

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

% Decided on: 8th May, 2017

+ **CRL.M.C. 304/2017 & CrI.M.A. 1367/2017 (stay)**

ISHA RASHID

..... Petitioner

Represented by: Mr. G. Saikumar, Mr. Varun
Pathak, Ms. Pooja Nuwal, Ms.
Soumya Saikumar.

versus

STATE & ANR.

..... Respondent

Represented by: Mr. Hirein Sharma, APP.
Mr. Dushyant Manocha, Mr.
Anish Gupta, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition the petitioner seeks quashing of FIR No. 34/2016 registered at PS Domestic Airport, New Delhi under Section 25 Arms Act and the proceedings emanating therefrom.
2. The allegations against the petitioner are that on 29th March, 2016 while boarding Indigo Airlines in the check-in baggage of the petitioner one 7.65 MM cartridge was recovered. Since the petitioner did not possess any valid license for the ammunition, the case was registered. The cartridge was sent to FSL and a report was received that the exhibit was ammunition as defined under the Arms Act, 1959.
3. During investigation it was also revealed that the father of the petitioner was holding a valid arms license for All India for carrying a NP

Bore Revolver since 26th June, 2002. Investigation was conducted from the father of the petitioner who revealed that to ensure safe custody he has kept the revolver along with its bullets hidden in the baggage and when his daughter i.e. the petitioner shifted from Jammu to Delhi to pursue her studies at Jamia University, he gave her bag after taking out the revolver and the bullets, however inadvertently one bullet remained stuck in one of the corners of the bag which was detected at the Airport when she was coming back from Delhi.

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 in Gaganjot Singh Vs. State W.P.(CRL.) 1169/2014 decided on 01.12.2014 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; 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 is evident from the charge-sheet the father of the petitioner holds a valid Arms license and the bag which the petitioner was carrying was of her father wherein advertently one bullet was left out. Thus, there is no material

in the charge-sheet to form a prima-facie opinion that the petitioner was in conscious possession of one live cartridge. Moreover, the constructive possession of the live cartridge was that of the father 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 discussion aforesaid, FIR No. 34/2016 under Section 25 Arms Act registered at PS Domestic Airport, New Delhi and the proceedings emanating therefrom are hereby quashed.

10. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MAY 08, 2017
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