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

+ W.P.(CRL) 313/2016

VIPIN DUTT SHARMA

..... Petitioner

Through: Mr.L.K.Giri, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Avininder Singh, A.S.C. for the  
State

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

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**03.02.2016**

1. The petitioner has invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 Cr.P.C. with a prayer that FIR No.109/2014 under Section 25 of Arms Act registered at Domestic IGI Airport, New Delhi may be quashed.

2. The case of the petitioner is that he is holding a valid licence for pistol of .32 bore bearing No.472/Sep/09 PS Sector 49 Noida, U.P. issued by Licencing Authority, Gautam Budh Nagar, U.P. The arms licence has been revalidated from time to time and lastly on 15.09.2015. It is further the case of the petitioner that 10 cartridges were issued by the gun seller on 22.10.2011 on the basis of arms licence issued to him and endorsement to that effect was also made on the last page of the licence.

3. On 21.12.2014 the petitioner alongwith his son was going to Hyderabad in connection with the admission of his son. The tickets were

booked on Flight No.6E 317 from Delhi to Hyderabad. After taking his boarding pass, when the petitioner went for security check, he put his belongings in tray for scanning. At that time, the officer on duty informed that there were seven live cartridges in the pocket of his jacket. The petitioner informed the officer on duty ASI Devi Singh that by mistake he had brought the cartridges in the pocket of his jacket which he used to wear daily during his work. He also informed the officer on duty that he was having valid arm licence issued by Licencing Authority, Noida, U.P. which was lying at his residence.

4. On the basis of recovery of seven cartridges from the pocket of his jacket, the case FIR No.109/2014 under Section 25 of Arms Act has been registered against the petitioner at Domestic IGI Airport, New Delhi.

5. As per the FIR, Sh.H.Devi Singh, ASI/Exe CISF No.110404202 COY.F.IGIA N.D came alongwith petitioner Vipin Dutt Sharma to the police station and produced a written complaint regarding recovery of seven live cartridges of .32 bore pistol which were seized and sealed and after filling the FSL form, the pullanda was deposited in the Malkhana. The petitioner was booked for committing the offence punishable under Section 25 Arms Act.

6. The grounds on which the petitioner is praying for quashing of FIR are:-

- (i) He belongs to a respectable family having roots in the society.
- (ii) The cartridges were validly issued to him on the basis of his arm licence.
- (iii) The cartridges were taken by him inadvertently and without any ill motive.

7. Before considering the contentions of the petitioner, it is necessary to examine the scope of power of this Court for quashing the FIR when the investigation is in progress which is very limited.

8. The power to quash criminal proceedings can be exercised very sparingly in rarest of the rare cases. In the case ***S.M.Datta vs. State of Gujarat & Anr. AIR 2001 SC 3253*** the Supreme Court has examined the legal position as under :

*'2. Since the decision of Privy Council in Khwaja Nazir Ahmed [King Emperor v. Khwaja Nazir Ahmed: MANU/PR/0007/1944 and till this day there is existing one salutary principle that in normal circumstances, the law courts would not thwart any investigation and criminal proceedings initiated must be allowed to have its own course under the provisions of the Code. The powers of the police ought to stand unfettered to investigate cases where they suspect or even have reasons to suspect the commission of a cognizable offence and the First Information Report (F.I.R.) discloses of such offence. The Judicial Committee in the decision of Nazir Ahmed (supra) observed:*

*"In their Lordship's opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial*

*authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."*

3. It is paramount to note however that the observations of Lord Porter in Nazir Ahmed stands qualified by inclusion of the following:

*"No doubt, if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."*

4. The qualified statement of the Judicial Committee however stands noted in *Sanchaita Investment (State of West Bengal and Others v. Swapan Kumar Guha and Others: MANU/SC/0120/1982 : 1982CriLJ819*. Incidentally, *Sanchaita Investment* and subsequent decisions including *Bhajan Lal [State of Haryana & Ors. vs. Bhajan Lal & Ors. MANU/SC/0115/1992]* and *Rajesh Bajaj [Rajesh Bajaj v. State NCT of Delhi & Ors. MANU/SC/0155/1999 : 1999CriLJ1833* in one tune stated that if an offence is disclosed the Court will not interfere with an investigation and will permit investigation into the offence alleged to have been committed. If however the materials do not disclose an offence, no investigation should normally be permitted.'

In para 9 of the report, it was concluded as under:-

*'9. We respectfully record our concurrence therewith. Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise. It is in this context however one feature ought to be noticed at this juncture that there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stage and investigations which ought not to be so scuttled. The First Information Report needs to be considered and if the answer is found on a perusal thereof which leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police since two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.'*

9. Reverting to the facts of instant case, the petitioner was going to Hyderabad and ticket was booked on Flight No.6E 317 from Delhi to Hyderabad. The date of incident is 21.12.2014 i.e. when the winter was at its peak. The jacket from which the recovery of seven live cartridges has been allegedly effected was kept in the tray for security check. It is a matter of common knowledge that when a passenger reports to security check, hand baggage, mobile, purse etc. are to be put in the tray which

pass through scanner. The passenger is also physically subjected to security check by the security personnel deputed for the job. Thus, the jacket worn by the petitioner was not required to be put in the tray.

10. The petitioner claims to be possessing valid arms licence claiming that cartridges were issued to him against his arms licence. Merely because the cartridges are validly issued to the petitioner did not authorise him to take the same to the security area at the airport without disclosing the same. The question whether the possession of the live cartridges was conscious or unintentional is subject matter of investigation.

11. The case of the petitioner does not fall in the rarest of the rare category where this Court should exercise the power of quashing the FIR or criminal proceedings against the petitioner at this stage.

12. Writ petition is dismissed.

**PRATIBHA RANI, J.**

**FEBRUARY 03, 2016**

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