

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

% Decided on: 2nd May, 2017

+ **CRL.M.C. 729/2017**

RANVIR ARORA

..... Petitioner

Represented by: Mr. Satvinder Singh, Mr.
Harshit Sethi, Ms. Pragati
Sharma, Advs.

versus

STATE NCT OF DELHI & ANR

..... Respondent

Represented by: Mr. Hirein Sharma, APP with SI
Sunil Kumar PS IGI Airport.
Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Sahaj Garg,
Adv. for R-3/UOI.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 6778/2017

For the reasons stated in the application 21 days delay in filing the counter affidavit by respondent No.3 is condoned. Counter affidavit is taken on record.

Application is disposed of.

CRL.M.C. 729/2017

1. By the present petition the petitioner seeks quashing of FIR No. 55/2016 under Section 25 Arms Act registered at PS IGI Airport and the proceedings pursuant thereto.
2. The allegations in the FIR in question are that while the petitioner was

travelling from New Delhi to Toronto by flight No. NW-230 when his handbag was being screened it was revealed that there were three live ammunitions of KF-7.65 in the hand-baggage.

3. During the investigation petitioner revealed that he had a valid arms license and he got it issued on 3rd February, 2016. On 5th February, 2016 he went to attend the Demo Class to the authorized arms dealer and thus was carrying the ammunitions in the hand baggage in the inner pocket. On 6th February when he came to Delhi, his luggage was packed by his mother who did not check the inner pocket and thus the three ammunitions were left inside the hand baggage. The petitioner produced a valid Arms License No. CP/ASR/ARM/CL/0216/016 valid upto 2nd February, 2019 and it was also verified to have been issued from the office of DCP, Amritsar, Punjab. Thus, instead of Section 25 Arms Act, charge-sheet was filed for offence punishable under Section 30 of the Arms Act.

4. During the investigation statement of Dr. Anupma Arora, the mother of the petitioner was also recorded who stated that on 5th February, 2016 she packed the luggage of her son, petitioner herein, and though she removed the weapon she failed to notice the ammunition and the same were left inside the hand baggage.

5. 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”

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. Section 30 of the Arms Act provides for punishment of contravention of any condition of license with imprisonment which may extend for a term for six months or with fine.

9. High Court of Bombay in the decision reported as MANU/MH/1595/2005 Santosh Laxman Nayak Vs. State of Maharashtra held that a charge sheet under Section 30 of the Arms Act has to be with specific imputation against the accused concerned who holds the valid firearm license, for a charge against him stating that his having committed violation of given conditions of license has thereby rendered himself triable, if found guilty, for punishment under Section 30 of the said Act. Such charge sheet alone can lead to framing of specific charge. It was held that the charge sheet containing various imputations does not specify as to how accused was responsible for trial for having violated conditions to hold firearm license. Similar view was expressed by the High Court of Madras in the decision reported as MANU/TN/0558/2010 Suriya @ Suriya Narayanan Vs. State represented by Inspector of Police.

10. In the present case the only averments in the charge sheet are that the petitioner produced copy of valid arm license No.CP/ASR/ARM/CL/0216/016 valid upto 2nd February, 2019 issued by the Deputy Commissioner of Police, Amritsar, Punjab which was verified and found to be genuine. Hence, Section 25 Arms Act was replaced with Section 30 of the Arms Act. The charge sheet nowhere spells out as to what violation has been carried out of the terms of the license. Hence the charge sheet for offence punishable under Section 30 Arms Act is liable to be

quashed.

11. 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].

12. As noted above, the petitioner is holder of a valid arms license and thus entitled to possess the ammunition. Due to inadvertence on the part of the mother it was not checked up while the bag was packed by her. Thus, in view of the law laid down by the Supreme Court and the various decisions of this Court and other High Courts, FIR No. 55/2016 under Section 25 Arms Act registered at PS IGI Airport and the proceedings pursuant thereto under Section 30 Arms Act are hereby quashed.

13. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 02, 2017
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