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

+ W.P.(CRL) 2857/2016

SURBHI SHARMA

..... Petitioner

Through: Ms. Manisha Bhandari, Mr. Anil Mathur, Mr. Omkar Shrivastava, Mr.Divyadeep Chaturvedi & Mr.Ankit Kushwaha, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Sanjay Lao, ASC and Mr.Siddarth Sindhu, Advocate along with SI Mukesh Baliyan, PS-IGI Airport, for the State.
Mr. Mukesh Kumar & Ms. Bhavna Duhoon, Advocates for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

04.10.2016

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The status report has been filed and perused.

The petitioner has preferred the present writ petition to seek quashing of proceedings in FIR No.397/2015 dated 13.09.2015 registered at IGI Airport, District – Palam Airport under Section 25 of the Arms Act, 1959.

The petitioner is a law graduate. While she was at the Airport to

board the flight leaving for Mumbai by Air India on 13.09.2015, in her baggage the DIAL Baggage Screening Unit found one cartridge 9 mm during screen of her registered baggage. Consequently, the aforesaid FIR came to be registered at the instance of respondent No.2.

The petitioner has explained that Major Raghunath Sharma was her late grandfather. He served in the Army during 1935 to 1967. He possessed one 0.32 bore pistol and one 12 bore Winchester make SBBL gun No.322. He expired on 13.08.1993. The petitioner has placed on record copy of the Family Pension Award passed by the Chief Controller of Defence Accounts (P) Allahabad and Letter of Grant from Army Officers' Benevolent Fund dated 03.02.1994 in this regard. The aforesaid two weapons were later transferred in the name of Sh. Sandeep Sharma, the petitioner's late father and he obtained a valid license for the same. Copies of the same have also been placed on record. On 20.07.2010, the said weapons were sold to M/s Hari Singh Jagdish Singh, the authorised arms dealer, 33, Lohia Nagar Market, District Ghaziabad vide sale letter dated 20.07.2010, copy whereof has also been placed on record.

The submission of the petitioner is that the baggage in question was an old baggage and the bullet found therein must have belonged to the grandfather of the petitioner, who was in the Armed Forces. The petitioner was not conscious of the presence of the said bullet in the baggage when she used the same for travel to Mumbai. The petitioner, therefore, submits that the ingredients of conscious possession are not present in the instant case.

The State has filed a status report to say that the bullet recovered from the check-in baggage was not the one used in the arms in respect of which the grandfather of the petitioner held licenses.

Mr. Lao submits that the bullet which was recovered is issued only to the Armed Forces or to police officials.

The aforesaid probablises the submission of the petitioner that the bullet must have been issued to her late grandfather while he was in service and may have somehow remained in the baggage used by him and thereafter by the petitioner unknowingly.

I may refer to the judgment of this Court in *Sh. Gaganjot Singh Vs. State*, W.P. (Crl.) No. 1169/2014 decided by a Division Bench of this Court on 01.12.2014. The Division Bench in this case has referred to several earlier decisions relevant on the subject. It has been held that for it to constitute an offence under Section 25 of the Arms Act, the possession thereof has to be conscious.

In view of the aforesaid circumstances, I am of the view that the FIR in question cannot be sustained since it does not bring out the fact on its reading that the possession of the cartridge with the petitioner was to her knowledge and such possession was conscious. Accordingly, the FIR in question and the proceedings arising therefrom are quashed.

The petition stands disposed of in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

OCTOBER 04, 2016

B.S. Rohella