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

+ **CRL.M.C. 3940/2022 & CRL.M.A. 12061/2024**

VARUNESH KUMAR GUPTA

.....Petitioner

Through: Mr. Manindra Dubey, Advocate.

versus

STATE OF NCT DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State.

SI Prashant, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

25.07.2024

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1. The Petitioner has approached this Court for quashing FIR No.312/2018 dated 13.06.2018 registered at Police Station IGI Airport for an offence under Section 25 of the Arms Act, 1959.

2. Material on record discloses that on 13.06.2018, the Petitioner was travelling to Guwahati from Delhi by flight. It is stated that when the Petitioner placed his hand bag for screening at the IGI Airport, it was found that the Petitioner had 15 live cartridges/ammunition of .32 bore in his hand bag. It is stated that when the Petitioner was asked to produce valid documents for cartridges/ammunition, he produced his arms license bearing No. 9157/PS Sidhpura, which is only valid in Uttar Pradesh. Subsequently, the live cartridges were seized and taken into possession and the instant FIR was registered against the Petitioner.



3. Learned Counsel for the Petitioner states that the said live cartridges belongs to the Petitioner and he holds a valid Arms License bearing No. 9157/PS Sidhpura which allows him to carry upto 50 cartridges only within U.P. It is also stated that the hand baggage was packed by his wife and she forgot to take out the cartridges. It is stated that when the instant FIR was lodged, the arms license of the Petitioner was valid and had not expired. It is further stated that since the Petitioner was not in conscious possession of the cartridges, the present FIR No.312/2018 dated 13.06.2018 registered at Police Station IGI Airport for an offence under Section 25 of the Arms Act, 1959 against the Petitioner may be quashed.

4. The question as to whether live cartridges, which are capable of being fired, is a complete ammunition within the meaning of Section 2(b) of Arms Act or a minor part of ammunition as referred to in Section 45(d) of the Arms Act and whether a person can be proceeded against under the Arms Act was referred to a Division Bench of this Court in Sh. Gaganjot Singh v. State, **W.P.(Crl).1169/2014**. The Division Bench by an Order dated 01.12.2014, observed as under:

“13. So far as the specific point referred to this Court is concerned, we may straightaway set out the definition of “ammunition” as in Section 2(b) of the Arms Act:

*(b) "ammunition" means ammunition for any firearm, and
includes--*



(i) rockets, bombs, grenades, shells [and other missiles]

(ii) articles, designed for torpedo service and submarine mining.

(iii) other articles containing, or designed or adapted to contain, explosive fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not,-

(iv) charges for firearms and accessories for such charges,

(v) fuses and friction tubes,

(vi) parts of, and machinery for manufacturing ammunition, and

(vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf;

It would be immediately apparent that there can be even parts of ammunition. The question which the Court would have to consider in a given case is whether the article seized is an “arm” or “ammunition”. The expression “arms” are defined in



Section 2(c) as:

"arms" means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp edged and other deadly weapons, and parts of, and machinery for manufacturing, arms....."

14. Section 45 excepts certain classes of arms or ammunition from the rigors of the Act. Section 45(d) reads as follows:

"45. Nothing in this Act shall apply to—

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(d) the acquisition, possession or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person."

15. In Chang Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged



individual. In para 43, learned Single Judge was of the opinion that the single live cartridge

“ cannot be used for the purpose without fire arms”

and then proceeded to state

*“though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because **a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act.**”*
(emphasis supplied)

*16. The structure of Section 45(d)- is that it is only “minor parts of arms or ammunition” that are “not intended to be used along with complementary parts” which can be excluded from the application of the Act. There cannot be any question as to which category a live cartridge falls into; it is clearly whole or entire or “ammunition”, given the inclusive nature of the definition under Section 2(d). The reasoning in Chang Hong Saik (supra), in this Court’s opinion, has proceeded without appreciation of Section 2(b) and the fact that there is no term as “minor ammunition” in that provision. **A single whole cartridge is not a part of an ammunition; it is a whole ammunition, nor can it be called a "minor ammunition". Having regard to the facts of Chang Hong Saik (supra), the Court is of***



the opinion that the interpretation placed upon the expression “ammunition”, i.e. that the whole live cartridge is a minor ammunition falling within Section 45(d), is plainly contrary to the Act and erroneous. The said view is accordingly overruled. The conclusion, however, in the facts of that case appears to have been warranted, since the police could not disclose any intention on the part of the alleged offender in that case. The reference made to the Division Bench is answered accordingly.

*17. The above discussion would ordinarily have resulted in this Court relegating the matter after answering the questions referred to – in the manner indicated above. However, having regard to the circumstances, all that remains to be seen is whether the petitioner’s claim for quashing is merited. Having regard to the earlier conclusion recorded, as far as the facts of this case go, an on an application of the law declared by Supreme Court in *State of Bihar v. Ramesh Singh* AIR 1977 SC 2018 and *State of Andhra Pradesh v. Golconda Linga Swamy & Anr.* AIR 2004 SC 3967 that the charges can be framed only when there is “reasonable suspicion” or sufficient material of the alleged offender having committed the offence –which is entirely absent in the circumstances of the present case – the impugned FIR (FIR No.158/2014) and all proceeding emanating from it deserve to be and is, accordingly, quashed.”*
(emphasis added)

The Division Bench had quashed the FIR in the above mentioned case.



5. Similarly, in Dhanwant Kaur v. State & Anr., **CRL.M.C. No.3593/2016**, this Court observed as under:

“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. Vs. Golconda Linga Swamy & Anr. (2004) 6 SCC 522]

6. The Division Bench of this Court Gaganjot Singh (supra) 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 Vs. State through NCT Delhi & Anr. Crl.M.C.2642/2014; Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State & Anr. Crl.M.C. 3576/2011; Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr. Crl.M.C. 4207/2014 and Sonam Chaudhary Vs. The State (Govt. of NCT Delhi) Crl.M.C.471/2015.



8. As verified and forms part of the charge-sheet, the husband of the petitioner is holder of an arms license and was also entitled to possess ammunition for the two weapons. The case of the petitioner is that inadvertently she did not check the pouch in which she kept her artificial jewellery which also contained live cartridges and carried it with her. Thus there was no material before the Court to come to a prima facie opinion that the petitioner was in conscious possession of 5 live cartridges. Moreover, the constructive possession of the 5 cartridges was that of the husband of the petitioner, whose possession is not illegal attracting Section 25 Arms Act as he held a valid Arms license.” (emphasis added)

6. The Petitioner has also relied on the judgment passed by a Coordinate Bench of this Court in Adhiraj Singh Yadav v. State, **W.P.(CRL)754/2020**, wherein 20 live cartridges were recovered from the hand baggage of the Petitioner therein and this Court had quashed the FIR.

7. Similarly, a Coordinate Bench of this Court in Ritesh Taneja v. State & Anr., **W.P.(CRL) 1302/2021**, quashed an FIR wherein 15 live cartridges were recovered from the possession of the Petitioner therein. The relevant portion of the said judgment reads as under:-

“2. The brief facts of the case are that on 06.02.2019, the petitioner was departing from New Delhi to Raipur, via GoIndigo flight No. 6E-2757, seat No. 7F. It is alleged that during screening of the petitioner’s hand baggage 15 live cartridges were recovered. On questioning, the petitioner could not produce any arms licence but he stated that those cartridges were related to him and he possesses the licence but the same was



not carried by him at that time. He only produced the deposition slip of his licenced weapon. Hence, the present FIR bearing No 044/2019 under Section 30 Arms Act, 1959 was registered.

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4. It is submitted by counsel for petitioner that the question of recovery of alleged ammunicions from the baggage of the petitioner though, not in dispute, but the petitioner holds a valid arms license bearing no. 538/GIV/PS-KICHA/USN/2009 issued by District Magistrate, Udham Singh Nagar. It is further submitted that the petitioner had no knowledge of the said cartridges in his baggage and the same came to light at the time of security check. It is further submitted by the learned counsel for the petitioner that the petitioner was not in „conscious possession“ of the alleged recoveries, hence, no offence under the Arms Act, 1959 is made out.

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6. Now, in the instant case, the question which is to be considered is whether the petitioner was in conscious possession of the ammunicions allegedly recovered from him or not. It is settled law that the expression 'possession' under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, conscious possession. Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

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11. Therefore, keeping in view the law laid down in above mentioned judgements and looking into the fact that the petitioner was not aware of the live cartridges in his hand baggage till the same were detected during



screening of the petitioner's baggage and there is nothing on record to show that the petitioner is involved in any other offence except the mere recoveries made from the hand baggage of the petitioner, therefore, I find that continuance of the proceeding would be a futile exercise as the necessary ingredients to constitute the offence in question is missing. Accordingly, the present petition is allowed and FIR bearing No 044/2019 under Section 30 Arms Act, and the proceedings emanating therefrom are hereby quashed. "

8. There are several other orders of this Court, wherein this Court had quashed the FIR on the ground that unless the accused is not in conscious possession of the ammunition, he cannot be prosecuted for the offence under Section 25 of the Arms Act, 1959.

9. Material on record indicates that the Petitioner had a valid license at the time live cartridges were recovered from him. It is also stated in the Status Report dated 05.07.2024 that the Petitioner had purchased 10 cartridges on 12.05.2018 and 10 cartridges on 13.03.2018.

10. Learned APP for the State has vehemently opposed the present petition and contends that the instant FIR against the Petitioner should not be quashed.

11. On perusal of the material on record and in light of the judgments passed by the Coordinate Bench of this Court, this Court does not find any reason to differ with the same. In view of the foregoing, this Court is inclined to quash FIR No.312/2018 dated 13.06.2018 registered at Police



Station IGI Airport for an offence under Section 25 of the Arms Act, 1959 and the proceedings emanating therefrom.

12. The petition stands disposed of in the above terms along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 25, 2024

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