

\$~48.

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

+ W.P.(CRL) 3341/2016 and CrI.M.A. No. 18131/2016

ALKA RAJ

..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
along with Mr. S.P. Khattri &
Mr.Satvinder Singh, Advocates along
with petitioner in person.

versus

STATE, NCT OF DELHI & ANR

..... Respondents

Through: Ms. Richa Kapoor, ASC and
Ms.Seema Patnaha, Advocate for the
State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
30.11.2016

%

1. Issue notice. Ms. Kapoor accepts notice. The State has already filed the status report on record.
2. The petitioner has preferred the present writ petition to seek quashing of FIR No. 490/2015 dated 17.11.2015 under Section 25 of the Arms Act, 1959, which is pending investigation, registered at PS - IGI Airport and the proceedings emanating therefrom.

3. The case of the petitioner is that she is an American citizen of Indian origin. She is a qualified lady. She was returning to USA via Dubai, when a live cartridge of 9 m.m. was found in her check-in baggage upon X-ray examination of her check-in baggage by the security personnel at IGI Airport, New Delhi. The petitioner states that she is residing with her husband at Texas State of USA and her husband Mr. Vijay Raj is a Chemical Engineer in USA and he is fond of shooting. For that purpose, he visits nearby shooting ranges on the weekends. The case of the petitioner is that in USA, there is no need for an adult to acquire a firearm license to be able to practice his/ her shooting skills in a firing range. For this purpose, the petitioner has placed on record a print-out containing the Frequently Asked Questions (FAQ) and their answers as put by DFW Gun Range and Academy. The case of the petitioner is that the live cartridge may have been somehow left in the baggage, which may have been obtained by her husband to practice his shooting skills and she was not aware of the presence of the said cartridge in her baggage. The petitioner had come to India in an emergent situation on 10.10.2015 to see her 74-year old seriously ailing mother, who has undergone Hysterectomy surgery. Without realising that the bullet was lodged in the baggage of her husband, she had used the same to carry her belongings.

4. The submission of Mr. Mathur, learned senior counsel for the petitioner is that no offence is made out in the facts of the present case inasmuch as there is no material to show that possession of the 9 m.m. single cartridge found in the check-in baggage of the petitioner was conscious.

5. Mr. Mathur has placed reliance on the decision of this Court in

Gaganjot Singh Vs. State, W.P. (Crl.) No. 1169/2014 decided on 01.12.2014. In the said decision, the Division Bench took note of the decisions of the Supreme Court in ***Gunwantlal Vs. The State of Madhya Pradesh***, AIR 1972 SC 1756, wherein the Supreme Court has held that possession of a firearm under the Arms Act must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else.

6. Mr. Mathur has also relied upon the orders passed by this Court in several other cases of similar nature, including in Crl.M.C. No.471/2015 titled ***Sonam Chaudhary Vs. The State (Govt of NCT Delhi)***, and Crl.M.C. No. 3435/2015 titled ***Rahul Dhir Vs. State (NCT of Delhi) & Another***.

7. Ms. Kapoor submits that in the present case, the investigation has been completed. However, the charge-sheet has not been filed since sanction was awaited, which has now been received.

8. Having heard learned senior counsel for the petitioner, perused the petition and heard Ms. Kapoor, I am inclined to allow this petition in the peculiar facts of this case.

9. The petitioner is an American citizen of Indian origin. She was visiting India only for a short duration to meet her ailing mother. She has been found in possession of only a single live cartridge, and that too, in her check-in baggage while on her return journey to USA via Dubai. It appears from the documents placed on record that for persons, who wish to sharpen

their shooting skills in USA, they do not need to obtain an arms license and they can sharpen their skills by visiting a shooting range and avail of their services for a charge.

10. The petitioner, who is present in Court, states that her husband used to visit one or the other shooting ranges occasionally, and as of now, it is even difficult to state as to which are the shooting ranges that he has visited at different points of time. The charges were also nominal, which were being paid through one or the other credit cards of the petitioner's husband.

11. In the aforesaid circumstances, the petitioner's possession of a single live cartridge, without a firearm itself, does not appear to be conscious. There appears to be no material available with the prosecution to indicate that the possession was conscious. Even though, it is open to the petitioner to bring the aforesaid aspect to the notice of the Trial Court in case the charge-sheet is filed, in my view, the petitioner should not be subjected to such undue harassment since she is an American citizen residing in USA and she would have to remain in India till the matter is sorted out by the Trial Court. No useful purpose would be served in subjecting the petitioner to a prolonged trial in the facts and circumstance of the case.

12. The petition is, accordingly, allowed and the FIR No. 490/2015 dated 17.11.2015 registered at PS – IGI Airport and the proceedings arising therefrom are quashed.

VIPIN SANGHI, J

NOVEMBER 30, 2016

B.S. Rohella