SUPREME COURT OF INDIA

The State Rep. By Inspector of

Vs.

Mariya Anton Vijay

Crl.A.No.836 of 2015

(Vikramajit Sen and Abhay Manohar Sapre,JJ.,)

01.05.2015

JUDGMENT

Abhay Manohar Sapre,J.,

S.L.P.(Crl.)No.7082 of 2014

1. Leave granted.

2. These appeals are filed by the State against the common final judgment and order dated 10.07.2014 passed by the Madurai Bench of the Madras High Court in Crl. R.C.(MD)No. 204 of 2014 and Crl. O.P. (MD) No. 6719 of 2014 whereby the High Court partly allowed the criminal revision case and the criminal original petition filed by the accused persons.

3. The relevant facts giving rise to these appeals though have been set out in great detail in the impugned judgment of the High Court, have to be recapitulated in order to enable us to give our own reasons keeping in view the law laid down by this Court in the decisions referred to hereinbelow. The material facts mentioned herein are taken from impugned judgment, charge sheet/final report and the special leave petitions.

4. The appellant is the State of Tamil Nadu represented through the Inspector of Police "Q" Branch of CID Tirunelveli Range and Thoothukudi, Tamil Nadu whereas the respondents are the accused persons.

5. On 11.10.2013, the Indian Coast Guard Thoothukudi received an information that one Vessel named "M. V. Seaman Guard Ohio" was stationed at 10.8 Nautical miles from Vilangusuhi Island of India/Thoothukudi Port and 3.8 Nautical miles away from the baseline promulgated by the Ministry of External Affairs, Government of India vide Notification No. SO-1197 (E) 11.05.2009. The Vessel was located within the territorial seawaters of India. The information received also revealed that one unidentified boat from Thoothukudi coast was suspected to have sailed to the Vessel for doing some kind of illegal activities on the vessel with the connivance of crew members on the vessel.

6. On the basis of information received, the Indian Coast Guard Station Ship "Naikidevi" intercepted the suspected vessel. On reaching there, the sleuths of the Coast Guard questioned the crew members and inquired as to whether they possessed any arms, ammunitions, guards etc. on the vessel? On being questioned, the crew members candidly admitted that they do possess and were carrying with them arms and ammunitions on the vessel.

7. On such disclosure being made admitting therein that the vessel was carrying arms/ammunition, the Coast Guard Ship directed M.V. Seaman Guard Ohio to weigh anchor and proceed to Tuticorin Port for further investigation by the concerned agencies. The vessel was accordingly escorted under the supervision of Captain KPP Kumar along with 3 armed guards of Indian Coast Guard Station. The vessel reached the port around 13.25 hrs on 12.10.2013.

8. The joint interrogation team was accordingly constituted comprising of representatives of Indian Coast guard, Customs Department and other agencies. The team members visited the vessel on the same day, i.e.,12.10.2013 at 14.00 hrs. and undertook thorough inspection of the vessel. The team members also interrogated the crew members staying on the vessel. It continued till the next day (13.10.2013), which inter alia revealed that the vessel was carrying huge quantity of arms/ammunition without any valid authorization and documentation by the crew members. It was further revealed that the vessel had received diesel in bulk quantity from one Indian fishing boat illegally few days back after the vessel entered in Indian Sea waters.

9.The vessel was accordingly handed over to Coastal Security Group Thoothukudi on 13.10.2013. Mr. Narendran-Assistant Commandant Boarding Officer of Indian Coast Guard Ship, Naikidevi lodged a written complaint with the Tharuvaikulam Marine Police Station, Tuticorin stating the aforementioned facts with details, which had come to their knowledge while inspecting the vessel.

10. On receipt of the report, immediately the Inspector of Police Marine PS Tharuvaikulam registered a First Information Report (in short "FIR") in Cr.No. 18/2013 under Section 25 (1B) (a) and (f) of the Arms Act, 1959 read with Section 3(b) and Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955 read with Section 2(m) (5) of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 1990.

11. The registration of FIR led to deeper investigation into the matter. However, looking to the seriousness of the matter, the DGP Tamil Nadu, by order dated 15.10.2013 in RC No 176936/crime/ IV (2)/2013 transferred the case to "Q" Branch, CID for further investigation.

12. The sleuths of CID Branch accordingly took up the investigation and visited the vessel on 16.10.2013 (MV Seaman Guard Ohio Vessel), which was by that time brought to the V.O.C.

Thoothukudi port. After inspecting the vessel, the team made necessary sketches and directed the vessel to remain at the port under the custody of Port authorities to enable them to carry out thorough investigation. It was revealed that around 35 crew members were stationed on the vessel out of which 11 were Indian national whereas remaining were foreign nationals.

13. On 17.10.2013, the investigation team again visited the vessel to collect more information. During this visit, it was found that 35 firearms, 5682 ammunition and 102 magazines were kept in the vessel without any documents and authorization certificates. These arms and ammunition were accordingly seized after doing physical verification on 18.10.2013. The investigating team also intimated to the Court of Judicial Magistrate-II, Thoothukudi about the factum of seizure of arms/ammunition made by them. Independent witnesses attested the seizure of arms/ammunition made by the team members.

14. On 18.10.2013, three crew members on the vessel described as A-4 A-6 and A-37 were arrested whereas other two, A-3 and A-5, were allowed to remain in vessel for doing maintenance work on their request. These arrests were made after observing necessary legal formalities.

15. On 19.10.2013, the other two crew members, A-3 and A-5, were also arrested, as none of the crew members, namely, A-3 to A-37, including the Captain of the vessel, who was under legal obligation to carry with him the necessary documents during voyage, were able to produce any document such as licenses issued by the statutory authorities or authorization orders issued by any competent authority as required under the Arms Act or/and any other law akin to Arms Actof any country in relation to the seized arms/ammunition to show that they were duly authorized to possess and carry these arms/ammunition for their own use while on the vessel.

16. The seized firearms and ammunition were accordingly remanded to the judicial custody on 18.10.2013 and kept at the armory of CISF Thoothukudi as ordered by the Court. On 19.10.2013, Maria Anton Vijay (A-38) was arrested whereas Vijay (A-39), Ranjit Kumar (A-40), Murgesh (A-41) and Selvam (A-42), crew members, were arrested on 20.10.2013. On 24.10.2013, Paul David Dennish Towers (A-4), Lalit Kumar Gurung (A-6) and Radhesh Dhar Dwivedi (A-7) crew members were taken to police custody for interrogation where their voluntary confessions were recorded. Later on, they were also arrested.

17. Pursuant to the disclosure made, the investigating team again visited the vessel on 27.10.2013 and recovered certain documents in relation to the seized weapons movement and e-mail transactions exchanged between the owner of the vessel- Advanfort Company USA and the crew members stationed at the vessel. The investigating team also seized about 2000 liter diesel kept in 10 barrels on the deck, which was purchased by the crew members on 11.10.2013 when the vessel was in territorial waters of India and anchored therein.

18. It was further revealed that the owner of the vessel had credited 40,476 US $ (around Rs.20 lakhs) from USA to India through HDFC, Chennai account of A-43 bearing No. 50200000105782. Thereafter, A-43 had credited Rs.10 lakhs in HDFC account of A-41 (A/c

No. 11041050004770) who, in turn, had withdrawn Rs.7 lakhs on 09.10.2013 and handed over the same to A-38 to enable him to purchase the bulk quantity diesel, which was transported to the vessel with the help of fishing boats successfully.

19. On 31.10.2013, the seized arms/ammunition were sent to Tamil Nadu Forensic Sciences Department, Chennai for analysis and diesel samples collected from 10 barrels were sent to Hindustan Petroleum Corporation Limited, Chennai for its analysis under the orders of the Court.

20. On 08.11.2013 the ballistics report was received which confirmed that out of 49 items of arms/ammunition, item Nos. 16 to 21 were prohibited arms/ammunition as defined under Section 7 of the Arms Act whereas rest were ordinary firearms.

21. Investigation also revealed that the vessel in question belongs to A- 1, which is a company known as "Advanfort Company" having its office at 1875 Eye Street, MW 5th floor Washington DC–2006, USA and its Operations Director is A-2-Mr. Mohamed Frajallah. Both A-1 and A-2 were responsible for all clandestine acts and deeds done by them with the connivance of crew members. Likewise, as mentioned above, A-3, who was the Captain of the vessel, and A-4, who was Tactical Deployment Officer of the vessel were found in physical possession of 35 illegal and unauthorized firearms and other ammunition without any valid documents and were thus found directly involved in the entire operation. Likewise, A-5 to A-37, who were crew members on the Board, were equally found involved in joint operation with A- 3 and A-4 and were accordingly found responsible for commission of various offences registered against them so also A-38 to A-45, who were found involved in supply of bulk quantity of diesel and other items to the crew members for running vessel and, therefore, found responsible for commission of the offences registered against them under various Acts as detailed in the FIR.

22. After completion of the investigation which was based on spot inspection of the vessel and other places as disclosed by the accused persons during their interrogation, examination of witnesses, seizure of documents, arms/ammunition, various articles from the vessel and other places, opinion of statutory authorities on seized items, opinion of public prosecutor and sanction order obtained from competent authorities for filing prosecution case under the Arms Act, a detailed charge sheet along with several documents and other materials collected during investigation was filed by the investigation officer against the respondents herein (A-1 to A-45) on 30.12.2013 before the Judicial Magistrate Court No. 1 Thoothukudi bearing PRC No. 1 of 2014 seeking prosecution of the accused persons (A-1 to A-45) for commission of offences punishable under Sections 33, 35 and 3 read with Section 25 (1B) (a), Section 7 read with 25 (1-A), Section 10read with Section 25 (1-B) (f) of the Arms Act 1959 and Rule 30 of the Arms Rules, 1962 , Section 36 (2) read with Section 30 of the Arms Act and Section 3 (2) (d) read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and Order 2(e)(v)(vi) of the Motor Spirit and High Speed diesel(Regulation of Supply Distribution and Prevention of Malpractices) Order 1998 and Section 120-B of IPC.

23. On perusal of charge sheet and enclosed materials, the Court took cognizance of the case and accordingly on 20.01.2014 issued non-bailable warrants against A-1 (Advanfort Company) and A-2 (Mohamed Frajallah Director Operations), who are the resident of USA (Washington) for their arrest and appearance in the Court in connection with the commission of aforementioned offences along with other accused named above. However, two accused (A-1 and A-2) are still not apprehended despite issuance of non- bailable warrants against them, which remain unexecuted. Similarly, A-43, A- 44 and A-45 are also not yet apprehended and absconding.

24. So far as the other accused, i.e., A-3 to A-41 are concerned, though they were arrested on different dates, some were enlarged on bail by the Trial Court and remaining by the High Court on different dates on terms imposed on them.

25. This led to filing of two criminal cases by the accused persons before the Madurai Bench of Madras High Court. So far as accused A-38 is concerned, he filed Criminal Revision(MD) No. 204/2014 under Section 397 of Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") wherein the challenge was to the cognizance taken by the Judicial Magistrate of the charge sheet seeking to prosecute A-38 for commission of several offences detailed therein. So far as A-3 to A-37 are concerned, they filed Crl.O.P. (MD) No. 6719 of 2014 under Section 482 of the Code wherein they also sought quashing of the final report/charge sheet filed seeking to prosecute them for commission of various offences detailed therein.

26. By common impugned judgment/order, the learned Single Judge of the High Court partly allowed both the cases. The High Court quashed the charge sheet/final report filed against all the accused persons insofar as it related to offences punishable under the Arms Act are concerned. It was held that no prima facie case has been made out on the facts set out in the charge sheet to prosecute any of the accused persons for commission of any offence punishable under the Arms Act and hence charge sheet/final report filed by the State prosecuting agency for commission of various offences punishable under the Arms Act against all the accused persons to that extent deserves to be quashed at the threshold. It was accordingly quashed to that extent.

27. The High Court, however, upheld the filing of the charge sheet against A-3 and A-38 for their prosecution in relation to the offences punishable for violating the Control Order, 2005 punishable under Section 3

> "(ii) (d) read with Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955 (in short "the EC Act"), holding that prima facie case against these accused for commission of offences under the EC Act is made out and hence these accused persons have to face trial on merits insofar as the offences punishable under the said Act are concerned."

28. It is apposite to reproduce the operative portion of the order of the High Court in paragraph 43 infra, "In fine, I find that the prosecution of the accused for the offences under the Arms Act, 1959 is not maintainable. Hence, the prosecution of the petitioners in both

petitions under theArms Act, 1959 is quashed. Mariya Anton [A38] will be liable for prosecution for violating the Control Order, 2005 punishable under Section 3(ii)(d) r/w 7(1)(a)(ii) of the Essential Commodities Act, 1955. Dudinik Valentyn [A3], the Captain of the Ship will be liable for abetment of the offence committed by Mariya Anton [A38] under the Essential Commodities Act within the Indian territorial waters. The cognizance taken by the learned Judicial Magistrate for offences under the Arms Act is set aside. Accordingly, the Criminal Original Petition and the Criminal Revision Case stand partly allowed. Consequently, M.P.Nos. 1&2/2014 in Crl.R.C(MD) No. 204/2014 and M.P.Nos. 1,2&4/2014 in Crl.O.P.(MD)No.6719/2014 are closed."

29. The effect of the impugned order is that only two accused namely A- 3 and A-38 will have to face prosecution in relation to the offences punishable for allegedly violating the conditions of the Control Order, 2005 issued under the Essential Commodities Act. In other words, all the accused persons (A-3 to A-45) stand discharged insofar as offences punishable under the Arms Act are concerned whereas the charge sheet/final report filed against two accused, A-3 and A-38, in relation to offences punishable under the Essential Commodities Act is held legal and proper and, therefore, trial on merits would be held against A-3 and A-38 in relation to offences punishable under the Essential Commodities Act.

30. Aggrieved by the said judgment/order of the High Court, the State has filed these appeals by way of special leave before this Court.

31. This is how the controversy is brought before this Court to examine the legality and correctness of the impugned order passed by the High Court.

32. The question which arise for consideration in these appeals is whether the High Court was justified in quashing the charge sheet in part in exercise of powers under Section 397 or/andSection 482 of the Code at the instance of accused persons insofar as it related to the offences punishable under the Arms Act?

33. Heard Mr. K. Ramamoorthy, Mr. C.A. Sundaran, learned senior counsel *Mr. Hari Narayan V.B and Mr. P.B. Suresh*[1], learned counsel for the parties.

34. Mr. K. Ramamoorthy, learned senior counsel for the State, the appellant herein while assailing the legality and correctness of the impugned order, urged several contentions. He contended that the High Court erred in quashing the charge sheet in relation to offences punishable under the Arms Act against all the accused. According to him, the entire approach of the High Court in entertaining the criminal revision and petition filed under Section 482 of the Code seeking to quash the charge sheet filed against the accused persons was per se illegal and erroneous being against the well settled principle of law laid down by this Court in a catena of decisions.

35. Elaborating his submissions, learned senior counsel contended that firstly, there was no basis factually or/and legally to invoke the revisionary power under Section 397 or/and inherent power under Section 482 of the Code for quashing the charge sheet at the threshold.

36. Secondly, learned counsel contended that having regard to the nature of controversy and the materials collected during investigation coupled with the admitted fact that huge quantity of unlicensed, unauthorized arms/ammunition including prohibited arms were recovered from the vessel were sufficient to attract the provisions of the Arms Act for prosecuting the accused persons as it was enough for holding that prima facie these accused persons have committed the offence punishable under the Arms Act rendering them liable to face the prosecution in accordance with law.

37. In any case, according to learned counsel, the issues involved in this case were such that it required full trial on merits and for that the prosecution should have been afforded an opportunity to prove their case set up in the charge sheet by adducing evidence in support of the contents of the charge sheet.

38. Thirdly, learned counsel contended that this was not a case where the High Court could have formed any opinion or as a matter of fact was in a position to form any opinion by simple reading the contents of the charge- sheet and perusing the materials collected in support of the charge sheet for holding that no prima facie case under the Arms Act against any of the accused was made out or that allegation made in the charge sheet were so absurd that no trial on such facts was legally possible and if it was allowed to be held then it would have amounted to sheer abuse of exercise of powers and harassment to all accused.

39. On the other hand, learned counsel contended that mere reading of the charge sheet running into several pages coupled with the materials filed in support thereof and more importantly, the admitted fact that unlicensed and unauthorized arms/ammunition in huge quantity were recovered from the vessel which was in possession and control of crew members(accused persons) fully justified prima facie that prosecution of accused for the offences punishable under the Arms Act was called for requiring them to face trial on merits in accordance with law.

40. Fourthly, learned counsel contended that the High Court committed yet another jurisdictional error when it decided the matter like an appellate court and in this process appreciated the factual allegations made in the charge sheet and documents/materials filed along with the charge sheet which were yet to be proved in evidence and further committed an error in proceeding to draw inferences therefrom for holding that no prima facie case was made out against any of the accused persons for commission of the offences punishable under the Arms Act. Such approach of the High Court, according to the learned counsel, being against the well settled principle of law laid down by this Court in many decisions has rendered the impugned order bad in law.

41. Fifthly, learned counsel contended that the High Court failed to keep in mind the subtle distinction between the powers which are exercised by the High Court while deciding criminal appeal arising out of final order of conviction and the powers which are exercised by the High Court while deciding petition under Section 482 of the Code.

42 In the former category of cases, according to learned counsel, the High Court is fully empowered to probe into the issues of facts and the law as also empowered to appreciate the entire evidence for recording findings whereas in the later category of cases, the High Court is empowered to examine only jurisdictional issues arising in the case on admitted facts without going into any appreciation of such facts and evidence. Since the High Court, according to learned counsel, failed to keep this well settled distinction in mind and proceeded to decide the matters like an appellate court, it has rendered the impugned order wholly unsustainable.

43. Sixthly, learned counsel contended that the High Court failed to see that once the charge sheet was filed and its cognizance taken, by the magistrate, the case was required to be committed to the Session Court for trial on merits in accordance with law so that the issue is brought to its logical conclusion one way or other, i.e., either resulting in conviction or acquittal of the accused.

44. In this case, according to learned counsel, before this stage could arrive, the High Court intervened without there being any justification by invoking its inherent jurisdiction underSection 482 and quashed the charge sheet in part. Such exercise of jurisdiction by the High Court has rendered the impugned order bad in law.

45. Seventhly, learned counsel contended that the High Court though mentioned the law laid down by this Court in *State of Haryana & Ors Vs Bhajan Lal & Ors.*[2] *and State of Madhya Pradesh Vs S.B. Johari & Ors*[3]. but unfortunately failed to examine the facts of the case in hand in the light of the law laid down in these two cases much less in its proper perspective.

46. It was, therefore, his submission that if the facts of the case in hand had been examined in the light of law laid down in the case of S.B Johari's case (supra) because the facts of the case in hand and the one involved in S.B. Johari's case (supra) were more or less identical on all material issues, then the High Court would have upheld the charge sheet in its entirety.

47. Eighthly, learned counsel contended that the case in hand did not involve any jurisdictional issue such as (1) despite there being a requirement to obtain prior statutory sanction to file the charge sheet, no sanction was obtained or (2) lack of an authority of a person who has filed the charge sheet or (3) the contents of the charge-sheet were so vague, inadequate or/and absurd that even after reading them as a whole it did not constitute prima facie case against any accused under the Arms Act etc. so as to enable the High Court to entertain the petition under section 482of the Code.

48. According to learned counsel, these being usually the grounds raised by the accused to challenge the FIR/ charge sheet/final report in a petition under Section 482 of the Code in the High Court no such ground really existed even prima facie in favour of any accused on facts/law so as to enable the High Court to quash the charge sheet by invoking inherent jurisdiction of the High Court treating this case to be the rarest of the rare.

49. Ninthly, learned counsel contended that in this case there should have been a trial which would have enabled the prosecution to adduce evidence in support of the charges and, in turn, would have enabled the accused to lead evidence in defence. This not having been done, has caused prejudice to the prosecution because despite collecting evidence against the accused, the prosecution was deprived of their right to prove their case against any accused on merits in trial. This has also rendered the impugned order bad in law.

50. Tenthly, learned counsel contented that the High Court erred in travelling into the factual matrix of the whole controversy without there being any evidence on record and, therefore, erred in recording factual findings on several material factual issues arising in the case such as whether the vessel in question was in Indian sea water and if so its effect, what was the nature of business in which the vessel was engaged, vessel's registration to do business etc., the effect of registration on the controversy in question, whether vessel was enjoying the benefit of innocent passage as provided in (UNCLOS) in sea waters and if so its effect, whether vessel was in distress at any time and if so, whether it ensured compliance of the relevant clauses of United Nations Convention on the law of Sea (UNCLOS) providing remedial measures to follow in such eventuality and how these clauses were complied with, whether there was any conspiracy to commit any offence and if so, how?

51. It was his submission that in no case the High Court could have gone into any of the aforementioned material factual issues arising in the case in a petition filed under Section 482 of the Code because all being purely factual issues, could be gone into only in an inquiry made by the Trial Court on evidence in accordance with law.

52. Eleventhly, learned Counsel contended that the High Court further erred in not examining the effect of recovery of unauthorized/unlicensed arms/ammunition from the possession and control of the accused lying in vessel and also the accused persons not being able to produce any documents of title in relation to the seized arms/ammunition or/and any certificate/license issued by the competent authorities to prove their right to possess and carry along with them such arms/ammunition on the vessel.

53. Non-consideration of these material issues and without recording any finding thereon has, according to learned counsel, rendered the impugned order bad in law.

54. Twelfthly, learned counsel contended that the High Court grossly erred in holding that theArms Act does not apply to the vessel in question and, in consequence, cannot be applied against the accused persons. It was his submission that the interpretation made by the High Court ofSection 45 (a) was not in conformity with the Object of the Act. According to learned counsel, due to erroneous interpretation of Section 45 (a) made by the High Court, the accused person got the benefit which otherwise they were not entitled to get. The finding on this issue, therefore, deserves to be set aside.

55. Learned counsel further maintained that Section 45 (a) does not apply to the case in hand and in any event, according to him, the question as to whether benefit of exemption as provided under Section 45 (a) is available to the accused or not can be decided only when the

accused persons are able to prove in their defence by adducing adequate evidence that the ingredients ofSection 45 (a) are fully satisfied by them. This, according to learned counsel, was not proved by the accused persons because no documents were produced by them during investigation and before they could be called upon to adduce evidence in trial, the High Court invoked the inherent powers and interfered in the investigation by quashing it. The finding on this issue is, therefore, against the plain reading of Section 45 (a) and renders the impugned order legally unsustainable.

56. Lastly, learned counsel placed reliance on the decisions of this Court reported in Bhajan Lal case (supra), S.B. Johari case (supra) and *Gunwantlal vs The State of Madhya Pradesh*[4], and prayed that applying the law laid down in these cases to the facts of the case in hand, these appeals deserve to be allowed by setting aside the impugned order and remanding the case to the concerned trial court for conducting full trial on merits in accordance with law.

57. In reply, learned senior counsel Mr. C.A. Sundaram, and Mr. Hari Narayan V.B, and Mr. P.B. Suresh appearing for the respondents-accused supported the impugned order and contended that no case is made out to interfere in the impugned order. Learned counsel elaborated their submissions in support of the reasons recorded by the High Court by referring to counter affidavits and various documents on record.

58. Having heard learned Counsel for the parties at length and on perusal of the entire record of the case, we find force in various submissions urged by the learned senior counsel for the State.

59 Before we deal with aforementioned various submissions, we consider it apposite to take note as to how and in what manner the High Court decided the issues in the impugned order. Indeed, it is necessary to keep this fact in mind in the light of the submissions of the learned counsel.

60 Out of 61 pages in which the impugned judgment was rendered, first 4 Paragraphs (pages 1 to 14) were devoted by the learned Single Judge in mentioning factual matrix of the case. This was followed by mentioning submissions of the parties in Paras 5 to 9 (15 to 30 pages) followed by the discussion, findings and conclusion in Paras 10 to 43 (pages 31 to 61).

61 After narrating the submissions, the Single Judge in Para 10 began his discussion with following observations:-

> "……Initially, this Court did not want to even admit this quash petition and cross the Lakshman Rekha in view of the caution sounded by the Supreme Court in the aforesaid judgment. But, the following aspects prompted this Court to break away from the self imposed barrier and peep to see if there is any legitimacy in the prosecution. Even according to the Police, M.V. Seaman Guard Ohio is a Flag Ship registered in Sierra Leone, a U.N. Member State."

62. Immediately, after the aforementioned observations, the Single Judge set out the reasons in the same para which, according to him, prompted him to break the "Laxman Rekha" (expression used in the impugned order) due to peculiar facts for invoking inherent powers to interfere. These reasons are reproduced in verbatim infra:

> "(1) Even according to the police, M.V.Seaman Guard Ohio is a flag Ship registered in Sierra Leone, a U.N.Member State.
>
> (2) The majority in the ship's crew are Indian nationals with Indian passports (8 names are mentioned i.e. A-6 to A-13).
>
> (3) The Chief cook, who hails from Uttaranchal State, has also joined in the conspiracy and made accused along with others.
>
> (4) As regards the security guards, four are Indians (A-31, A-33, A- 34, and A-37).
> (5) The central Agencies like Intelligence Bureau, DRI etc. got involved on 12 & 13.10.2013 and thereafter they handed over the matter to the State Police to be investigated as any other ordinary municipal offence.
>
> (6) The "Q" branch CID of the Tamil Nadu Police is an elite investigating unit and has got a very good track record of cracking down terrorists and extremists. After their investigation, they were able to file a final report only for possession simplicter of prohibited firearms and for violation of control order under the Essential Commodities Act and nothing more. In other words, the final report does not even show any needle of suspicion about the involvement of the crew members and others in the ship in any crime that is prejudicial to the interest of this country."

63. After setting out 6 reasons, the learned Single Judge in para 10 observed as under:-
"Therefore, for the aforesaid reasons, this Court ventured to go into the final report and the accompanying documents to find out, even if by accepting the entire averments found therein as gospel truth, would it attract a prosecution under the Arms Act and the Essential Commodities Act?"

64. Then in Para 11 the Single Judge rejected the defence submission on the ground that the ship was not within the Indian territorial Sea and holds that it being a question of fact cannot be looked into while deciding the petition under Section 482 of the Code, which reads as under:-

> "The learned counsel for the defence submitted that the ship was not within the Indian territorial sea. In my considered opinion, this is a disputed question of fact which cannot be looked into while dealing with a petition under Section 482 Cr.P.C. Therefore, this Court will go under the premise that the ship was within 12 Nautical Miles and was in the territorial sea of India."

65. Thereafter in para 12, the Single Judge formulated the question for decision which reads as under ;

> "Now the line of enquiry is, can the crew and the guards in the ship be prosecuted for possession of prohibited arms under the Arms Act?"

66. Thereafter in Para 13, the Single Judge observed that it is legitimate for the Court to take "judicial notice of certain notorious facts" and then set out facts relating to piracy, which we consider has nothing to do with the case in hand being general in nature. However, it is worth reproducing hereinbelow:

> "13. It will be legitimate for this Court to take judicial notice of certain notorious facts and those facts are as follows:
>
> Merchant vessels all over the world are not permitted to carry arms. Piracy in and around Indian Ocean, especially by Somali Pirates, is a fact which has been taken note of by the Government of India, as could be seen from the Preamble to the circular dated 28.09.2011 issued by the Director General of Shipping, Ministry of Shipping, Government of India [which is also a document relied upon by the prosecution and supplied to the accused], which runs as under:
>
> "The menace of piracy continues unabated in spite of increased naval presence in the Gulf of Aden region and merchant ships being asked to comply with best management practices which includes establishment of "Citadel".

The Hon'ble Supreme Court has also taken note of this, as could be seen from the judgment in Republic of Italy through *Ambassador and others vs. Union of India and others reported in*[5]

> "The past decade has witnessed a sharp increase in acts of piracy on the high seas off the coast of Somalia and even in the vicinity of the Minicoy islands forming part of the Lakshadweep archipelago." The Government of India has recognized the fact that there are private maritime security companies that provide security for merchant vessels while they traverse through pirate infested locations. This is evident from the circular dated 28.09.2011 issued by the Director General of Shipping, which is referred to above and is being strongly relied upon by the prosecution. Apart from taking judicial notice of the aforesaid facts, this Court is constrained to bear in mind the following two facts that are admitted by the prosecution. Even according to the prosecution, M.V. Seaman Guard Ohio is a ship, registered with Sierra Leone and Registration Certificate is part of the final report and is one of the documents that is relied upon by the prosecution. It is not the case of the prosecution that M.V. Seaman Guard Ohio is an unregistered vessel or a pirate vessel."

67. Then in Paras 14, 15 and 16, the Single Judge took note of the issues relating to grant of registration of vessel, the nature of business carried on by the owner of the vessel with the use of vessel and the effect of both the issues on the whole controversy involved in this case.

68. The Single Judge then proceeded to consider these issue on merits after taking into account the entries in log book, GPS register, the registration certificate, the statement of Captain recorded during his interrogation by joint investigation team where he had explained the functioning of the guards posted in the ship, minutes of investigation team drawn during inspection of the vessel, and lastly, the names of Indian crew members.

69. The Single Judge appreciated the aforesaid material/documents and then after appreciation concluded that the vessel in question is a ship registered in Sierra Leone and is doing anti piracy business.

70. The concluding portion of Para 16 reads as under:-

> "……Therefore, I have no doubt in my mind that M.V. Seaman Guard Ohio is a ship registered in Sierra Leone and is into Antipiracy business."

71. In Para 17, the Single Judge formulated the question as to whether the Indian Arms Act applies to the prohibited arms on the Board of the flagship.

> "The next line of enquiry is does the Indian Arms Act apply to the presence of prohibited arms on board the Flag Ship M.V. Seaman Guard Ohio?"

72. This issue was then considered by the learned Judge in Paras 18 to 22 after referring to Section 4 (2) of IPC, the law laid down by this Court in *Republic of Italy through Ambassador & Ors. Vs U.O.I. & Ors*[5]. and certain Articles of UNCLOS 1982 and held that the crew and guards of the vessel cannot be prosecuted for the offence punishable under the Arms Act for possessing simpliciter prohibited arms on board of the vessel. This finding is recorded in Para 22 and it reads as under:

> "……..Therefore, I hold that the crew and the guards of M.V. Seaman Guard Ohio cannot be prosecuted for the offence under the Arms Act for possession simpliciter of prohibited arms on board their vessel."

73. Then in Para 23, the learned Judge observed that the aforesaid issue could be examined from yet another angle, namely, as to whether the vessel in question was in distress and secondly, whether it was sailing in the innocent passage in the sea waters?

74. This issue was considered in Paras 23 to 29 after taking into account the entries in logbook, GPS register, contents of final report, and applying Section 4(1) of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act 1976, and Articles 18 (2) and 19 of UNCLOS.

75. In Para 29, the Single Judge held that anchoring of the vessel was within Indian territorial seawaters and that the vessel was sailing out of necessity and hence their action is saved by the principle of "innocent passage" as defined in UN Conventions (UNCLOS). The Single Judge held that none of the crew members can, therefore, be prosecuted for any of the offences punishable under the Arms Act. Para 29 reads as under:

> "To sum up, I hold that the anchoring of M.V. Seaman Guard Ohio within our territorial sea was out of necessity and their action is saved by the principle of 'innocent passage' contemplated by Section 4(1) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976 and Articles 18 and 19 of UNCLOS and therefore, the Crew and the Security Guards cannot be prosecuted for an offence under the Arms Act."

76. In Para 30, the Single Judge then dealt with the question as to whether the vessel (ship) violated clauses 7.3 and 7.5 of Circular dated 28.09.2011 issued by Director General of Shipping and then went into factual matrix of the whole controversy and came to the conclusion on this issue in the following words:

> "……..That apart, this Circular would apply only to a foreign ship visiting Indian port. In this case, I have given a finding that the said Ship was drifting and out of necessity it had come into the Indian waters and had anchored at the Outer Port Limits (OPL) of Tuticorin Port. This Ship never had the intention of visiting the Indian Ports, because the Captain was waiting for further instructions from its owners as to what the next move should be for getting provisions and fuel….."

77. After recording the aforesaid finding, the learned judge held that the ship did not violate the requirements adumbrated in the said circular which reads as under:-

> "……Hence, I am of the opinion that the Ship has not violated the requirements adumbrated in the said Circular issued by the Director General of Shipping."

78. The Single Judge then in Para 32 framed a question viz. "Assuming for a moment that the ship, which has been registered as an "utility vessel" in Sierra Leone has changed its status, can the captain, crew members and others on board the ship be prosecuted in India for violation of the registration granted by Sierra Leone?

79. The learned judge in the next sentence held "The answer is an obvious "No". He then referred to the statement of Mr. Senthil Kumar, Captain and after appreciating the contents of the statement held that breach of registration of the vessel will not give any right to Indian prosecuting authorities to prosecute the accused under Indian Laws but such right is available only to prosecuting agencies to prosecute the accused in Sierra Leone.

80. The learned judge then proceeded to consider the next issue as to whether any case for breach of condition of the Notification dated 20.04.2012 issued under Section 457 of the

Merchant Shipping Act, 1958 read with the Rules framed thereunder is made out on the facts set out in the charge sheet?

81. The learned Judge in Paras 33 and 34 dealt with this issue and held that in the light of findings already recorded in favour of the accused persons and on interpretation of Rules 3 and 4 of the Merchant Shipping Rules, no case for violation of any of the conditions is made out against the accused. In paragraph 34, the Single Judge held as under:-

> "(b) The maximum punishment is Rs. 1,000/ for the violation of this Notification. Violation of this Notification cannot lead to the inference that they have committed offences under the Arms Act."

82. The learned Judge then considered the last issue regarding applicability of Section 45 (a) of the Arms Act in Para 36. Without any discussion, the learned judge held that in the light of finding already recorded that the Indian authorities cannot invoke Arms Act against the accused, the provisions of Section 45(a) of the Arms Act, in any event, will otherwise protect the accused, i.e., crew members and the guards on the vessel from being prosecuted, under the Arms Act.

83. The learned Judge then in Paras 37 and 38 held that in the light of findings already recorded, no case is made out against any of the accused to prosecute them for commission of any offence under the Arms Act. However, the learned Judge went on to hold against the two accused that A-3 and A-38 are liable to be prosecuted for commission of offences punishable under the Control Order, 2005 read withSection 7 (1) (a) (ii) of the Essential Commodities Act for purchase of fuel which was alleged to have been purchased in violation of the Control Order. While recording finding on this issue, the learned Judge referred to Section 81 of the IPC.

84. We have purposefully mentioned supra in detail the various findings recorded by the Single Judge only with a view to show the approach and the manner in which the learned Judge decided the case and eventually allowed it in part in favour of the accused.

85. The question as to how, in what manner and to what extent, the inherent powers of the High Court under Section 482 of the Code are exercised for quashing the registration of FIR/final report/charge sheet/complaint etc. are no more res integra and settled by several decisions of this Court.

86. One leading case on this question is Bhajan Lal's case (supra) and the other is S.B.Johari's case (supra) apart from many others.

87. So far as the case of Bhajan Lal (supra) is concerned, following proposition of law is laid down:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a

series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. [pic](5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

88. As far as S.B. Johari (Supra) case is concerned, following proposition of law is laid down:

> "4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. *In Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya*[6], after considering the provisions of Sections 227 and 228 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the [pic]offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in*State of Bihar v. Ramesh Singh*[7], *Union of India v. Prafulla Kumar Samal*[8], *and Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja*[9], and held thus: (SCC p. 85, para 7) "From the above discussion it seems well settled that at theSections 227- 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."
>
> (emphasis supplied)
>
> 6. In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not……..."

89. Keeping the aforementioned principles of law in mind and applying the same to the facts of the case in hand, we have no hesitation to hold that the High Court erred in allowing both

the criminal cases filed by the accused persons thereby erred in quashing the charge sheet at the threshold.

90. In our considered opinion, both the cases out of which these appeals arise, deserve to be dismissed thereby enabling the prosecuting agency to prove the charges against the accused persons in a trial on merits in accordance with law. This we say for the following reasons.

91. It is apparent from mere reading of the impugned order that the entire approach of the High Court while deciding the petition was illegal and erroneous. It looks so apparent that instead of considering the prima facie case, the High Court appreciated and weighed the materials on record for coming to the conclusion that the charge sheet against the respondents could not have been filed and if filed no charges could have been framed against the respondents on the basis of such charge sheet, for facing trial.

92. As rightly argued by the learned senior counsel for the appellant (State), the Single Judge while deciding the matters virtually acted as an appellate Court as if he was hearing appeals arising out of the final order and proceeded to examine each and every issue mentioned in the charge sheet by appreciating the material on record and applying the relevant provisions of various Acts, Rules and international treaties governing the controversy.

93 This approach of the High Court while hearing the case under section 482 of the Code, in our considered view, was wholly unwarranted, illegal and thus cannot be upheld. Having rightly observed by the Single Judge in the beginning that he cannot cross "barrier" while hearing the petition under Section 482 yet committed an error by crossing the barrier.

94. As noted above, six reasons given by the High Court, in our opinion, were not the reasons which could be made basis to invoke the inherent jurisdiction of the High Court. For quashing the charge-sheet, those six factual reasons had nothing to do with the jurisdiction of the court while entertaining the charge sheet. Apart from the fact as to whether such reasons were relevant or not, the fact remained that none of them were of any avail unless each reason was proved by the evidence adduced by both parties during trial.

95. It cannot be disputed that prosecuting agency had collected material during investigation to enable the Court to frame appropriate charges for commission of the offences punishable under the Arms Act and such material was capable of being proved in evidence in accordance with law to enable the Trial Court to reach any conclusion as to whether a case of conviction or acquittal is made out or not?

96. The very fact that huge quantity of arms and ammunition were recovered from the possession and control of the crew members from the vessel and further during investigation, the crew members were unable to satisfy their legal possession over such arms/ammunition with them by not being able to produce any evidence such as licenses, certificates etc. it was sufficient to attract the provisions of Arms Act for initiating prosecution of the accused for commission of the offences punishable under the Arms Act, namely, for possessing unlicensed and unauthorized arms/ammunition on the vessel.

97. The questions as to whether the vessel in question was found in Indian sea waters, or outside Indian territory, whether the vessel was in distress and if so, for what reasons, what steps were taken by the crew members on the vessel to come out of the distress call given by them to the Indian authorities at Indian port and whether steps allegedly taken in that behalf were in conformity with the relevant clauses of UNCLOS which govern the subject, whether the accused persons were having any valid licenses and certificates issued by statutory authorities under the applicable laws so as to enable them to possess and carry with them the arms/ammunition including prohibited categories of arms/ammunition on the vessel, what was the nature of business in which the vessel was engaged and whether owner of the vessel was having a license to do that business which enabled them to possess and carry such arms/ammunition in huge quantity, why amount of 40476 US dollars (Rs. 20 lakhs in Indian currency) was credited by the owner of the vessel (A-1 & A-2) from US to the accounts of some accused persons in their accounts in India (HDFC Bank, Chennai), whether such amount was used for purchase of diesel which was recovered from the deck of the vessel or it was used for doing some other illegal activity etc.

98. These were some of the material questions, which had a bearing over the issues involved in the case. Admittedly, these factual questions could be answered one way or other on the basis of evidence to be adduced by the parties in the trial but not otherwise.

99. In other words, none of the aforementioned questions were capable of being answered without the aid of evidence to be adduced by the parties, by mere reading of FIR, Final report, charge sheet, for the first time by the High Court in exercise of its inherent jurisdiction. Similarly, the High Court had no jurisdiction to appreciate the materials produced like an appellate court while hearing the petition under Section 482 of the Code or/and Revision Petition under Section 397 abid.

100. As rightly argued by the learned senior counsel for the appellant, the law laid down by this Court in S.B. Johari's case (supra) squarely applies to the facts of the case in hand in favour of the State. (101) S.B. Johari's case (supra) was also a case where the High Court had quashed the charge at the instance of accused persons in exercise of its inherent jurisdiction by appreciating the material filed by the prosecution along with charge-sheet. The High Court therein had held that no case was made out on the basis of the contents of the charge sheet and the material filed in support thereof as in the opinion of the High Court, it was insufficient to frame the charge against the accused for their prosecution for commission of offence punishable under Section 5(1)(d) and (2) of the Prevention of Corruption Act. The accused were accordingly discharged by the High Court without compelling them to face the trial on merits.

102. In an appeal filed by the State against the order of the High Court, this Court allowed the State's appeal, set aside the order of the High Court and upheld the charge sheet and the charges which were framed by the trial court and laid down the law which we have reproduced in para 88 above.

103. Coming back to the facts of this case, the High Court committed the same error which was committed by the High Court in S.B. Johari's case (supra) because in this case also the High Court went into the questions of fact, appreciated the materials produced in support of charge sheet, drawn inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution under the Arms Act. This approach of the High Court, in our considered view while deciding petition under Section 482 of the Code was wholly illegal and erroneous.

104. In our considered opinion, the High Court committed yet another error when it recorded the finding that provisions of Arms Act is not applicable to the case in hand and in any event are otherwise not applicable by virtue of Section 45(a) and hence no accused person can be prosecuted for any of the offences punishable under the Arms Act. This finding, in our considered view, is also not legally sustainable and deserves to be set aside for more than one reason.

105. In the first place, this finding could not have been recorded by the High Court either way till the prosecution and the defence had led their full evidence. Secondly, it could be done only in the trial and depending upon the decision rendered by the Trial Court on this issue, the High Court in an appeal arising out of final order of the Trial Court could have examined this issue in its appellate jurisdiction at the instance of accused or State, as the case may be. Thirdly, interpretation made by the High Court of Section 45(a) is wholly unsustainable.

106. This takes us to the next question as to whether the High Court was justified in properly interpreting Section 45(a) of the Arms Act? In other words, the question that needs to be examined is what is the true interpretation of Section 45 of the Arms Act and, in particular, clause (a) of Section 45.

107. Section 45 of the Arms Act sets out certain type of cases to which the provisions of Arms Actare not made applicable. These cases are specified in clause (a) to clause (d) of Section 45. In other words, if the case of the accused falls in any of the clauses of Section 45 and he is able to satisfy the requirement of such clause then such accused cannot be prosecuted for commission of any offence punishable under the Arms Act. He is then held exempted from the applicability of the Arms Act. Section 45

(a) with which we are concerned reads as under:

> "45. Act not to apply in certain cases. – Nothing in this Act shall apply to – Arms or ammunition on board any sea-going vessel or any aircraft and forming part of the ordinary armament or equipment of such vessel or aircraft."

108. Mere perusal of the aforequoted section would go to show that it applies only to those arms/ ammunition stored on board of any sea-going vessel, which forms part of the "ordinary armament or equipment of such vessel". In other words, in case if the accused seeks to place

reliance on Section 45(a) to avoid his prosecution under the Arms Act then it is necessary for him to prove that arms/ammunition stored on the vessel were "forming part of the ordinary armament or equipment" of the vessel .

109. The qualifying words to seek exemption are "forming part of the ordinary armament or equipment of the vessel."

110. The question as to whether arms/ammunition form part of the ordinary armament or equipment of any vessel is a question of fact. The accused has to, therefore, satisfy that the arms/ammunition seized from the vessel are, in fact, part of the ordinary armament or equipment of their vessel and hence were exempted from the operation of the Arms Act by virtue of Section 45 (a) ibid.

111. The object of Section 45(a) is to give exemption from applicability of the Arms Act to those arms/ammunition, which form part of any ordinary armament or equipment of the vessel and not to all arms/ammunition on the vessel. It cannot, therefore, be construed to mean that Section 45(a) enable every vessel to carry any number of arms/ammunition regardless of its purpose, necessity and requirement to carry such arms/ammunition on the vessel.

112. Now coming to the facts of the case in hand, we find that firstly, there was no evidence adduced by the accused to prove that huge quantity of arms and ammunition including prohibited category of arms which were seized from the vessel formed part of the ordinary armament or equipment of their vessel within the meaning of Section 45(a) of the Arms Act. Secondly, this stage had in fact not reached and in the meantime, the High Court interfered with causing prejudice to the rights of the parties and especially to the prosecution, who were unable to prove their case and lastly, in the absence of any finding on this issue, the impugned order cannot be sustained.

113. We are also of the considered view that the issue involved in this case should have been tried keeping in view the law laid down by this Court in the case of Gunwantlal (supra) along with several other legal provisions of Acts/Rules and International Treaties.

114. In the case of Gunwantlal (supra), while upholding the framing of charge for an offence punishable underSection 25(a) of the Arms Act, this Court remanded the case to the Sessions Court for trial. While examining this issue, this Court interpreted the expression “possession” used in Section 25(a) of the Act. Justice P. Jaganmohan Reddy, speaking for the Bench held as under:

> “4. The main question in this case is whether on the facts alleged if true and at this stage nothing can be said about the truth or otherwise of that allegation, the appellant can be said to be in possession of the revolver for being charged with an offence under Section 25(a) of the Act.Section 25(a) insofar as it is relevant states:

"whoever acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3… shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both".

5. What is meant by possession in the context of this section? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15 of that Act. The word "control" under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises the power to obtain possession thereof when he so intends? If the meaning to be given to the word "possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. The 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 nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the [pic]house during the day and in the meantime some one conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of it will be that of the owner. The concept of possession is not easy to comprehend as writers of Jurisprudence have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. As we said earlier, the first precondition 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 and secondly that possession need not be physical

possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words "on or before" were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word "on or before" might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. From a reference of Form XXVIII of Schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he "on or about"… did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read 'on or about' instead of 'on or before' which we accordingly order."

115. In our considered opinion, therefore, this was a case where the High Court should have dismissed the revision filed by the accused under Section 397 and also the petition filed under Section 482 of the Code and remanded the case to the Trial Court to proceed in the case to enable the prosecution to adduce evidence on merits in support of the charge sheet after framing of the charges and also allow the defence to lead their evidence so as to bring the case to its logical conclusion in accordance with law. In other words, this was not a case falling in a category of rare case requiring interference of the High Court by invoking powers under Sections 397 or/and Section 482 of the Code as laid down in the case of Bhajan Lal (supra).

116. Learned counsel for the respondents-accused, however, vehemently contended that this is not a fit case where an interference under Article 136 of the Constitution is called for inasmuch as when the High Court has extensively dealt with all the issues and given reasons. It was also urged that all the accused (some Indian nationals and some foreign nationals) are innocent having no connection with the alleged seizure of arms/ammunition from the vessel. We find no merit in this submission at this stage.

117. It is a settled principle of law that if a law laid down by this Court was not applied properly by the High Court then such order has to be set aside. In this case, we find that the

law laid down by this Court in Bhajan Lal (supra) and S.B Johari's case (supra) was not applied properly.

118. In the light of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court. As a result, the appeals succeed and are accordingly allowed. Impugned order is set aside resulting in dismissal of two cases filed by the respondents (accused) before the High Court out of which these two appeals arise.

119. The Trial Court, which has seized of the case out of which these matters arise, is directed to proceed with the case and decide the same on merits in accordance with law. Let the trial be completed by the Court concerned within six months from the date of receipt of copy of this judgment. Copy of this judgment be filed in the Trial Court within two weeks.

120. Before parting with the case, we consider it appropriate to make it clear that we have not decided any issue arising in these appeals on its merits and nor has made any observation on merits of controversy except to interpret Section 45 (a) of the Arms Act to enable the concerned competent Trial Court to decide the rights of the parties accordingly in accordance with law while deciding the case.

121. The Trial Court (competent Court) would, therefore, decide the case strictly in accordance with law uninfluenced by any of our observations and of the High Court.

Judgment Referred.

[2]*(1992 supp (1) SCC 0335*
[3]*(2008) 2 SCC 0057*
[4]*(1972) 2 SCC 0194*
[5]*(2013) 4 SCC 0721*
[6]*(1990) 4 SCC 0076*
[7]*(1977) 4 SCC 0039*
[8]*(1979) 3 SCC 0004*
[9]*(1979) 4 SCC 0274*