

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

% Decided on: 4<sup>th</sup> October, 2016

+ **CRL.M.C. 3593/2016 & CrI.M.A.15169/2016 (stay)**

DHANWANT KAUR

..... Petitioner

Represented by: Mr. Harshvir Pratap Sharma,  
Mr. Ajay Sharma, Mr. Rajesh  
Tiwari, Advs.

versus

STATE & ANR.

..... Respondents

Represented by: Ms. Meenakshi Chauhan, APP  
with SI Rajesh Kumar.  
Ms. Meenesh Dubey, Mr. D.P.  
Pande, Advs. for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. The petitioner while intending to fly on flight No.GA-286 from Delhi to Goa was intercepted at the security check-in counter when on examination of her bag 5 live cartridges were found in a pouch. Since petitioner could not produce an arms license FIR No.17/2015 under Section 25 Arms Act was registered at PS IGI Airport. The explanation of the petitioner was that she did not check the stuff in the pouch and put her artificial jewellery therein and carried it along with the luggage which was detected by the airport authorities. She also stated that 5 live cartridges belonged to her husband who was having an arms license.

2. During the course of investigation, copy of the arms license of the petitioner's husband was handed over to the Investigating Officer which was

verified to be correct. The petitioner's husband with a license No.3583/DM/LDH/DIV 5/Jan-2005 had two weapons i.e. NPB 7.62 MM Bore Pistol No.31063600-66 and another NPB 12 Bore DBBL Gun No. KSA-10012-83. The petitioner's husband had a quota of 25/25 cartridges and the five live cartridges were for use in the 7.62 MM Bore pistol. After investigation a charge-sheet has been filed and petitioner was summoned for offence punishable under Section 25 Arms Act. Hence the present petition.

3. According to the definition of ammunition under Section 2(b) of the Arms Act and the decision of the Division Bench of this Court in Shri Gaganjot Singh Vs. State in W.P.(CRL.) 1169/2014 a live cartridge is an ammunition. As per the report of the FSL received 5 cartridges are live ammunitions.

4. The Supreme Court in its decision reported as Gunwantlal Vs. State of Madhya Pradesh (1972) 2 SCC 194 held:

*“The possession of a firearm under the Arms Act 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 besides physical possession being in someone else. The first pre-condition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in*

*possession of the thing in question. In this view it is difficult to postulate as to what the evidence will be. If the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver”*

5. It is trite law that the power of the High Court under Section 482 Cr.P.C. is required to be exercised *ex debito justitiae* to prevent abuse of process of the Court but should not be exercised to stifle legitimate prosecution and the High Court cannot assume the role of a Trial Court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. However, if on the face of the charge-sheet the ingredients of the offences are not disclosed, the High Court would be within its power to quash a frivolous proceedings. [See State of A.P. Vs. Golconda Linga Swamy & Anr. (2004) 6 SCC 522]

6. The Division Bench of this Court Gaganjot Singh (supra) in a case of recovery of a solitary live cartridge found from the possession of the petitioner therein expressed his lack of awareness as the bag recovered belonged to his uncle and held that the possession of the petitioner therein was not conscious and quashed the proceedings.

7. Similar view was expressed by this Court in Juan Manuel Sanchez Rosas Vs. State through NCT Delhi & Anr. CrI.M.C.2642/2014; Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State & Anr. CrI.M.C. 3576/2011; Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr. CrI.M.C. 4207/2014

and Sonam Chaudhary Vs. The State (Govt. of NCT Delhi)  
CrI.M.C.471/2015.

8. As verified and forms part of the charge-sheet, the husband of the petitioner is holder of an arms license and was also entitled to possess ammunition for the two weapons. The case of the petitioner is that inadvertently she did not check the pouch in which she kept her artificial jewellery which also contained live cartridges and carried it with her. Thus there was no material before the Court to come to a prima facie opinion that the petitioner was in conscious possession of 5 live cartridges. Moreover, the constructive possession of the 5 cartridges was that of the husband of the petitioner, whose possession is not illegal attracting Section 25 Arms Act as he held a valid Arms license.

9. In view of the aforesaid discussion, FIR No.17/2015 under Section 25 Arms Act registered at PS Domestic Airport (IGI), charge sheet dated 25<sup>th</sup> June, 2015 and the order of Ld. MM dated 2<sup>nd</sup> July, 2016 taking cognizance and the proceedings emanating therefrom are hereby quashed.

10. Petition and application are disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**OCTOBER 04, 2016**  
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