

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

% Decided on: 22nd May, 2018

+ **W.P.(CRL) 747/2018**

NARINDER SINGH BUTTA Petitioner

Represented by: Mr. Surender Singh, Advocate
with petitioner in person.

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Represented by: Mr. Shashank Vachher,
Advocate for Mr. Avi Singh,
ASC for State, SI Satish
Kumar, PS IGI Airport, New
Delhi
Respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Respondent No. 2 has been served and is present in Court. He states that he does not wish to file any independent reply and would rely upon the reply filed by the State.
2. By the present petition, the petitioner seeks quashing of FIR No. 99/2018 registered at PS IGI Airport, New Delhi under Section 25 Arms Act, 1959 and the proceedings emanating therefrom.
3. The allegations against the petitioner are that on 2nd March, 2018 when he was travelling from Delhi to Vancouver, during search of baggage of the petitioner, one live ammunition of .32 caliber was recovered. Since the petitioner did not possess any valid license for the ammunition, above noted FIR was registered. The cartridge was sent to FSL and a report has been received opining that the recovered cartridge was live and an

“ammunition” as defined under the Arms Act, 1959.

4. During investigation, the petitioner submitted photocopy of a letter dated 27th February, 2018 from Rajesh Armory, Arms and Ammunition dealers, Railway Road, Pathankot, Punjab via custody no. 2215 issued in his favour. Aforesaid letter was issued pursuant to the deposit of revolver (NPB .32 bore revolver no. 35227, make - Calt (USA) old 2nd hand). Petitioner also produced the licence bearing No. 2913/A/MISC/DM/HSP by DM Hoshiarpur valid upto 18th May, 2015 in the state of Punjab and Chandigarh. On investigation, the aforesaid letter and the arms licence of the petitioner were found to be genuine. Furthermore, the purchase of the revolver and rounds (10 rounds) from the shop Nanda Arms Co. (Arms and Ammunition Dealers) on 17th May, 1988 was also verified and was found to be genuine.

5. It is well settled that to convict an accused for offence punishable under Section 25 Arms Act the prosecution must prove that the accused was in conscious possession of the arms/ammunition and that his possession is illegal. 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"

6. 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]

7. The Division Bench of this Court in Gaganjot Singh v. State W.P.(CRL.) 1169/2014 decided on 1st December, 2014 in a case of recovery of a solitary live cartridge found from the possession of the petitioner therein who expressed his lack of awareness as the bag recovered belonged to his uncle, held that the possession of the petitioner therein was not conscious and quashed the proceedings.

8. 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.

9. It is evident that the petitioner had surrendered his revolver and rounds as he was travelling to Canada. Petitioner is a citizen of Canada and the cartridge was recovered while he was returning back to Canada on 2nd March, 2018. Since the petitioner was holding a valid arms licence and the live cartridge remained in the luggage inadvertently, it cannot be said that the petitioner was in conscious possession of the cartridge.

10. In view of the discussion aforesaid, FIR No. 99/2018 under Section 25 Arms Act registered at PS IGI Airport, New Delhi and the proceedings emanating therefrom are hereby quashed.

11. Passport of the petitioner has been handed over to the petitioner by the SI Satish Kumar, PS IGI Airport, New Delhi in Court today.

12. Petition is disposed of.

13. Order dasti.

(MUKTA GUPTA)
JUDGE

MAY 22, 2018
‘vn’