

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

+ **W.P.(CRL) 3353/2016**

VIDYA UPADHYAY

..... Petitioner

Represented by: Dr. Harshvir Pratap Sharma,
Mr. Ajay Sharma and Mr.
Sheetanshu Shekhar,
Advocates.

versus

GOVT OF NCT & ANR.

..... Respondents

Represented by: Mr. Rajesh Mahajan,
Additional Standing Counsel
for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

23.08.2018

%

1. By the present petition, the petitioner seeks quashing of FIR No. 377/2015 registered at PS IGI Airport, New Delhi under Sections 25 Arms Act, 1959 and the proceedings emanating therefrom.
2. The allegations against the petitioner are that on 29th August, 2015 two live cartridges were detected in the check-in baggage of the petitioner when she was travelling from Delhi to Pune. Since the petitioner could not produce any valid license for the ammunition, the present FIR was registered.
3. During the course of investigation, the petitioner revealed that she was accompanied by her husband Awani Kumar Udadhyay and the cartridges belonged to him but they were not carrying any valid license at that time. The cartridges were sent to FSL for opinion and as per the FSL report, it was opined that the cartridges were live. Awani Kumar Udadhyay,

husband of the petitioner, later produced the copy of arms license bearing no. 7324 having UIN No. 330020031923112016 at District Magistrate, Moradabad, Uttar Pradesh which was verified from the concerned authority and was found to be genuine. Further, the source of purchase of cartridges against the aforesaid arms license was also verified and the cartridges were found to be purchased from Choudhary & Sons, P.L. Sharma Road, Meerut, Uttar Pradesh.

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 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 husband of the petitioner holds a valid Arms license and inadvertently cartridges remained in the bag of the petitioner which she 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. 377/2015 under Sections 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.

Crl. M.A. No.1974/2017

Application is dismissed as infructuous.

MUKTA GUPTA, J.

AUGUST 23, 2018

‘vn’