions of the Arms Act. Without any foundational material to substantiate that the petitioner was in conscious and knowing possession of the ammunition, the continuation of criminal proceedings would amount to an abuse of the process of law. Moreover, the learned trial Court failed to properly assess whether the allegations in the charge sheet, even if taken at face value, disclose the commission of any cognizable offence, thereby committing a manifest illegality and procedural irregularity. In that view of the matter, the impugned order passed by the learned Magistrate is unsustainable in law and is liable to be set aside.

15. Accordingly, this Criminal Revision Case is allowed setting aside the impugned Order dated 08.09.2015 in Criminal Miscellaneous Petition No.3408 of 2014 in C.C.No.299 of 2014 passed by the learned VIII Metropolitan Magistrate, Cyberabad at Rajendranagar, presently pending on the file of the learned XXV Additional Judicial Magistrate of First Class, Rangareddy District at Rajendranagar. Consequently, the petitioner-accused No.1 is discharged from the alleged offence. All proceedings arising therefrom shall stand quashed.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUVVADI SRIDEVI, J

Dated: 25-JUL-2025
KHRM