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

+ W.P.(CRL) 102/2017

JAIVIR GOPAL SINGH Petitioner
Through: Mr.Satvinder Singh, Adv.

versus

STATE, NCT OF DELHI & ANR Respondents
Through: Mr.R.S.Kundu, ASC with Mr.Ankit
Gulia, Adv.
SI Mukesh Baliyan, P.S.IGI Airport.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **24.04.2017**

The petitioner has sought quashing of the first information report bearing No.363/2014 dated 01.10.2014 (P.S.IGI Airport) instituted for the offences under Section 25/25 (54)/59 of the Arms Act, 1959.

It is alleged that from the waist money belt of the petitioner, at the IGI Airport, while the petitioner along with his family was about to board the plane for going to Hongkong, three live cartridges of 9 mm were recovered. Consequently, the subject FIR was registered.

The petitioner is a consultant in garments who was intending to fly to Hongkong by Cathay Pacific Airlines along with his daughter and wife. During the course of screening, three live cartridges were detected by the security personnel.

It is submitted on behalf of the petitioner that he is the holder of a valid arms license bearing No.SDGK/8/2004/63 (renewed till 19.08.2019). In the haste of travelling abroad, the petitioner is said to have removed his pistol and bullet etc from the waist money belt for keeping his travel documents. The inner stitching of the waist belt had perhaps given way and three live cartridges had slipped into the lining of the belt which could not be detected by the petitioner. It is further submitted that the petitioner did not have any knowledge about the presence of those live cartridges and came to learn about it only at the Airport.

For prosecution regarding possession of a firearm under the Arms Act, it needs to be proved that the accused had the knowledge or consciousness of that possession.

“Possession”, for the purposes of prosecution must mean possession with the requisite mental element that is conscious possession and not mere custody without awareness (refer to *Gunwantlal vs. The State of Madhya Pradesh*, AIR 1972 SC 1756; *Sanjay Dutt vs. State through CBI, Bombay* (II), (1994) 5 SCC 410).

The circumstances of the case make it very clear that mere possession of three live cartridges and no further evidence is insufficient for proving any charge against the petitioner. It is quite normal for a licensee to use the waistline pocket, which was hitherto being used for keeping the pistol and cartridge, for carrying documents. The petitioner was travelling with his family and had kept his travel documents in the waistline belt. It does not seem improbable that some of the cartridges would slip and go down the inner stitching line having given way, and the same could not have been detected by the petitioner.

Three live cartridges, it has been submitted, cannot be used for any purpose in the absence of the firearm.

It is a settled law that the Courts can interfere at any stage for preventing the abuse of the process of the Court and the only safe-guard against such use of power is that legitimate prosecution may not be stifled. True it is that this Court cannot inquire into the reliability of the evidence and sustainability of accusation but from the circumstances of this case, it would only be a futile exercise to keep the investigation of this case pending when the petitioner has a clean background and has a valid license.

This Court takes note of the fact that the father of the petitioner was a military personnel who was the holder of the license. After his death, the license was transferred in the name of the mother of the petitioner and thereafter it was again transferred in the name of the petitioner.

The learned counsel appearing for the petitioner has relied upon various orders passed by this Court in several other cases of similar nature.

Having regard to the facts and circumstances of this case, this Court is of the opinion that the possession of three live cartridges, without the firearm, the petitioner cannot be said to be in conscious possession of the same. There does not appear to be even a remote possibility of the police bringing in any further evidence regarding the intention of the petitioner. The petitioner would unnecessarily be subjected to prolonged investigation which would not only be a waste of time but no useful purpose would be served as well.

Considering the aforesaid facts, FIR No.363/2014 dated 01.10.2014 registered at P.S.IGI Airport for the offence under Section 25/25(54)/59 IPC and all the emanating proceedings thereof are quashed.

The petition is disposed of in terms of the above.

ASHUTOSH KUMAR, J

APRIL 24, 2017

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