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

+ W.P.(CRL) 2218/2018

MAHESH CHAND

..... Petitioner

Represented by: Mr. Varun Malik, Mr. Ajay P.
Tushir, Mr. Satya Ranjan
Swaip, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Kamna Vohra, ASC for the
State with SI Manoj Kumar, PS
Domestic Airport.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

24.01.2019

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1. By the present petition, the petitioner seeks quashing of FIR No. 094/2017 registered at PS Domestic Airport, New Delhi under Section 25 Arms Act, 1959 and the proceedings emanating therefrom.

2. The allegations against the petitioner are that on 4th August, 2017, at about 4:36 A.M. when he was travelling from Delhi to Bangalore his hand baggage was put for screening wherein two live cartridges of .32mm with S&W.L (KF) engraved on the bottom were detected. Since the petitioner could not produce any valid license for the ammunition, the present FIR was registered. The cartridges were sent to FSL and as per the report both recovered cartridges were live ones and could be fired through .32 bore firearm.

3. During interrogation, the petitioner disclosed that he had a valid arms license for the State of U.P. and he shall produce the same within due course of time. The petitioner produced Arms Licence bearing number 9013/2003/PS Kotwali Nagar dated 23.02.2003 which was verified from the

District Magistrate, Bulandshahar, U.P and found to be genuine and issued in the name of the Petitioner. Thereafter Section 25 Arms Act was converted into Section 30 Arms Act as the Petitioner was holding a valid 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 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 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 holds a valid Arms license and inadvertently cartridges were left kept in the bag from where they were recovered. 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. 094/2017 under Section 25 Arms Act registered at PS Domestic Airport, New Delhi and the proceedings emanating therefrom are hereby quashed.

10. Petition is disposed of.

MUKTA GUPTA, J.

JANUARY, 2019

‘vj/ga’