

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

+ CrI.M.C. No.3435/2015

Date of Decision: October 09th, 2015

RAHUL DHIR Petitioner
Through Mr.Mohit Mathur, Sr. Adv. with
Mr.Shyam S .Sharma, Adv.,
Mr.Sanjeev K. Baliyan, Adv.,
Ms.Swati Malik, Adv. &
Mr.Pranav Rishi, Adv.

versus

STATE (NCT OF DELHI) & ANR. Respondent
Through Mr.Ashish Dutta, APP for the State
with SI Kazambir Singh.
Mr.Anil Soni, CGSC with
Mr.Naginder Banipal, Adv. for R2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of FIR No.40/2014 dated 28th May, 2014 under Section 25 of the Arms Act, 1959 registered at Police Station Domestic Airport, Delhi and the Sanction Order dated 16th January, 2015 passed by the DCP, IGI Airport.

2. The facts giving rise to the present petition are within the

narrow compass. The petitioner was travelling to Bengaluru with his mother & wife on 28th May, 2014 via flight no.6E 107 Economy of Indigo Airlines and that during the security checking, two live cartridges one being 7.65 MM and the other's bore being unclear, were recovered from his hand bag at Terminal 1D, Domestic, IGI Airport, Delhi without a valid Arms Licence. An FIR No.40/2014 dated 28th May, 2014 under Section 25 of the Arms Act, 1959 at Police Station Domestic Airport was registered against the petitioner. It is stated that the petitioner was thoroughly interrogated by the police officials on the day of the alleged incident but he was never arrested in the present case and his arrest was deferred.

3. It is stated that a sanction order dated 16th January, 2015 was passed by the DCP, IGI Airport which was illegal being passed by an authority not competent to do so under the Arms Act, 1959.

4. A charge-sheet was filed in the Court of learned Metropolitan Magistrate, Dwarka Courts, Delhi.

5. It is stated by learned counsel for the petitioner that the petitioner was unaware of the possession of the alleged two cartridges in his handbag which he was using for a long time and had taken the same with him during numerous occasions on which he travelled across India. It is further contended that the petitioner

himself was surprise and shocked to see the presence of the two live cartridges in his handbag which belonged to his deceased father's old revolver. It is stated that no incriminating material was recovered from the petitioner in addition to the alleged cartridges.

6. Learned counsel for the petitioner relies on the judgment of the Supreme Court in ***Gunwantlal v. State of Madhya Pradesh(1972) 2 SCC 194*** wherein it was held thus:-

“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.”

7. It is further submitted by learned counsel for the petitioner that the aforesaid observation was reiterated by Hon'ble the Supreme Court in ***Sanjay Dutt v. State through CBI, Bombay 1994 (5) SCC 410***. It is submitted on behalf of the petitioner that this Court in Crl.M.C. No. 1455/2014 ***Manuel R. Encarnacion v. State through NCT of Delhi & Anr.*** had ruled on 22nd May, 2014 that possession of 3 live cartridges by Police Officer of New York Police Department was not the conscious one and had quashed the FIR.

8. It is contended by learned counsel for the petitioner that the learned Metropolitan Magistrate has wrongly taken cognizance of a defective charge-sheet as the same was without the requisite sanction of the District Magistrate which was a pre-requisite for filing the charge-sheet/challan.

9. I have heard learned counsel for the parties at length.

10. The main contention of the learned counsel of the petitioner is that the petitioner had no knowledge of the two live cartridges found in his handbag and that there are no allegations of any firearm being discovered/recovered from him or any allegation of “*conscious possession*” of the cartridges, therefore the petitioner bonafidely remained oblivious of their presence in his luggage/handbag. He further stated that, as a matter of fact, no other incriminating material was found or recovered from the petitioner besides the alleged cartridges. He further argued that though the articles seized and subsequently tested in this case are live cartridges and, therefore, constitutes “ammunition”, nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence.

11. In the present case, it is alleged against the petitioner that two cartridges were recovered from his baggage. This Court is of

the considered opinion that mere recovery of cartridges itself is insufficient to prove the offence in the absence of any intention. It was contended by the petitioner that he was having the said cartridges since long as it belonged to his deceased father and he was keeping the same as antique item. It is also matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridges for committing any criminal act. So, there cannot be any intention on the part of the petitioner to carry the recovered cartridges to use them in any offence.

12. On the other hand, the learned APP for the State has opposed the present petition on the ground that on interrogation, the petitioner-herein failed to produce any Valid Arms Licence to authenticate the possession of the ammunition as legal and thus prima facie an offence under Section 25 of the Arms Act, 1959 was made out. He further argued that during the course of investigation, the accused was interrogated who admitted his guilt of carrying live ammunition with him in his hang bag without a valid arms licence. Further, the ballistic expert has opined that the cartridges sent for examination are live and covered under ammunition as defined in the Arms Act, 1959. He further argued that, there is sufficient evidence on record against the

accused/petitioner to prosecute him under Section 25 of the Arms Act, 1959 and subsequent upon, the sanction order under Section 39 Arms Act, 1959 was obtained.

13. As noticed above, two cartridges, which on examination by expert has been confirmed to be live in nature were seized by the authority. The petitioner, no doubt, was in possession of them. However, he expressed his lack of awareness of those articles. There is no material on record to indicate that his statement is groundless. There is no material to show that he was conscious of his possession of the cartridges. Though the ballistic report confirms them to be cartridges and consequently it is “ammunition”, by itself that is insufficient to point to suspicion- much less reasonable suspicion of petitioner’s involvement in an offence which, necessarily had to be based on proven conscious possession.

14. Applying the dictum of the Hon’ble Apex Court in ***Guruwantlal (supra)*** reiterated in ***Sanjay Dutt (supra)*** to the facts of the instant case, this Court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question are lacking.

15. Consequently, this petition is allowed. FIR No.40/2014 dated 28th May, 2014 under Section 25 of the Arms Act, 1959

registered at Police Station Domestic Airport, Delhi and
proceedings emanating therefrom are hereby quashed.

(P.S.TEJI)
JUDGE

OCTOBER 09, 2015
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