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

+ W.P.(CRL) 718/2017

RAVINDER SINGH DHALIWAL Petitioner

Through: Mr.Arun Satija, Adv.

versus

STATE NCT OF DELHI & ANR. Respondents

Through Mr. Rajesh Mahajan, ASC with Mr.
Lokesh Chandra, Adv.

SI Vasant Kumar PS IGI Airport.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **03.05.2017**

The petitioner seeks quashing of FIR No.45/2016 dated 31.01.2016 (P.S.IGI Airport) instituted for offence under Section 25 of the Arms Act.

It is alleged that while the petitioner was about to board a flight to USA from IGI Airport on 31.01.2016, he was found to be in possession of three live cartridges of 0.32 bore. The live cartridges were found in the pocket of the trouser which was kept in the check-in baggage.

The petitioner is stated to be living with his family in USA, who had come to India on 18.01.2016 to attend the marriage of his nephew in Punjab on 24.01.2016.

It is further submitted that the brother of the petitioner had borrowed his trouser for wearing in the marriage function as the trouser was of good quality. The brother of the petitioner may have carried his weapon or the

bullets which was not to the knowledge of the petitioner. It appears that after the trouser was returned to the petitioner, without checking it, he kept it in his bag.

The circumstances of the present case make it very obvious that there is no material for the prosecution of the petitioner. Recovery of three live cartridges without any further evidence would not be sufficient for proving any charge against him. Three live cartridges cannot be used for any purpose in the absence of the firearm. The petitioner submits that he does not even know how the live cartridges found its place in his bag. He was absolutely unaware of the same.

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, i.e. 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).

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.

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.

Considering the aforesaid facts, FIR No.45/2016 dated 31.01.2016 registered at P.S.IGI Airport for the offence under Section 25 of the Arms Act and all the emanating proceedings thereof are quashed.

The petition is disposed of in terms of the above.

ASHUTOSH KUMAR, J

MAY 03, 2017

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