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

+ **W.P.(CRL) 1722/2017**

GAJENDRA KUMAR PASTOR

..... Petitioner

Represented by: Ms. Jyoti Gupta, Adv.

versus

STATE & ANR

..... Respondent

Represented by: Ms. Nandita Rao, ASC with
ASI Biman Biswas CISF, IGI
Airport, SI Sunil Kumar PS IGI
Airport.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.12.2017

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1. Present none for respondent No.2 despite service.
2. By the present petition the petitioner seeks quashing of FIR No. 0087/2017 under Section 25 Arms Act registered at PS IGI Airport, Delhi on the complaint of Respondent No.2/ ASI Biman Biswas, CISF Unit then posted at IGI Airport.
3. In the FIR it was alleged that when the petitioner was travelling from New Delhi to Mumbai by flight No. UK-975 during screening of his hand baggage one live cartridge was recovered. On inquiry the petitioner did not produce any valid document regarding the possession of the said cartridge.
4. The case of the petitioner is that the petitioner is holding a valid license issued to him at Jhansi and inadvertently the cartridge remained in

his bag which he did not realise.

5. A status report has been filed verifying the fact that the petitioner has been issued an arms license which was already renewed upto 31st March, 2018 and has also been issued 30 cartridges in total. Considering the fact that the petitioner possesses an arms license and the ammunition was also licensed, this Court deems it fit to quash the above-noted FIR and the proceedings pursuant thereto.

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 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].

8. 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.

9. 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.

10. As noted above, the petitioner is holder of a valid arms license and thus entitled to possess the ammunition. 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. 0087/2017 under Section 25 Arms Act registered at PS IGI Airport, Delhi and the proceedings pursuant thereto hereby quashed.

11. Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

DECEMBER 08, 2017
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