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

Date of decision: 21st April, 2016

+ W.P.(CRL) 1861/2014 and Crl. MA No. 14442/2014

ADILSON DURAN SPIGOLON Petitioner
Through Mr. Wills Mathews, Mr. Gaurav
Kumar and Ms. Reshma Divakaran,
Advocates
versus

STATE OF DELHI Respondent
Through Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Jamal Akhtar,
Mr. Amrit Singh and Mr. Shekhar
Budakoti, Advocates
SI Jitender Kumar, PS IGI Airport

**CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No. 297/2014, under Sections 25/25(54)/59 of the Arms Act, 1959 (hereinafter referred to as 'the Act') registered at Police Station- IGI Airport, Delhi and the proceedings emanating therefrom.

2. It is an admitted position that the petitioner is a Brazilian national aged 75 years and a former Police Officer of Brazil.

3. It is asserted on behalf of the petitioner that the petitioner is suffering from advanced stage of prostate cancer and requires constant treatment.

4. After hearing learned counsel for the parties, the facts that emerge are briefly encapsulated as follows:-

(i) The petitioner visited India on a tourist Visa which was valid between the period from 24th July, 2014 to 23rd January, 2015.

(ii) On the 24th August, 2014, when the petitioner was exiting the country after his 'spiritual tour', he was detained by the police at the IGI Airport, Delhi on the allegation that two live cartridges were recovered from his handbag.

(iii) That there are no other suspicious circumstances other than the mere recovery of the live cartridges from the petitioner.

(iv) That the police have not disclosed any intention on the part of the petitioner to commit any offence in the present case.

5. The two issues that arise for consideration in the present petition are as follows:-

A. Whether the live cartridges recovered from the possession of the petitioner attract the offence within the meaning of Section 2(b) of the Arms Act, 1959; and

B. Whether in the facts and circumstances of the case, there is reasonable suspicion or sufficient material of the petitioner having committed the offence?

6. Insofar, as the first issue is concerned, the same is no longer *res integra*. The Division Bench of this Court in ***Gaganjot Singh vs. State*** reported as ***2014 LawSuit (Del) 4968*** conclusively determined that a single whole live cartridge constitutes “ammunition” in terms of the afore-stated provision.

7. Insofar, as the second issue is concerned, the Division Bench in ***Gaganjot Singh (supra)*** clearly delineated that the view of a Single Bench of this Court in ***Chang Hong Saik Thr. Spa: Arvinder Singh vs. State & Anr.***, reported as ***2012 (130) DRJ 504***, although erroneous vis-à-vis the conclusion that the recovery of a single live cartridge did not attract the

provision of Section 2(b) of the Act, affirmed that decision and the conclusion arrived at therein in the facts of that case since the police could not disclose any intention on the part of the alleged offender.

8. In this behalf, it would be relevant and profitable to extract paragraphs 15, 16 and 17 of the ***Gaganjot Singh (supra)***. The same are as follows:-

“15. In Chang Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge “cannot be used for the purpose without fire arms” and then proceeded to state “though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act.” (emphasis supplied)

16. The structure of Section 45(d)- is that it is only “minor parts of arms or ammunition” that are “not intended to be used along with complementary parts” which can be excluded from the application of the Act. There cannot be any question as to which category a live cartridge falls into; it is clearly whole or entire or “ammunition”, given the inclusive nature of the definition under Section 2(d). The reasoning in Chang Hong Saik (supra), in this Court’s opinion, has proceeded without appreciation of Section 2(b) and the

fact that there is no term as “minor ammunition ” in that provision. A single whole cartridge is not a part of an ammunition; it is a whole ammunition, nor can it be called a "minor ammunition". Having regard to the facts of Chang Hong Saik (supra), the Court is of the opinion that the interpretation placed upon the expression “ammunition”, i.e. that the whole live cartridge is a minor ammunition falling within Section 45(d), is plainly contrary to the Act and erroneous. The said view is accordingly overruled. **The conclusion, however, in the facts of that case appears to have been warranted, since the police could not disclose any intention on the part of the alleged offender in that case.** The reference made to the Division Bench is answered accordingly.

17. The above discussion would ordinarily have resulted in this Court relegating the matter after answering the questions referred to – in the manner indicated above. However, having regard to the circumstances, all that remains to be seen is whether the petitioner’s claim for quashing is merited. Having regard to the earlier conclusion recorded, as far as the facts of this case go, an on an application of the law declared by Supreme Court in State of Bihar v. Ramesh Singh AIR 1977 SC 2018 and State of Andhra Pradesh v. Golconda Linga Swamy & Anr. AIR 2004 SC 3967 that the charges can be framed only when there is “reasonable suspicion” or sufficient material of the alleged offender having committed the offence – which is entirely absent in the circumstances of the present case – the impugned FIR (FIR No.158/2014) and all proceeding emanating from it deserve to be and is, accordingly, quashed.”

9. A conjoint reading of the facts culled out hereinabove and the law on the subject leads to but one inescapable conclusion, that in the subject proceedings, the police has been unable to disclose any intention on the part of the petitioner or raise a “reasonable suspicion” *qua* the commission of an offence by the petitioner.

10. In this view of the matter, the present petition is allowed.

11. Resultantly, FIR No. 297/2014, under Sections 25/25(54)/59 of the Arms Act, 1959 registered at Police Station- IGI Airport, Delhi and the proceedings emanating therefrom are hereby set aside and quashed *qua* the petitioner.

12. With the above directions, the writ petition is allowed and disposed of accordingly.

SIDDHARTH MRIDUL, J

APRIL 21, 2016

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