

(2010) 04 MAD CK 0179

In the Madras High Court

Case No : Criminal O.P. No. 9618 of 2007 and M.P. No. 1 of 2007

Suriya @ Suriya Narayanan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Arms Act, 1959 — Section 21, 21(1), 21(2), 21(3), 21(4)
Penal Code, 1860 (IPC) — Section 109, 286

Citation : (2010) 04 MAD CK 0179

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : C.D. Johnson, for the Appellant; J.C. Durairaj, Government Advocate (Crl. Side), for the Respondent

Final Decision : Dismissed

Judgement

C.T. Selvam, J.—The petitioner who is the 1st accused in case pending in S.C. No. 31 of 2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court I, Coimbatore seeks to quash proceedings as against him.

2. In an occurrence at about 9.30 p.m. on 31.08.2005, the petitioner herein who is a licensed revolver holder indulged in taking liquor with his friends. Seeing petitioner holding the revolver in a pouch, one of the friends i.e., the 2nd accused in the case asked therefore .Though the petitioner initially refused, he subsequently handed over the revolver to the 2nd accused. The 2nd accused playful dealing with it resulted in a shot being fired and caused an injury to his cheek. As regards this occurrence, the First Information Report was registered on 01.09.2005 in Crime No. 1553 of 2005 on the file of the respondent for offence u/s 25(1)(a) r/w. Section 30 of the Arms Act, 1959 as also u/s 286 IPC. The final report in the case alleges offences punishable u/s 25(1)(a) r/w. Section 30 of the Arms Act, 1959 and Section 286 IPC r/w. Section 109 IPC. The relevant provisions of law in relation to the offence with which the accused are charged are reproduced.

3. Licence for acquisition and possession of firearms and ammunition.-

No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

Notwithstanding anything contained in Sub-section (1), no person, other than a person referred to in Sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of Sub-section (1) of Section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

Nothing contained in Sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

The provisions of Sub-sections (2) to (6) (both inclusive) of Section 21 shall apply in relation to any deposit of firearms under the proviso to Sub-section (2) as they apply in relation to the deposit of any arm or ammunition under Sub-section (1) of that section.

5. Licence for manufacture, sale, etc, of arms and ammunition.-

No person shall

(a) use, manufacture, sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

Notwithstanding anything contained in Sub-section (1), a person may, without holding a licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition:

Provided that no firearm or ammunition in respect of which a licence is required u/s 3 and no arms in respect of which a licence is required u/s 4 shall be sold or transferred by any person unless he has informed in writing the district magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and a period of not less than forty-five days has expired after the giving of such information.

25. Punishment for certain offences - (1) whoever manufactures, 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 rest of the sub-sections - otiose

30. Punishment for contravention of licence or rule.-

Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

286. Negligent conduct with respect to explosive substance.-

Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.-

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation. - An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

3. In the facts and circumstances of the case where the petitioner herein is a licensed revolver holder, it is clear that there is no violation of Section 5 of the Act which would render the petitioner liable for offence u/s 25 thereof. Similarly, the petitioner also cannot be found of having violated Section 3 of the Act or Section 30 thereof as a reading of the charge sheet does not inform of any violation of condition of license and the memo of evidence filed therewith does

not inform that any person is to be examined by the prosecution in this regard. Again coming to the offence under the Indian Penal code, Section 286 IPC would be attracted when an explosive substance has been dealt with rashly or negligently. Even accepting the prosecution case, what has been dealt with negligently is the revolver, which would not fulfill the description of the explosive substance.

4. For the above reasons, none of the charges against the petitioner would stand. It is also abundantly clear that what has occurred was merely an accident though it may be stated that there was some negligence on the part of the petitioner. For the above reasoning, the Criminal Original Petition shall stand allowed. The proceedings in S.C. No. 31 of 2007 pending on the file of the learned Additional District and Sessions Judge, Fast Track Court I, Coimbatore shall stand quashed in so far the petitioner is concerned. Consequently, the connected miscellaneous petition is closed.

5. However, the order presently made shall not stand in the way of licensing authority exercising his discretion on whether the petitioner is a fit person to hold a license for revolver or not.