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

% Decided on: 15th May, 2018

+ **W.P.(CRL) 3510/2017**

JAGJEET SINGH JHAJI

..... Petitioner

Represented by: Mr. Satvinder Singh, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents

Represented by: Mr. Rajesh Mahajan, ASC for State.

Mr. Pratyush Miglani, Adv. for R-3 to R-5.

Inspector Sanjay Kumar for R-3 to R-5

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition, the petitioner seeks quashing of FIR No.467/2016 registered at PS IGI Airport, New Delhi under Section 25 Arms Act and the proceedings emanating therefrom.
2. The allegations against the petitioner are that on 19th December, 2016 when he was travelling from Delhi to Frankfurt, during screening of the hand 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 was received that the recovered cartridge was live and was "ammunition" as defined under the Arms Act, 1959.
3. During investigation, the petitioner disclosed that the cartridge does

not belong to him and since he had borrowed the bag from his relative Harpal Singh who has a valid arms license issued by the Commissioner of Police, Ludhiana, Punjab, he unknowingly brought the cartridge with him. Petitioner submitted a copy of the arms licence in the name of Harpal Singh. During investigation, it was revealed that the arms license of Harpal Singh was also issued for the NP .32 bore revolver.

4. 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]

5. 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"

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 charge-sheet, uncle of the petitioner holds a valid Arms license and the bag which the petitioner was carrying was of his

uncle wherein advertently one cartridge was recovered. Further even as per the status report filed not only Sh. Harpal Singh is having a valid arms licence, he had also purchased ten cartridges of .32 bore on his arms licence from Verma Gun House. 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. Moreover, the constructive possession of the live cartridge was that of his uncle, whose possession is not illegal attracting Section 25 Arms Act as he held a valid Arms license.

9. In view of the discussion aforesaid, FIR No.467/2016 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)
JUDGE

MAY 15, 2018
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