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

+ W.P.(CRL) 2023/2017

ANTON GOLYSHEV

..... Petitioner

Through: Ms. Anu Sura & Mr. Sameer Jain,
Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. R.S. Kundu, ASC with Mr.
Peeyush Bhatia & Mr. Ankit Malik,
Advs.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **01.08.2017**

The petitioner seeks quashing of the FIR No.203/2017 dated 26.05.2017 (P.S. I.G.I. Airport) instituted for the offences under sections 25, 54 and 59 of the Arms Act.

The petitioner is a Russian citizen, who was arrested while travelling as he was found to be in possession of two live cartridges.

Learned counsel for the petitioner has submitted that on his visit to Khajurao, he had been gifted with a “weaver’s nest” which he had kept as a souvenir in bag without realising that it contained the two empty cartridges. He could learn about the cartridges only when his luggage was put to scrutiny at the airport.

It has further been stated that without the consciousness of possession, the petitioner cannot be attributed with the knowledge of possessing firearm. That apart, in the absence of any firearm or intention of the petitioner which

is the pre-requisite for him to be prosecuted under any of the provisions of the Arms Act, the possession of ammunition by itself would not attract any offence. In ***Gunwatlal vs. The State of Madhya Pradesh: (1972) 2 SCC 194***, the Supreme Court has held as under:

“The possession of a firearm under the Arms Act in our view 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 despite physical possession being in someone else..... “As we said earlier, the first precondition 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.”

Taking into account the aforesaid facts, this court is of the view that the petitioner need not be prosecuted or investigated with respect to the aforesaid case.

Mr. R.S. Kundu, learned Additional Standing Counsel on the strength of the status report submitted that the petitioner is not required to be detained for any other offence in this country and that he has a valid passport and visa for travelling to and in India.

Considering the aforesaid facts, the FIR No. 203/2017 dated 26.05.2017 (P.S. I.G.I. Airport) instituted for the offences under sections 25, 54 and 59 of the Arms Act along with all the proceedings emanating therefrom, is quashed.

The petition is allowed and disposed of accordingly.

Dasti.

ASHUTOSH KUMAR, J

AUGUST 01, 2017

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