

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

% Decided on: 15th February, 2017

+ **CRL.M.C. 3397/2016**

JOHN GORDON HODGSON

..... Petitioner

Represented by: Mr. Dayan Krishnan, Mr.
Ranjan Kumar Pandey, Ms.
Apara Pandey, Mr. Ratnesh
Deo, Mr. Ram Krishna, Ms.
Shalini, Mr. Anshuman
Bahadur, Ms. Akashi Loda,
Advts.

versus

STATE NCT OF DELHI & ANR

..... Respondent

Represented by: Mr. Hirein Sharma, APP with
Insp. Vishram, PS IGI Airport.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 2714/2017

By this application the petitioner seeks to place on record additional documents which being relevant to the decision of the present case are taken on record.

Application is disposed of.

CRL.M.C. 3397/2016 & CrI.M.A. 14387/2016 (stay)

1. The petitioner is a British citizen holding Passport No.801394339 and a qualified Chartered Accountant arrived at International Airport at Delhi on 20th August, 2015 stayed at Gurgaon and Delhi and on 22nd August, 2015

was scheduled to visit Bangalore. While boarding flight No. NW-0815 to Bangalore when the handbag of the petitioner was screened at Security Check, a single live ammunition/ cartridge was found in his handbag.

2. FIR No.362/2015 was registered under Section 25 Arms Act at PS IGI Airport. Thereafter the petitioner was permitted to proceed for his onward journey to Bangalore, Pune and Mumbai. On 27th August, 2015 the petitioner departed for London from Mumbai as per scheduled travel plan. A charge-sheet for offence punishable under Section 25 of the Arms Act was filed against the petitioner on which cognizance was taken by the learned Trial Court and the petitioner summoned.

3. By this petition, the petitioner seeks quashing of FIR No.362/2015 under Section 25 Arms Act registered at PS IGI Airport and the proceedings pursuant thereto. Case of the petitioner is that the petitioner has a farm known as Sundial Farm, Shelton Green at Shelton Norwiche, Norfolk and to safeguard the farm from rabbits, rodents etc., he has a firearm license No. 36/A/005304/2015 issued by Norfolk Constabulary for .22RF rifle valid from 13th August, 2014 to 12th August, 2019. Since before arriving at Delhi on 20th August, 2015 the petitioner visited his farm on the week end and had kept ammunition in his handbag, though emptied all the ammunition while coming to India, however inadvertently one live cartridge remained in the handbag which was recovered during the screening of the handbag at the security check while boarding the flight to Bangalore.

4. On a notice being issued a status report has been filed. Vide order dated 6th December, 2016 this Court noted that as per the status report verification has not been received from High Commission of United Kingdom, thus State was directed to make its endeavour to get the

verification report expeditiously. A further status report has been handed over today by learned APP for the State along with the a verification report which is taken on record.

5. As per the fresh status report on 18th January, 2017 an email from Jane Betts Senior Firearms Licensing Officer, Firearms Licensing, Norfolk & Suffolk Constabularies, Operations & Communications Centre, Jubilee House, Falconers Chase, Wymondham, was received by the SHO IGI Airport clarifying that Arms License No. 36/A/005304/2015 was issued in favour of John Gordon Hodgson and is valid from 13th August, 2014 to 12th August, 2019.

6. 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”

7. It is well-settled that the power of the High Court under Section 482 Cr.P.C. should be exercised *ex debito justitiae* to prevent abuse of process of the Court but should not be exercised to stifle legitimate prosecution and while exercising the power under Section 482 Cr.P.C. the High Court cannot embark upon any inquiry as to the reliability of evidence after evaluating the same. However, if on the face of the charge-sheet, the ingredients of offence are not disclosed, 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]

8. As noted by the Supreme Court, to attract prosecution for offence punishable under Section 25 Arms Act the accused should be in conscious constructive possession of the firearm. When the possession of a solitary or a few live cartridges is due to lack of awareness, the possession of the firearm cannot be held to be conscious attracting Section 25 of the Arms Act. 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 Dhanwant Kaur Vs. State & Anr. CrI.M.C. 3593/2016.

9. Petitioner is having a valid arms license and the live cartridge remained in the handbag inadvertently. In view of the fact that the petitioner

has a valid arms license, the possession of the live cartridge is not illegal attracting Section 25 of the Arms Act.

10. Consequently FIR No. 362/2015 under Sections 25/54/59 of the Arms Act registered at PS IGI Airport, Delhi, charge-sheet pursuant thereto, order dated 29th August, 2016 summoning the petitioner and the proceedings emanating therefrom are hereby quashed.

11. Petition and application are disposed of.

12. The date of 9th March, 2017 is cancelled.

(MUKTA GUPTA)
JUDGE

FEBRUARY 15, 2017
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