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

+ W.P.(CRL) 1364/2017

DAVINDER SINGH CHUNG

@ DAVINDER SINGH RANIA

..... Petitioner

Through: Mr.Harish Sharma, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Nandita Rao, ASC.

SI Anuj Kumar, P.S.IGI Airport.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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05.05.2017

The petitioner has sought quashing of the FIR No.308/2016 dated 22.08.2016 (P.S. IGI Airport) instituted for offences under Section 25/54/59 of the Arms Act, 1959.

On 21.08.2016, while the petitioner was enroute to Melbourne, Australia from IGI Airport, Terminal III, in his check-in baggage, from the pocket of his jacket two live bullets/cartridges of 0.32 mm were recovered. Despite the petitioner making the authorities know that it must have been a mistake, FIR was registered.

The petitioner submits that he has a valid license. The petitioner is a NRI, residing for most of the times in California, USA since 19.09.1997. He has a permanent resident card of USA but keeps visiting his village in the district of Faridkot, Punjab. He is also said to be active in politics and is a frequent traveller. It has been submitted that the petitioner was not at all

aware of the two live cartridges in his check-in-bag and cannot even make a guess as to how those cartridges found its way in the pocket of his jacket. Had there been any intention to carry the cartridges or use it for any purpose, an attempt would have been made to take his weapon as well.

Ms.Nandita Rao, learned Additional Standing Counsel opposed the quashing of the FIR on the ground that the petitioner has been reckless and has not taken care of his weapon, cartridges and has thus violated the terms of the conditions of license, rendering him liable for prosecution under Section 30 of the Arms Act and also for revocation/suspension/cancellation of his license to hold firearms.

The circumstances of the case make it very clear that mere possession of two live cartridges without any knowledge of the same being in the pocket of the jacket in the check-in-bag, is not sufficient for proving any charge against the petitioner. Two live cartridges cannot be used for any purpose in the absence of the firearm.

On enquiry, it has been duly proved that the cartridges belonged to the petitioner and that petitioner is a valid license holder. The petitioner may have been reckless and his license may be revoked/suspended or cancelled but that by itself would not render the petitioner liable for being prosecuted in the present case as there is no intention/consciousness of the presence of two live cartridges in his check-in-bag.

For prosecution regarding possession of fire arm under the arms act, it needs to be proved the accused had knowledge or consciousness of the 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 *Gunwantalal 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 two 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, this court is of the view that no useful purpose would be served in continuing with the investigation in this case.

Considering the aforesaid facts, FIR No.308/2016 dated 22.08.2016 (P.S. IGI Airport) for the offence under Section 25/54/59 of the Arms Act, 1959 and all the emanating proceedings therefrom are quashed.

The petition is disposed of.

Dasti.

ASHUTOSH KUMAR, J

MAY 05, 2017

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