

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

% Decided on: 1<sup>st</sup> August, 2018

+ **W.P.(CRL) 87/2018**

NITIN SHARMA

..... Petitioner

Represented by: Mr. J.K.Sharma, Mr. Siddharth Pandit and Mr. Atul Bansal, Advocates with petitioner in person.

versus

STATE (GOVT OF NCT OF DELHI) & ANR. .... Respondents

Represented by: Mr. Avi Singh, ASC for State with Ms. Purnima, Advocate. SI Anuj Kumar, PS IGI Airport.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. By the present petition, the petitioner seeks quashing of FIR No. 306/2015 registered at PS IGI Airport, New Delhi under Section 25/54/59 Arms Act and the proceedings emanating therefrom.
2. The allegations against the petitioner are that on 17<sup>th</sup> July, 2015 one live cartridge was detected in the check in baggage during DIAL security check at level-04 while he was travelling to Bangkok by flight no. TG-316/16. Kaushik Chatterjee, Manager, Thai Airways, IGI Airport, complainant herein, handed over the recovered ammunition and the check in baggage. Since the petitioner could not produce any authorization or Arms Licence to validate his possession, the case was registered. The cartridge was sent to FSL, Delhi for Ballistic examination and a report was received

that the recovered cartridge was live and was ammunition as defined under the Arms Act, 1959.

3. During the course of investigation, the petitioner disclosed that he holds a valid arms license issued by the Commissioner of Police, Jalandhar with area validity in Punjab only and the ammunition recovered belongs to his licensed weapon. He further disclosed that he did not have the knowledge that there was ammunition in the check in baggage. Genuineness of Arms license No. CP/Jal/Arm/D3/1210/014 was verified and it was found to be issued to the petitioner for NPB pistol with area validity of Punjab only. It was further verified that 45 cartridges were sold to the petitioner on 22<sup>nd</sup> December, 2011 against the aforesaid Arms License.

4. The Supreme Court in its decision reported as (1972) 2 SCC 194 Gunwantlal v. State of Madhya Pradesh 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"*

5. 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. v. Golconda Linga Swamy & Anr. (2004) 6 SCC 522]

6. The Division Bench of this Court in Gaganjot Singh v. State W.P.(CRL.) 1169/2014 decided on 1<sup>st</sup> December, 2014 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.

7. Similar view was expressed by this Court in Juan Manuel Sanchez Rosas v. State through NCT Delhi & Anr., CrI.M.C.2642/2014; Jaswinder Singh v. State Govt. of NCT of Delhi & Anr., CrI.M.C. 4207/2014 and Sonam Chaudhary v. The State (Govt. of NCT Delhi) CrI.M.C.471/2015.

8. As is evident from the charge-sheet, the petitioner holds a valid Arms license and he was not in conscious possession of the cartridge. Thus, there is no material in the charge-sheet to form a prima-facie opinion that the petitioner was in conscious possession of one live cartridge.

9. In view of the discussion aforesaid, FIR No. 306/2015 under Section 25/54/59 Arms Act registered at PS IGI Airport, New Delhi and the proceedings emanating therefrom are hereby quashed subject to the petitioner depositing a cost of ₹50,000/- with Juvenile Justice Board within four weeks.

10. Petition is disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**AUGUST 01, 2018**  
**‘vn’**

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