

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3576/2011 & Crl.M.A.No.12699/2011

% *Judgment reserved on: 30th April, 2012*
Judgment delivered on: 2nd July, 2012

CHAN HONG SAIK THR.

SPA: ARVINDER SINGH

..... Petitioner

Through : Mr.Maninder Singh, Mr.Sermon
Rawat, Mr.Harsh Vardhan Shama, Mr.Ashok
Mishra, Mr.Sanjay Chaubey, & Ms.Aekta
Vats,Advs.

Versus

STATE & ANR

..... Respondents

Through : Mr.Naveen Sharma,APP with
SI Vishram Meena, police station IGI Airport,
New Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition is being filed for quashing of the FIR No.126/2011 registered at PS IGI Airport for the offences punishable under section 25 Arms Act, 1959.

2. The petitioner also prayed to set aside the charge framed against him vide order dated 18.08.2011 passed by learned ACMM, Dwarka Courts, to which he pleaded not guilty and claimed trial. The same reads as under:-

“I, Rajesh Kumar Goel, ACMM02, Dwarka hereby

charge you Chan Hong SAIK s/o Cham Siew Teong as under:-

That on 14/03/2011 at about 19:50 hrs. At departure level of T-3, of IGI Airport, New Delhi within the jurisdiction of P.S. Domestic Airport, you were found in possession of one live cartridge of 9 m.m. from your handbag, without any license or permit in contravention of Section 3 of the Arms Act, 1959, and thus, you have committed an offence punishable U/S 25 (1-B) of the Arms Act, 1959, and within my cognizance.

3. As per the charge-sheet, the case of the prosecution against the petitioner is that on 15.03.2011 at about 1950 hrs. at BIS No.4 departure level of T-3, IGI Airport, New Delhi, a passenger, namely; Chan Hong Saik/petitioner, who intended to go to Kuala Lumpur by flight No.1 MH, was carrying one bag, approached for security clearance. During the course of checking, one 9 mm live cartridge was recovered from his bag. The passenger had no valid licence for the ammunition recovered from his possession.

4. During the course of investigation, prosecution witnesses were examined and their statement under section 161 of Cr.PC were recorded. Site plan prepared, seizure memo of the cartridge was prepared, sketch of cartridge was drawn, recovered ammunition was sent to FSL for examination, FSL report/expert opinion of ammunition/cartridges recovered from the possession of the accused was obtained.

5. As per the opinion, the cartridge recovered from the accused is live cartridge and covered under the category of Indian Arms Act,

1939. Accordingly, the sanction under section 39 of the Arms Act obtained which is on record.

6. From the investigation conducted so far, the prosecution found sufficient evidence against the petitioner on record in the form of oral deposition and the recovery of the live ammunition to prosecute him under section 25 of the Arms Act, 1959.

7. It is pertinent to mention that the instant petition has been filed by the attorney of the accused Chan Hong Saik who was arrested by the police at IGI Airport, New Delhi in case FIR No. 126/2011 dated 15.03.2011 registered under section 25 of the Arms Act, 1959.

8. Ld. Counsel for the petitioner submitted that the alleged offence occurred from Monday 14.03.2011, 1950 Hrs. to Tuesday 15.03.2011, 00.30 Hrs.

9. He pointed out that Ld. Counsel for the petitioner submits that the time of the occurrence has not been mentioned in the FIR, rather it is preferred to be left blank. In the column No.3(b) of the FIR the date of receipt of information at police station is mentioned as 15.03.2011 at 00:30 hrs; and in column (c) thereof, general diary reference, entry No.2A and time 00:30 hrs is mentioned. The direction and distance from police station is mentioned as South-West / 0.6KM is written in column No.4(a) of the FIR.

10. He further submitted that the alleged occurrence came to the knowledge of the police at 19:50hrs and the alleged spot was in the airport itself and the present FIR was lodged at 00:30 hrs on

15.03.2011 and the distance from the police station to the spot is about 500 meters, which is itself in the airport premises. Therefore, there is delay in lodging the FIR and as to what the police was managing in between; prosecution has no explanation.

11. Further submitted that petitioner came from Lucknow to Delhi and thereafter by connecting flight he had to go to Kuala Lumpur, Malaysia i.e. his native country from the same airport. The petitioner was a member of group of 22 persons along with his son namely Goh Sai Hong.

12. He further submitted that the petitioner who is a Buddhist travelled to India for a holy pilgrimage along with his fellow Malaysian Buddhist to visit the key Buddhist holy sites in India. During his visit to India for 14 days, and during this entire period, he visited many sites to see the Buddhist temples and shrines of India.

13. On 14.03.2011, the petitioner travelled from Lucknow to Delhi for which he boarded a flight from Lucknow airport and landed at the Delhi airport. A true copy of the air ticket is attached as annexure P-3, page No.43.

14. Learned counsel for the petitioner further submitted that petitioner reached the IGI Airport, New Delhi on 14/15.03.2011 and collected his boarding pass and reached the immigration point and after clearing the same, he reached the security check counter where he and his luggage was checked by the security officers. The luggage of the petitioner was screened and he cleared the security check.

15. Thereafter, one security personnel came and asked the petitioner about his nationality. On rechecking, the petitioner was informed by the police officer that there was a live cartridge in his bag. The petitioner was shocked and surprised as he had no knowledge about the presence of any bullet/live cartridge in his luggage. Moreover, it was the same bag which the petitioner had brought from Malaysia and travelled in India all along.

16. Further submitted that the petitioner fully cooperated with the police officers present over there.

17. Learned counsel for petitioner has raised the issues that at the time of alleged recovery there were persons available from the group and none of them has been made witness to the alleged recovery and none of the public persons from the airport was made witness.

18. The CCTV footage has been provided by the prosecution, however in the said CCTV footage, it is not established whether the alleged recovery was effected from the petitioner or not.

19. It is submitted the petitioner was so tensed that he could not think at that point of time, however on being repeatedly asked by the police, the only possibility that the petitioner could think at that time was that since the petitioner was a member of the rifle club in Malaysia, the bullet could have been left in his bag by mistake. However, the said bullet was never shown to petitioner. Even, whatever he stated that cannot be used against him as barred by the Evidence Act.

20. Learned counsel for the petitioner, has also relied upon the protection envisaged under clause (d) to Section 45, Arms Act, 1959, which reads as under:-

(d) The acquisition, possession of carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person.”

21. Mr. Navin Sharma, learned APP for State submits that the petitioner has admitted in the petition that he was a member of rifle club in Malaysia and the bullet could have been left in the bag by mistake, therefore, it is clear cut admission by the petitioner. On this ground alone, the instant petition deserves rejection.

22. Learned APP further submits, there is no delay in lodging the FIR. The petitioner has been interrogated by the CISF Personnel posted over there and thereafter, made the information to the police station, which resulted in the lodging the instant FIR against petitioner. As per the ballistic expert report, the live cartridge recovered from the petitioner can be fitted and fired through any 9 mm pistol. The said bullet has been recovered from the hand bag of the petitioner, therefore, the live cartridge was very much in his possession.

23. In the present case, the controversy revolved upon the fact that whether one live cartridge comes under the category of ‘minor ammunition’ as provided in section 45(d) of the Arms Act.

24. Vide order dated 02.12.2011, this court directed the

respondent/State to call the ballistic expert on the next date of hearing. Accordingly, Mr. R. Suresh, Sr. Scientific Officer, Ballistic, Forensic Science Laboratory, Rohini, Delhi appeared in the Court on 07.012.2011.

25. Shri Navin Sharma, learned APP for the State, on instructions from him, argued that as per the FSL Report dated 8th April, 2011, Ex.A-1 is ammunition as defined in the Arms Act, 1959.

26. He further submitted that as per clause (d) of section 45 of the Arms Act, it does not talk about the minor ammunitions but about the minor parts of the same. The intention of the legislators behind clause (d) of section 45 is to include minor parts of the arms or minor parts of the ammunitions.

27. Ld. APP further argued that the instant case required full trial as charge has already been framed against the petitioner. Therefore, at this stage, the instant petition is premature and the petitioner has to prove his case during trial.

28. He further submitted that the accused can be discharged at the stage of charge only when if the case falls in the guidelines issued in the case of *State of Haryana and others vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 which are reproduced below:-

“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 F.I.R. 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 F.I.R. 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.

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.”

29. Ld. APP submitted that there are evidence against the petitioner in the present case as one live cartridge of 9 mm was recovered from his bag. Clause (d) of section 45 only mentions about minor parts of the arms or minor parts of the ammunition. The live cartridge is an ammunition under section 25 of the Arms Act. Therefore, not covered under Section 45 of Arms Act.

30. This Court vide order dated 24.04.2012 directed the ld. APP to produce the ammunition seized in the present case. Accordingly, the same was produced by SI Vishram Meena, PS IGI Airport, New Delhi in a sealed pulanda. The seal was opened and it was found that it contained an ‘empty container’ of fired cartridge without nose and powder. This Court seen and returned under seal to the aforesaid SI who was further directed to deposit the same in *Malkhana*, PS IGI Airport, New Delhi.

31. On perusal of the FSL report dated 08.04.2011 conducted by Sr. Scientific Officer (Ballistics) which reads as under:-

“FSL, Delhi FSL 2011/F-1366 page #2

3. *RESULTS OF EXAMINATION/OPINION:*

(1) The 9 mm cartridge marked exhibit ‘A1’ is live one and can be fired through 9mm calibre firearm.

(2) The 9 mm cartridge marked exhibit ‘A1’ was test fired through the pistol 9mm calibre marked exhibit ‘F1’ in (FSL case no.2010/B-3185, DD No.10A PS: Kanjhawala).

(3) The exhibit 'A1' is an ammunition as defined in the Arms Act, 1959.

NOTE: *(1) Case Exhibits/Remnants of Exhibits sent to this laboratory for examination have been sealed with the seal of PP FSL DELHI."*

32. I heard Id. Counsel for the parties. On perusal of the charge-sheet and the trial court record, undisputedly, it is established that only one live cartridge of 9 mm recovered from the petitioner as he was returning to his country i.e. Malaysia from IGI Airport.

33. It is also not disputed that any other fire ammunition was recovered either from the petitioner or from his associates as he was travelling with a group of 22 persons including his own son, namely, Go Sai Hong.

34. The petitioner came from Lucknow to Delhi and thereafter by connecting flight he had to go to Qualalumpur, Malaysia from the same airport. The petitioner being a Buddhist travelled to India for a holy pilgrimage along with his fellow Malaysian Buddhist to visit the key Buddhist holy sites in India. During his visit to India for 14 days, and during this entire period, he visited many sites to see the Buddhist temples and shrines of India.

35. Finally, on 14.03.2011 on concluding his tour, he travelled from Lucknow to Delhi for which he boarded a flight from Lucknow airport and landed at the Delhi airport and thereafter collected his boarding pass and reached the immigration point. After clearing the same, he reached the security check counter where he and his luggage was

checked by the security officers. On checking of his bag, the police officer found a live cartridge therein.

36. For my satisfaction, I have seen the footage of CCTV on my laptop in the open Court and it seems that some suspicious object was recovered from the said bag though it is not very much clear from the CCTV footage whether the said cartridge was recovered or not.

37. Be that as it may, I find force in the submission of the Id. Counsel for the petitioner that he has a protection envisaged under section 45 (d) of the Arms Act, 1959 in which the acquisition or possession of minor parts of arms or ammunition have been stipulated.

38. In the present case, single live cartridge which is found without any fire arm and specially at the stage when he was to leave this country to his native country.

39. The case of the prosecution is not that he extended any threat to any of the authority or the fire arms or ammunition was found with any of this group persons including his own son who was travelling with him.

40. It is pertinent to mention here that when this Court called the ballistic expert, he also could not explain what is the minor ammunition. He only stated that live cartridge is ammunition.

41. It is also pertinent to mention here that Id. APP has argued that live cartridge is one single piece and there cannot be any minor part of the same. In that eventuality, for my satisfaction, I directed him to

produce the seized ammunition in the Court. On production, I found that only cartridge container was produced and same was without powder and cap.

42. Therefore, whether the cartridge with ammunition i.e. live cartridge comes under the minor ammunition and; whether without powder can it be said that the container is a minor ammunition?

43. Single live cartridge cannot be used for any threat purpose without fire arms. Value of the same in the market is also not attractive. It cannot be used for any third purpose. If the intention of the petitioner was not of either of the purpose mentioned above, then he cannot be held guilty and punished for the charge framed against him.

44. He is a renowned shooter. He won medal even in India. He is member of Rifle Club of Malaysia. Though he claimed trial, but that live cartridge may have left in his bag while practice over there. He travelled through different places in India. It could not be detected on any other Airports. Therefore, it was not so alarming without firearms. Particularly, in such situation, he cannot be punished.

45. Though, the petitioner has not admitted recovery of the cartridge and claimed trial, however, even if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without fire arm is a minor ammunition which is protected under clause (d) of section 45 of the Arms Act.

46. In view of the above discussion, the aforesaid FIR No.126/2011

registered at PS IGI Airport, charges framed against the petitioner vide order dated 18.08.2011 and all criminal proceedings emanating therefrom are hereby quashed.

47. Accordingly, the instant petition is allowed.

48. No order as to costs.

49. Bail bonds are cancelled. Surety stands discharged.

50. The trial court record be sent back henceforth.

Crl.M.A.No.12699/2011

Dismissed as infructuous.

SURESH KAIT, J

JULY 02, 2012

RS/jg