

\$~39

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

+ **W.P.(CRL) 3221/2019**

RAKESH KUMAR JAIN

..... Petitioner

Through: Ms Sonam Datta Mehta, Advocate.

versus

THE STATE

..... Respondent

Through: Mr Karan Jeet Rai Sharma, Advocate
for Mr Sanjay Lao, ASC for State
with SI Kedar Yadav, PS Domestic
Airport.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

19.11.2019

CRL.M.A. 40538/2019

1. Allowed, subject to all just exceptions.

W.P.(CRL) 3221/2019

2. Issue notice. The learned counsel appearing for the respondent accepts notice.

3. The petitioner has filed the present petition, *inter alia*, praying that FIR No.48/2019 under Section 30 of the Arms Act, 1959 and all proceedings arising therefrom, be quashed.

4. The said FIR was registered at the instance of the security staff at the IGI Airport as the petitioner was found carrying a pack of 7 live cartridges of 7.65 mm calibre.

5. The petitioner states that he was scheduled to travel on 11.04.2019

from Delhi to Dehradun, by Indigo Flight No.6E-966. During screening, his bag was found to contain a pack of seven live cartridges. He states that he is a resident of Faridabad and had travelled to Delhi on the previous day.

6. The petitioner further states that the luggage used by the petitioner was earlier used for carrying a licenced arm and ammunition. And, inadvertently the pack of 7 live cartridges remained in the side pocket of the said luggage. It is asserted that the petitioner was not conscious of the same.

7. The status report has been filed wherein it has been verified that the petitioner held a valid licence at the material time (Licence No.24-N/JCP-FBD/2017) for a .32 calibre pistol. It has also been verified that the petitioner had purchased 30 cartridges of .32 calibre (7.65 mm) on 20.03.2017 on his arms licence.

8. The status report also indicates that the seized ammunition has been sent to FSL for ballistic examination and investigation is pending. On a pointed query as to whether any further investigation other than awaiting the result of the FSL is pending; the learned counsel appearing for the State, on instructions of the IO, responded in the negative.

9. This Court is of the view that the report of the FSL is not material. Since it is an admitted case that the ammunition seized from the petitioner is live ammunition, the only explanation provided by the petitioner is that he was not conscious of the fact that the pack of cartridges had remained in the said luggage used by the petitioner.

10. This Court finds no reason to disbelieve the explanation that inadvertently, the live cartridges had remained in the luggage of the petitioner and he was not conscious of the same. It is clear that the said live ammunition was little use without the weapon.

11. This Court has in a number of cases held that where the accused is not conscious of the ammunition, no offence under the Arms Act, 1959 could be established. (See: ***Manuel R. Encarnacion v. State (NCT of Delhi) and Anr.: Crl. M.C. No. 1455/204, decided on 22.05.2014*** and ***Chang Hong Saik through SPA: Arvinder Singh v. State and Anr.: 2012 (130) DRJ 504***).

12. The learned counsel appearing for the petitioner has also referred to the decision of this Court in ***W.P.(Crl.) 3516/2016 captioned as 'Abdul Nasir Barich v. The State (NCT of Delhi)'*** wherein this Court had quashed the FIR which had been filed on account of eight live cartridges being recovered from the bag of the petitioner therein. The Court had accepted the explanation that the father of the petitioner therein held a licensed revolver and the cartridges related to that weapon.

13. In view of the above, the petition is allowed and FIR No. 48/2019 under Section 30 of the Arms Act, 1959 and all proceedings emanating therefrom, are quashed.

14. The petition is disposed of.

15. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 19, 2019
MK