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

+ W.P.(CRL) 2205/2017

DILEEP YADAV

..... Petitioner

Through Mr. Amit Swami with Ms. Smarika
Azad, Adv.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through Ms. Srilina Roy, Adv. for Ms.
Nandita Rao, ASC for the State
SI Arun Kumar, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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09.11.2017

The petitioner seeks quashing of FIR No.481/2015 dated 17.12.2014 (P.S. I.G.I. Airport) instituted for offence under Sections 25, 54 and 59 of the Arms Act, 1959.

From the baggage of the petitioner, two live cartridges were found at the Indira Gandhi International Airport.

It has been submitted on behalf of the petitioner that the bag from where two cartridges were recovered, belongs to him. The petitioner is a valid license holder of a firearm and the cartridges which were recovered were the ammunition issued to him against the aforesaid licensed weapon. Because of some inadvertence, the two live cartridges were left behind in the bag, which was carried to the airport.

This court has time and again clarified that for prosecution under the

Arms Act, it needs to be proved that the accused had the knowledge or consciousness of 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 ***Gunwantlal vs. The State of Madhya Pradesh, AIR 1972 SC 1756; Sanjay Dutt vs. State through CBI, Bombay (II), (1994) 5 SCC 410***).

The circumstances of the case make it very clear that mere possession of two live cartridges and no further evidence, is insufficient for proving any charge against the petitioner. Two live cartridges, it has been submitted, cannot be used for any purpose in the absence of the firearm.

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 continue with the prosecution when the petitioner has a clean background.

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.

Ms. Srilina Roy, learned counsel for the State, has submitted that charge sheet in this case has already been submitted. Despite that, this court is of the view that no useful purpose would be served in prosecuting the petitioner any further.

Considering the aforesaid facts, FIR No. 481/2015 dated 17.12.2014 (PS IGI Airport) instituted for the offences under Section 25, 54 and 59 of the Arms Act, 1959 and all the emanating proceedings therefrom are quashed.

The petition is disposed of.

ASHUTOSH KUMAR, J

NOVEMBER 09, 2017

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