

A CHANDRAKANT HARGOVINDAS SHAH
V.
DEPUTY COMMISSIONER OF POLICE & ANR.
(Civil Appeal No. 3243 of 2009)

B MAY 5, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Arms Act, 1959/Arms Rules, 1962:

C *Section 3, 17/Schedule III – Arms licence – Issue of –*
Two licences issued to sports person engaged in the sport of
shooting – Purchase and subsequent sale of arms by the
sports person – Cancellation of both licences – Appellate
authority restored one licence – On remand, appellate
D *authority directed cancellation of both licences – Writ Petition*
thereagainst dismissed by High Court – On appeal, Held:
*Appellant guilty of **suppresio veri** as also **suggestio falsi** –*
In view of the frequency of transactions, the statutory
authorities were justified in canceling the licences – However,
E *the appellate is requested to consider grant of any licence so*
as to enable the appellant to carry out his sporting activities
on such terms and conditions as are permissible in law,
provided an application is made in accordance with law.

F **The appellant is engaged in the sport of shooting**
since 1988 and has been participating in the shooting
events at national and international levels. He was
granted two licences for revolver/pistol and gun/rifle.
Between 2001 and 2005, on 26 occasions he had
G **imported various arms and cartridges.**

G **Appellant was issued a show cause notice on the**
ground that he had transferred weapons imported from
abroad thereby misusing his licences. Appellant replied
that the said transactions were entered into only upon

obtaining the requisite permission from the licensing authority. He had also stated that as accuracy was not to be achieved through some arms, he had to sell them off to buy better arms. However, the licences came to be cancelled. On appeal, the appellate authority upheld cancellation order in respect of one licence, but directed restoration of another licence. Appellant filed a writ petition and the High Court remitted the matter to the appellate authority on the premise that no reason had been assigned as to why one licence was denied to the appellant. The appellate authority passed an order canceling both the licences of the appellant. Writ petition against the said order was dismissed by the High Court. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1. In terms of Schedule III of the Arms Rules, 1962 licences are granted in 22 different forms and for different purposes as specified therein. Indisputably, grant of licences under Form III is for purpose of self-use. Appellant himself has contended that he intended to use the arms and ammunition as a sportsman. [Para 16] [905-A-B]

2. There cannot be any doubt or dispute whatsoever that sale and purchase of arms and ammunition by a licensee *per se* is not prohibited. But having regard to the provisions of the said Act and the purport and object for which different types of licences are granted for different purposes, there cannot be any doubt whatsoever that a licensee cannot be permitted to do something indirectly which he cannot do directly. [Para 17] [905-C-D]

3. During the period appellant had been holding his licences, he sold arms at least 39 times. In his show cause as also ground 'G' of the Special Leave Petition, the appellant had contended that he had imported arms

A only once. He, in fact, had imported arms at least on 26 occasions. He, therefore, is guilty of *suppresio veri* as also *suggestio falsi*. [Para 18] [905-G-H; 906-A]

B *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai* (2007) 6 SCC 329, relied on.

"Black's Law Dictionary" (5th edition), referred to.

C 4. It also appears from the record that the appellant had imported a large number of air rifles and air pistols although he had not been participating in the events requiring use of the said weapons. So is the case with the toy weapons which were of no use to him as a sportsman. [Para 20] [906-D-E]

D 5.1. It may be true that the appellant had obtained permission before transferring the weapons in favour of third parties but, indisputably, as he had entered into a large number of transactions, the licensing authority was entitled to infer that he had in effect and substance not been purchasing the same for his own use which was the *sine qua non* for grant of licence. [Para 21] [906-E-F]

F 5.2. On a large number of occasions he had sold the weapons only after a few days of purchase. It is, therefore, difficult to appreciate the contention that the appellant had to sell the weapons only because upon practice he had found that the accuracy level of the weapons had deteriorated. There is another aspect of the matter which also cannot be lost sight of. It may be one thing to say that he had been purchasing weapons manufactured by the companies for which he had no occasion to test the efficacy of the weapons concerned, but even according to the appellant himself he had been purchasing second hand weapons. Before entering into a transaction of weapons in second hand, it is expected,

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that the purchaser would take all precautions to see that the same would be of some use to him. [Para 21] [906-F-H; 907-A-B] A

5.3. Keeping in view the frequency of the transactions, this Court is of the view that the statutory authorities were justified in passing the impugned orders cancelling the licences. [Para 22] [907-B-C] B

6. Ordinarily in a case of this nature, this Court would have remitted the matter back to the licensing authority so as to enable the appellant to satisfy it with regard to his *bonafide* or otherwise in respect of the transactions, but, keeping in view the peculiar facts and circumstances of the case, this Court is of the opinion that the same would be a futile exercise. This Court, as is well known, would not pass any order which would make a statutory authority to comply with only useless formalities. However, appellate authority is requested to consider the question as to whether the appellant, being a sportsman, can be granted any licence so as to enable him to carry out his sporting activities. Such licence may be granted on such terms and conditions as are permissible in law, provided that an application is made in accordance with the law. [Para 23] [907-C-F] C
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Case Law Reference:

(2007) 6 SCC 329 relied on Para 18 F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3243 of 2009.

From the Judgment and Order dated 06.2.2007 of the High Court of Bombay in Writ Petition No. 1809 of 2006. G

Siddhartha Dave, Jemtiben and Vibha Datta Makhija for the Appellants.

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A Madhavi Divan, Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

B **S.B. SINHA, J.** 1. Leave granted.

2. An intricate question involving interpretation of the provisions of the Arms Act, 1959 (for short, 'the Act') falls for determination in this appeal which arises out of a judgment and order dated 06th February 2007 passed by a Division Bench of the High Court of Bombay.

C 3. Appellant herein was a renowned sports person engaged in the sport of shooting since 1988 and has been participating in the shooting events at national and international levels. He has consistently been awarded the certificate of "Renowned Shot" in the categories of small bore 10 meter rifle and pistol, 25 meter all pistol events, 50 meter rifle events, 12 bore trap and skeet events and 300 meter rifle events.

D 4. Indisputably, the Government of Maharashtra issued a notification dated 25th June 1982 in terms of the provisions of the Act and the rules framed thereunder, classifying the target shooters into four categories. It furthermore specified the quantities of arms and ammunition permitted to be possessed by the target shooters. Having regard to the fact that the appellant fell in category 3 of the said notification dated 25th June 1982, he was granted two licences, viz., licence no.BO/50/October/90 for 4 revolver/pistol and licence no.BO/50A/October/90 for 5 gun/rifle in the year 1990.

E 5. It further appears that during the period 1996 to 2005, he had bought and sold rifles and pistols for 36 times, the details whereof are as under :

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Sr. No.	Date of purchase	Date sold	Weapon Type	Details of weapon
01	27.08.96	20.07.01	.315 Rifle	.315 Rifle No.94 AB 4205
02	28.02.97	16.06.97	30.06 Rifle	30.06 Rifle No.374182 by Spring Field
03	28.03.98	28.04.99	.22 Rifle	.22" Rifle No.804309 by Bruno
04	15.07.98	23.09.98	.22 Rifle	.22" Rifle No.068207 by Auschwitz
05	05.10.98	16.10.98	.32" Pistol	.32" Pistol No.387437 by Unique
06	12.10.98	20.10.98	.32" Revolver	.32" Revolver No.ABS 4982 by Smith & Wasson
07	02.11.98	28.04.99	.22" Pistol	.22" Pistol No.G 25027 by Hammerli
08	02.12.98	25.11.99	.22" Rifle	.22" Rifle No.AC/KB/667/102/77
09	09.07.99	15.07.99	.32" Pistol	.32" Pistol No.672901 by Astra
10	09.07.99	16.07.99	.32" Pistol	.32" Pistol No.27402 by Harrington
11	01.09.99	22.11.99	.22" Pistol	.22" Pistol No.89216
12	25.08.99	07.09.99	.22" Rifle	.22" Rifle No.105022 by Bruno

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A	13	31.08.99	07.09.99	.22" Rifle	.22" Rifle No.109617 by Bruno
	14	27.09.99	28.09.99	.22" Rifle	.22" Rifle No.95952 by Bruno
B	15	27.09.99	30.09.99	.22" Rifle	.22" Rifle No.87431 by Bruno
	16	27.10.99	19.11.99	.22" Rifle	.22" Rifle No.35310 by FN Browning
C	17	01.11.99	18.04.00	.22" Rifle	.22" Rifle No.223058 by Auschwitz
	18	05.11.99	12.11.99	.32" Revolver	.32" Revolver No.607020 by Taurus
D	19	24.11.99	20.06.00	.22" Pistol	.22" Pistol No.307126 by Erma
	20	20.12.99	28.04.00	12 Bore DBBL Gun	12 Bore DBBL Gun No.187742 by Simson
E	21	05.08.00	13.11.03	.22" Rifle	.22" Rifle No.96818 by FN Auschwitz
F	22	16.09.00	26.09.01	.22" Pistol	.22" Pistol No.27595 by Hammerli
	23	18.01.01	20.01.01	.32" Revolver	.32" Revolver No.H- 112351 by Smith & Wasson
G	24	14.12.01	19.04.02	.22" Rifle	.22" Rifle No.468146 by Bruno
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25	22.02.02	16.10.02	12 Bore DBBL Gun	12 Bore DBBL Gun No.27501 by WW Greener	A
26	01.08.02	20.08.02	.45" Pistol	.45" Pistol No.C- 14987 by Colt	B
27	17.09.02	08.01.03	.22" Pistol	.22" Pistol No. G- 007938 by Walther	C
28	04.03.03	27.05.05	.38" Pistol	.38" Pistol No.12548 by Colt	C
29	10.06.03	30.09.03	.45" Pistol	.45" Pistol No.2087341 by Ithaca	D
30	28.11.03	26.09.01	.22" Pistol	.22" Pistol No.27595 by Hammerli	D
31	20.02.04	19.08.04	.122" Pistol	.122" L.R. Barrel Pistol No.99286 with conversion barrels	E
32	09.06.92	12.01.99	30.06" Rifle	30.06" Rifle No.139853 by Winchester	E
33	07.06.92	23.09.98	.22" Rifle	.22" Rifle No 162302 by Auschwitz	F
34	28.02.94	15.07.98	25/35" Rifle	25/35" Rifle No.984490 by Winchester	F
35	29.05.92	18.09.96	12 Bore DBBL Gun	12 Bore DBBL Gun No.8127 by Felix	G
36		31.12.99	ML Gun	Muzzle Loading Gun No.14	H

A It also appears that during the period between 2001 and 2005, on 26 occasions he had imported various arms and cartridges. During the period between 26.11.1991 and 15.10.2004, however, he had taken part in 18 events of various State and National Shooting Championships.

B 6. *Inter alia*, on the premise that he had misused the licence, taking undue advantage of his aforementioned certificates by transferring weapons imported by him from abroad 39 times, a show cause notice was issued to him on or about 20th January 2005 by the licensing authority, stating :

C "You are aware that abovesaid both the Weapons permission are given to you being you are as a renowned shot. However, upon having verifying the record of this office, it has been observed that you are taking undue advantage of your renowned shot and you are importing weapons from abroad very easily and these weapons are being used by you for renowned shot and after that you are selling these weapons and have sold. It has been observed that till such time total 39 times you have sold these weapons.

E You are not holding specimen Form XII weapons sale/purchase (dealership licence) issued by the Government of Maharashtra. Only on the basis of that you are being as a Renowned shot, you are misusing the abovesaid licences and doing sale/purchase business and it has been noticed by this office so it would be better to cancel the abovesaid licences.

F But, before doing the abovesaid act, I, Rajnish Sheth, Dy. Commissioner of Police (Head Office) and Weapon Act, 1959 and I am being a authorized officer, why I should not cancel your licence of above weapons as per the provisions made in Weapon Act, 1959 u/s. 17 so, I am giving you this show cause notice and also I am giving you 20 days of time to furnish your satisfied reply in writing to

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this show cause notice.

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This authority shall have liberty to take ex-parte decision if your reply is not received within a prescribed time as stipulated above, which please note."

7. Appellant filed a detailed show cause, inter alia, contending:

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"This is wrong I have imported only one Fire Arms Target Rifle (Steyr Rifle) in 1999 and till today it is on my arms license.

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I have been given License for 5 Gun/Rifle and 4 Rev/Pistol for target shooting sports since 1990 (total 9).

And till now I have made sale purchase 39 times (in 15 years) which I have purchased from India only. This all are 11nd hand and if it was worth for target shooting sport then I was keeping it or after testing or doing practice if it does not suit me, I was disposing off to arms licences holder with your Sale Permission and I was asking purchase period to purchase my choice weapon."

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8. According to him, he had entered into the said transactions only upon obtaining the requisite permission from the licensing authority. He furthermore contended that as the accuracy was not to be achieved through some arms, he had to sell them off to buy better arms.

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9. By an order dated 04th April 2005, the 1st respondent, however, cancelled his licences, opining:

"You are aware that abovesaid both the Weapons permission are given to you being you are as a renowned shot. However, upon having verifying the record of this office, it has been observed that you are taking undue advantage of your renowned shot and you are importing weapons from abroad very easily and these weapons are

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A being used by you for renowned shot and after that you are selling these weapons and have sold. It has been observed that till such time total 39 times you have sold these weapons.

B You are not holding specimen Form XII weapons sale/purchase (dealership licence) issued by the Government of Maharashtra. Only on the basis of that you are being as a Renowned shot, you are misusing the abovesaid weapons and licences and for this reason a show cause notice bearing No.533/2005 dt.20/01/2005 was served to you by this office.

C For the abovesaid show cause notice, you have replied on 19/02/2005. However, in your reply have stated that 'these weapons are now not suitable for the competition and hence, these were sold'. Your said point and statement is baseless. You are not holding specimen Form XII its weapon sales/purchase business licence (dealership licence) issued by the Government of Maharashtra only on the point that you are renowned shot these licences were offered to you but you have misused the same and it has been cleared that you are doing sales/purchase business of the weapons and hence, for cancellation of above said licences, I am passing the order as under :-

F ORDER

G I, Dr. Sanjay Apranti – Dy. Commissioner of Police, Head Office, being as a Authorised Officer and as per the provisions made in Weapon Act, 1959 u/s 17(3) and by using my powers and authority, hereby canceling the Weapon Licence No.BO/50/October/90 and BO/50A/October/90 with immediate effect given to Shri Chandrakant H. Shah. Both the above said licences and respective weapons may be deposited with the weapon custody. This is the order.”

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10. An appeal was preferred thereagainst before the State Government in terms of Section 18 of the Act. The Home Minister of the Government of Maharashtra, who was the designated appellate authority, by an order dated 17th October 2005, while upholding the order of cancellation in respect of one licence, directed restoration of Licence No.BO-50A/October/90.

11. Aggrieved by and dissatisfied therewith, the appellant filed a writ petition before the High Court of Bombay. Having regard to the fact that the order of the appellate authority was not a speaking one, the Division Bench of the High Court, by reason of the order dated 17th January 2006, set aside the said order and remitted the matter to the appellate authority on the premise that no reason had been assigned as to why one licence was being denied to the appellant. By reason of an order dated 19th June 2006, the appellate authority, however, directed cancellation of both the arms licences of the appellant and thereby confirmed the order dated 04th April 2005 passed by the respondent no.1.

12. A writ petition was filed by the appellant thereagainst which, by reason of the impugned judgment, has been dismissed.

13. Mr. Siddhartha Dave, learned counsel appearing on behalf of the appellant would contend that the respondent no.1, the appellate authority as also the High Court committed a serious error insofar as they failed to take into consideration that purchase and sale of arms being not prohibited under the conditions of licence and the transactions having been carried out upon obtaining permission of the licensing authority, appellant cannot be said to have violated the conditions of licence. It was urged that the appellant being a sportsperson, which has not been denied or disputed, should have been allowed to have his arms so as to enable him to participate in the National and State level events.

A 14. Ms. Madhavi Divan, learned counsel appearing on behalf of the respondents, on the other hand, would contend:

B i. Overuse of weapons cannot be said to be a genuine justification by the appellant for frequent sale or purchase.

ii. Frequent sale of licences is contrary to the letter and spirit of the licences granted to the appellant.

C iii. Appellant has resorted to *suppresio veri* and *suggestio falsi* inasmuch as he has contended in Ground 'C' of the petition that he was required to purchase new weapons so as to enable him to participate and perform better in competitions as the accuracy of a weapon gets worn off with use and it is for that reason that he is required to sell his old weapon and purchase new ones. In reply to the show cause notice, however, he wrongly contended that he never made any purchase from any foreign country as there are materials on record to show that he had imported fire-arms, cartridges etc. at least 26 times.

E 15. The Arms Act, 1959 was enacted to consolidate and amend the law relating to arms and ammunition.

F Indisputably, appellant applied for and was granted licences in terms of Section 17 of the Act. Clause (d) of sub-section (3) of Section 17 of the Act provides that if any of the conditions of the licence has been contravened, the same may either be suspended for a particular period or revoked/cancelled. He was granted the licences as per Form III of Schedule III of the Arms Rules, 1962 which is for the purpose of acquisition, possession and carrying of arms or ammunition for sport/protection/display/crop protection and property protection. Licences, however, in Forms XII and XIII of the said Schedule are granted for the purposes of storing, selling and transferring of arms and ammunition of certain categories.

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16. The Central Government, in exercise of its powers conferred by Sections 5, 9, 10, 11, 12, 13, 16, 17, 18, 21, 41 and 44 of the Act framed rules known as Arms Rules, 1962. In terms of Schedule III of the said Rules, licences are granted in 22 different forms and for different purposes as specified therein.

Indisputably, grant of licences under Form III is for the purpose of self-use. Appellant himself has contended that he intended to use the arms and ammunition as a sportsman.

17. There cannot be any doubt or dispute whatsoever that sale and purchase of arms and ammunition by a licensee per se is not prohibited. But having regard to the provisions of the said Act and the purport and object for which different types of licences are granted for different purposes, there cannot be any doubt whatsoever that a licensee cannot be permitted to do something indirectly which he cannot do directly.

18. Insofar as the contention that the appellant was guilty of *suppressio veri* and *suggestio falsi* is concerned, we may note that the *Black's Law Dictionary* (5th edition) defines *suggestio falsi* as, 'suggestion or representation of that which is false; false representation. To recite in a deed that a will was duly executed, when it was not, is *suggestio falsi*; and to conceal from the heir that the will was not duly executed is *suppressio veri*'. A mere omission or negligence would not constitute a deliberate act of *suppressio veri* and *suggestio falsi*. Although it may not be very accurate or apt but *suppressio veri* would amount to concealment, *suggestio falsi* would amount to furnishing of inaccurate particulars. [See : *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai* (2007) 6 SCC 329 para 71].

We have noticed hereinbefore that during the period appellant had been holding his licences, he sold arms at least 39 times. In his show cause as also ground 'G' of the Special Leave Petition, the appellant had contended that he had

A imported arms only once. He, in fact, had imported arms at least on 26 occasions. He, therefore, in our opinion, is guilty of *suppresio veri* as also *suggestio falsi*.

B 19. Licence(s) under the Act is/are granted for specific purpose(s). Sub-section (2) of Section 3 of the Act states that no person, other than a person referred to in sub-section (3), can have in his possession or carry at any time more than three firearms. As indicated hereinbefore, by reason of the
C aforementioned notification dated 25th June 1982, only certain categories of sportspersons were permitted to acquire and possess more than three firearms for the purpose of taking part in shooting competitions. Appellant was in possession of six arms, three in each category under two different licences. Indisputably he was permitted to possess five rifles and four
D revolvers including one of the prohibited category for the purpose of sport shooting.

E 20. It also appears from the record that the appellant had imported a large number of air rifles and air pistols although he had not been participating in the events requiring use of the said weapons. So is the case with the toy weapons which were of no use to him as a sportsman.

F 21. It may be true that the appellant had obtained permission before transferring the weapons in favour of third parties but, indisputably, as he had entered into a large number of transactions, the licensing authority was entitled to infer that he had in effect and substance not been purchasing the same for his own use which was the *sine qua non* for grant of licence.

G From the aforementioned chart it would appear that on a large number of occasions he had sold the weapons only after a few days of purchase. It is, therefore, difficult for us to appreciate the contention of Mr. Dave that the appellant had to sell the weapons only because upon practice he had found that the accuracy level of the weapons had deteriorated. There
H is another aspect of the matter which also cannot be lost sight

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of. It may be one thing to say that he had been purchasing weapons manufactured by the companies for which he had no occasion to test the efficacy of the weapons concerned, but even according to the appellant himself he had been purchasing second hand weapons. Before entering into a transaction of weapons in second hand, it is expected, that the purchaser would take all precautions to see that the same would be of some use to him.

22. We, therefore, keeping in view the frequency of the transactions, are of the view that the statutory authorities were justified in passing the impugned orders cancelling the licences.

23. Ordinarily in a case of this nature, we would have remitted the matter back to the licensing authority so as to enable the appellant to satisfy it with regard to his bonafide or otherwise in respect of the transactions, but, keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the same would be a futile exercise. This Court, as is well known, would not pass any order which would make a statutory authority to comply with only useless formalities. We would, however, request the appellate authority to consider the question as to whether the appellant, being a sportsman, can be granted any licence so as to enable him to carry out his sporting activities. Such licence may be granted on such terms and conditions as are permissible in law, provided that an application is made in accordance with the law.

24. The appeal is dismissed with the aforementioned observations. No costs.

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Appeal dismissed.