

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

+ **W.P.(CRL) 1123/2018**

JEREMY SCOTT MERCIER

..... Petitioner

Represented by: **Mr. Satvinder Singh, Advocate.**

versus

STATE, NCT OF DELHI & ORS

..... Respondents

Represented by: **Ms. Nandita Rao, Additional
Standing Counsel for State with
Ms. Iti Pandey, Advocate with
SI Vipin Kumar, PS IGI
Airport.
Mr. Anuj Dalal, respondent
No.2, DIAL, IGI Airport.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
21.08.2018

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1. Respondent No.2 has been served and is present in Court. He states that he does not wish to file any reply to the present petition.

1. By the present petition, the petitioner seeks quashing of FIR No. 172/2018 registered at PS IGI Airport, New Delhi under Section 25 Arms Act, 1959 and the proceedings emanating therefrom.

2. The allegations against the petitioner are that on 5th April, 2018 when he was travelling from Delhi to Mumbai by Jet Airways flight number 9W-362, one live ammunition of 9 mm was recovered during the screening of checked in baggage. Since the petitioner could not produce any valid authorization for the ammunition, the present FIR was registered.

3. During the course of investigation, the cartridge was sent to FSL and the report is awaited. Petitioner revealed that he acquired the said

ammunition for hunting purposes and no license is required in Texas for the cartridge. Petitioner provided the copies of invoices for purchase of 9 mm cartridges by his uncle and cousin brother with the declaration that he accompanies them for shooting purposes. Aforesaid invoices were verified through e-mail and found to be genuine.

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 1st 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 material on record, the petitioner is not required to hold a valid Arms license in Texas, United States of America of which he is a citizen and the purchase of the bullets, on verification, was found to be genuine. Thus, there is no material to form a *prima-facie* opinion that the petitioner was in conscious possession of the ammunition.

9. In view of the discussion aforesaid, FIR No. 172/2018 under Section 25 Arms Act registered at PS IGI Airport, New Delhi and the proceedings

emanating therefrom are hereby quashed.

10. Petition is disposed of.

11. Order dasti.

AUGUST 21, 2018

‘vn’

MUKTA GUPTA, J.