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

Date of decision: 28.05.2021

+ W.P. (CRL) 552/2021

GAURAV SACHDEVA Petitioner
Through Mr. Aamir Chaudhary, Adv.

versus

NCT OF DELHI & ANR. Respondent
Through Mr. R.S. Kundu, ASC for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL. M.A. 5356/2021

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. The present writ petition is filed under Articles 226/227 of the Constitution of India read with section 482 Cr.P.C. seeking quashing of FIR No. 100/2019 registered at Police Station – I.G.I. Airport, for the offences punishable under Section 25 Arms Act, 1959 and all proceedings emanating therefrom.

4. Learned counsel for petitioner submits that the petitioner was not in conscious possession of the live cartridge that was recovered from him whilst he was travelling from Delhi to Sri Lanka vide flight No.UL196 and had thereafter a connecting flight to Australia . He further submits that the live cartridge of 0.32 mm calibre detected in Petitioner's tagged baggage, was part of the baggage of his father used in the normal course of travelling and his father has a valid arms license bearing No. DM/FZR/DUP/FZRC/0118/11.

5. During interrogation, petitioner disclosed that his father has a valid arms license issued by the Government of Punjab. During further course of investigation, petitioner produced a copy of his father's Arms License bearing number DM/FZR/DUP/FZRC/0118/11.

6. Learned ASC for State submits that the aforesaid Arms Licence issued in the name of petitioner's father has been verified and the same is found to be genuine.

7. It is a well settled law that where a person is not conscious of the ammunition in his possession, an offence under Section 25 of the Arms Act, 1959 would not be made out in view of judgments ***Surender Kumar @ Surender Kumar Singh vs. The State (GNCT of Delhi) & Anr.: W.P.(Crl.)***

2143/2019 decided on 27.09.2019; Aruna Chaudhary vs. State & Ors.: W.P.(Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.:(Crl.) 152/2019 decided on 29.08.2019), therefore, Section 25 Arms Act was converted into Section 30 Arms Act as the Petitioner was holding a valid Arms License.

8. The fact remains that this Court in *Chan Hong Saik Vs. State and Anr. , 2012 (130) DRJ 504 (decided on 2.7.2012) in CRL.M.C. 3576/2011)* quashed the FIR by holding that *a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 45 of the Arms Act*. However, the judgment delivered by this Court dated 02.07.2012 was referred to the larger Bench and vide judgment dated 06.01.2016 in case of *Dharmendra vs. State in CRL.M.C. 4493/2015*, the Court opined that single cartridge is ammunition and comes under the Arms Act, 1959.

9. The larger Bench referred above did not agree with the opinion of this Court but opined that since the possession of the ammunition was unconscious and there was no arm with the accused and there was no threat to anyone, therefore this Court has rightly quashed the FIR.

10. In the case in hand, it is not the case of the prosecution that there was fire arm recovered from the petitioner or there was any threat to anyone at

the Airport.

11. Thus, in the present case also, the possession of the ammunition was unconscious and there was no threat to anyone.

12. Accordingly, for the reasons afore-recorded, FIR No. 100/2019 registered at Police Station – I.G.I. Airport, for the offences punishable under Section 25 Arms Act, 1959 and all proceedings emanating therefrom are hereby quashed.

13. The petition is allowed and disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

MAY 28, 2021/rk

न्यायमेव जयते