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

+ **W.P.(CRL) 1127/2017**

KIRANJIT KAUR GILL Petitioner
Through: Mr.Varun Malik, Adv.

versus

THE STATE NCT OF DELHI Respondent
Through: Mr.Rajesh Mahajan, ASC.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

% **ORDER**
02.05.2017

CRL. M.A.6341/2017

Exemption allowed, subject to all just exceptions.

Application is disposed of.

W.P.(CRL) 1127/2017

The petitioner has sought quashing of the FIR No.113/2016 dated 20.03.2016 (P.S.IGI Airport) instituted for the offence under Section 25 Arms Act, 1959.

It is alleged that while the petitioner was about to board flight No-OZ-768 for going to Seoul from IGI Airport, Delhi on 20.03.2016, her check-in baggage, on search, was found to be containing one single live bullet of 0.32 bore.

The petitioner is stated to be living in United States of America along with her husband who works there. The petitioner had come to India with

her husband to meet her relatives in the year 2016.

The petitioner was not aware of the presence of the live bullet in her hand bag. On enquiry, it was found that the bullet belonged to her husband who has a valid license for revolver (License No. 3264/DM/LDH/JGSD/Aug-2004).

The circumstances of the present case make it very obvious that there is no material for the prosecution of the petitioner. Recovery of one bullet, without any further evidence would not be sufficient for proving any charge against her. One live bullet cannot be used for any purpose in the absence of the firearm. The petitioner submits that she does not even know how the bullet found its place in her handbag. She 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 one live cartridge, 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, this court is of the view that no useful purpose would be served in continuing with the investigation in this case.

As such, the FIR No.113/2016 dated 20.03.2016 (P.S.IGI Airport) for the offence under Section 25 Arms Act, 1959 and all the emanating proceedings therefrom are quashed.

The petition is disposed of.

ASHUTOSH KUMAR, J

MAY 02, 2017

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