

\$~39.

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

+ W.P.(CRL) 3700/2016

UMESHCHANDRA TUKARMA YADAV

..... Petitioner

Through: Mr. Vijay Kumar Sharma & Mr. N.P.
Yadav, Advocates.

versus

SECRETARY, MINISTRY OF HOME AFFAIRS & ORS.

..... Respondent

Through: Mr. Rajendra Sahu & Mr. Sameer
Sharma, Advocates for respondent/
UOI.

Mr. Ashish Negi, Advocate for
Ms. Richa Kapoor, ASC along with SI
Dinesh Kuma, PS-Domestic Airport,
for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

27.01.2017

%

The status report has been filed and perused.

The petitioner has preferred the present writ petition to seek the quashing of FIR No.28/2016 registered at IGI Airport PS, PALAM, Delhi under Section 25/54/59 of the Arms Act, 1959 and the proceedings arising therefrom.

The case of the petitioner is that he is a Special Public Prosecutor for the Government of Maharashtra in the State of Maharashtra and on account

of his professional duties, he keeps travelling extensively. He submits that on 14.03.2016, he was on a professional visit to Delhi at Patiala House Court. On his way back to Mumbai, he was apprehended during the security check whereby while scanning his bag, it was alleged that a 0.32 cartridge/ammunition has been recovered from his hand bag. The CISF Personnel at the T1 Terminal at Domestic Airport had referred the matter to the Domestic Airport Police Station and an FIR bearing No. 28 of 2016 was lodged against the petitioner with the said Police Station.

The petitioner submits that on account of being involved in high profile sensitive cases and in the interest of his self defence & protection, he had applied for the grant of Arms Licence to the District Magistrate Kolhapur, Maharashtra in the year of 2002. The same was granted to him on 23.02.2002 under the license no. 2784/2002 for the State of Maharashtra. He subsequently purchased a weapon from the Ordnance Factory Board and also 0.32 ammunition for the said weapon which was duly endorsed on the License. The License has been renewed upto 31.12.2016 by virtue of the order of the District Magistrate, Kolhapur.

The case of the petitioner is that the cartridge/ammunition was left out in his handbag inadvertently and without his knowledge. He submits that the possession of the cartridge/ammunition was not conscious and relied upon ***Sanjay Dutt vs State*** 1994 SCC (5) 410; ***Jaswinder Singh vs. State Govt. of NCT of Delhi*** in CrI MC 4207/2014 and CrI MA No. 14518 of 2014 Delhi High Court; ***William Michael Hurtubise vs State of Odisha*** (2014) 117 CLT 303 and ***Sonam Chowdhary vs. Govt. of NCT of Delhi*** 2016 (1) JCC 307 in this regard. Petitioner states that no case under Section 25 of the Arms Act is made out since he is a holder of a valid license and since no fire

arm or weapon has been recovered from his possession for him to have extended any threat to any persons or police officials. He places reliance on ***Thomas Jeffrey Kidd vs. State of Karnataka*** in WP (Crl) NO. 3219 of 2015 Karnataka High Court. Recovery has been of a 0.32 cartridge/ammunition which amounts to being a minor part of an arm or ammunition and is not intended to be used along with its complementary parts. He places reliance on clause (d) of Section 45 of the said Act to submit that the said provision protects acquisition, possession or carrying of such minor parts. Reliance is placed on ***Chen Hong Saik through SPA Arvinder Singh vs State & Anr.*** Crl. M.C. No. 3576/2011 Delhi High Court in this regard.

Petitioner concludes by submitting that he is protected under Section 40 of the Act as the presence of the ammunition in his handbag was in good faith and without his knowledge and conscious possession. Moreover, recovery of a single bullet was not a threat to the society and could not endanger the life of public.

The petitioner has placed on record the copy of the arms license and the acknowledgment by the issuing authority for the weapon (0.32 Revolver) issued pursuant to the License. Further, the State vide its status report dated 23.01.2017 has also verified the said License from the Distt. Magistrate Kolhapur, Maharashtra which shows the license to be valid for the State of Maharashtra and renewed till the date as stated by the petitioner.

The petitioner is a Special Public Prosecutor by profession and may be exposed to sensitive matters where his life could be at stake. The petitioner, as established above, is a holder of an authorized arms license, thus, the presence of a bullet/ammunition, obtained to use that arm for which the license exists, in his possession cannot be ruled out. In the circumstances

of this case, it seems probable that the petitioner may have inadvertently carried the bullet/ammunition, since if he were to consciously carry the cartridge he would have carried the weapon along as well. The recovery of a solitary cartridge also rules out the possibility of the petitioner seeking to smuggle the cartridge with him from Mumbai to Delhi or pose any threat to the public or police officials.

It is well settled that mere possession of ammunition *per se* would not attract penal consequences, unless circumstances show that the same is conscious possession by the person not authorised to possess the same. In this regard, reference may be made to the decision of a Division Bench of this in **Gaganjot Singh v. State**, W.P. (Crl.) No. 1169/2014 decided on 01.12.2014, MANU/DE/3227/2014. In the said decision, the Division Bench took note of the decisions of the Supreme Court in **Gunwantlal Vs. The State of Madhya Pradesh**, AIR 1972 SC 1756, wherein the Supreme Court has held that possession of a firearm 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 that weapon so that his possession thereon continues despite physical possession being in someone else.

In light of the above, I am of the view that the FIR in question cannot be sustained since it does not bring out the fact on its reading that the possession of the cartridge with the petitioner was to his knowledge and such possession was conscious. Accordingly, the FIR in question and the proceedings arising therefrom are quashed.

It goes without saying that the present order is passed in the facts and circumstances of this particular case, since the aspects whether possession of

the ammunition is conscious would have to be assessed by the court in each particular case.

Petitions stands disposed of.

VIPIN SANGHI, J

JANUARY 27, 2017