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

+ W.P.(CRL) 1764/2017

VAIBHAV AGRAWAL

..... Petitioner

Represented by: Mr. Gaurav Jain, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Ms. Nandita Rao with SI
Vasant Kumar, PS IGI Airport

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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27.09.2018

1. By the present petition, the petitioner seeks quashing of FIR No. 260/2015 registered at PS IGI Airport, New Delhi under Section 25 Arms Act, 1959 and the proceedings emanating therefrom.
2. Allegations against the petitioner are that on 28th June 2015, at about 10:58 P.M. when he was travelling from Delhi to Newark his hand baggage was put for screening wherein two 8mm (KF) and five Nos .32 live ammunition were detected. Since the petitioner could not produce any valid license for the ammunition, the above noted FIR was registered. The cartridges were sent to FSL and as per the report all seven cartridges were live. Two out of the seven cartridges were standard cartridges of .315 Bore and five cartridges were of .32 Bore.
3. During the course of investigation, the petitioner disclosed that the said cartridges belonged to his father namely Rajesh Kumar, who has a valid All India Arms License. Arms License number NWSB/10/1985/9 of the petitioner's father was verified from Additional Commissioner of Police - Licensing, New Delhi and the same was found to be genuine. The purchase of the recovered ammunition was also verified from M/s Dalip Singh &

Sons, Arms & Ammunition Dealers, New Delhi and were found to be issued against the said Arms License.

4. 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. Also 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 01.12.2014 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's father holds a valid Arms license and inadvertently cartridges were recovered from the bag which he was carrying. Thus, there is no material to form a prima-facie opinion that the petitioner was in conscious possession of the cartridges.

9. In view of the discussion aforesaid, FIR No. 260/2015 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.

MUKTA GUPTA, J.

SEPTEMBER 27, 2018

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