

\$~27

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

+ **CrI.M.C. 4810/2016**

SIDDHARTHA KAPUR

.....Appellant

Through: Mr. Jeevesh Nagrath, Mr. Raj Mohan
Guta, Mr. Pratham Sharma and
Mr.Rohan Lanpathy, Advocates.

Versus

STATE OF NCT DELHI & ANR.

....Respondent

Through: Mr. Amit Ahlawat, APP for the State with
SI Dinesh Kumar, PS-Domestic Airport.
Mr. Anish Gupta, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

10.08.2017

%

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing of FIR No.97/2014, under Section 25 of the Arms Act registered at Police Station – Domestic Airport and the proceedings emanating from it.
2. The facts of the present case are that the petitioner on 23.11.2014 was travelling from Delhi to Guwahati in flight 6E-221(PNR Z74NPP). Upon certain suspicious articles being found in his check in baggage, the baggage was referred for a physical check and thereafter two live cartridges without the requisite license were found in the petitioner's baggage. The petitioner during the interrogation stated that he had no knowledge about the cartridges being present in his hand baggage and had no intention to carry the same during his travel. Thereafter, FIR No. 97/2014 was registered under Section 25 of the Arms Act.

3. Mr. Jeevesh Nagrath, learned counsel for the petitioner submitted that the petitioner was not conscious of carrying bullets in his check-in-baggage. Further he submitted that without any other fire arm, the petitioner did not have 'conscious possession' as he had no intention or ability of using the ammunition.

4. On the converse, Addl. Public Prosecutor appearing for the State contended that at the time of framing charge, court has to sift the evidence placed on record for the purpose to see whether a prime facie case is made out against the accused who has been charge-sheeted, though he admitted the fact that the ammunition found in the check-in-baggage has no ability to be used.

5. I have heard the submissions of the learned counsel appearing on behalf of the applicant as well as the submissions of learned Additional Public Prosecutor and perused the records.

6. Law in relation to conscious possession has been settled by Supreme Court in number of judgments. The Supreme Court in the case of *Gunwantlal Vs. State of Madhya Pradesh*, reported in *1972 2 SCC 194*, wherein the Supreme Court has held that possession of a fire arm under the Arms Act must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over the weapon.

Relevant portion of the same is recapitulated as under :-

“ 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 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. 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 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 a trite law that the power of the High Court under Section 482Cr.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 frivolous proceedings.

8. Similar view was expressed in the case of Shri Gaganjot Singh Vs. State in W.P.(CRL.) 1169/2014 ; Juan Manuel Sanchez Rosas Vs. State through NCT Delhi & Anr. in Crl.M.C.2642/2014; Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State & Anr. in Crl.M.C. 3576/2011; Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr. in Crl.M.C. 4207/2014 and Sonam Chaudhary Vs. The State (Govt. of NCT Delhi) in Crl.M.C.471/2015.

9. Therefore, applying the said principles of law, and considering the fact that the petitioner was not aware of the presence of live cartridge in his bag and had absolutely no knowledge of the same till it was detected by the security personnel during screening of the baggage at the security check, it can be safely inferred that the said possession does not fall within the ambit of 'conscious possession'. Admittedly, no firearm or weapon has been recovered from the petitioner and he has not extended any threat to any person or police official, hence no offence under section 25 of the Act is made out against the petitioner and the present FIR and proceeding emanating there from are quashed.

10. Accordingly, the present petition stands disposed of.

Crl.M.A. 19996/2016 (Stay)

In view of the order passed in the main petition, the present application is rendered infructuous.

Application stands disposed of.

SANGITA DHINGRA SEHGAL,J.

AUGUST 10, 2017 / gr//