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

+ **CRL.M.C. 4019/2017**

KRISHAN LAL

..... Petitioner

Through: Mr Rikban Tyagi, Mr Gurpreet Singh Sachdeva, Ms Muskan Rathi, Mr Insult Pahwa, Mr Dhruv Gupta, Mohd. Sameen, Mr Shivam Sharma, Mr Mahesh and Ms Vinita, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr Ritesh Kumar Bahri, APP for the State with Insp. Kedar Yadav, Police Station IGI Airport.

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

ORDER
04.04.2024

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CRL.M.A. 10239/2024

1. The present application has been filed seeking early hearing.
2. For the reasons mentioned in the application, the same is allowed.
3. The application is disposed of.

CRL.M.C. 4019/2017

4. With the consent of the learned counsel for the parties, the matter is taken up for final disposal.
5. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.0078/2016 under Sections 25/54/59 of the Arms Act



registered at Police Station IGI Airport.

6. The case of the prosecution is that the petitioner was travelling from New Delhi to Paris and at the airport during the screening of his baggage one live cartridge was detected and recovered from a shaving pouch kit which was kept in a suitcase trolley. Accordingly, the aforesaid FIR came to be registered.

7. The learned counsel for the petitioner submits that the petitioner is a senior citizen aged about 67 years. He is a permanent resident of France and he has been living in Paris since 1989. The petitioner is also holder of OCI card. The petitioner had come to India from Paris to attend a marriage and on 23.02.2016 when the petitioner was travelling back to France during the screening of his luggage at the T-3, IGI Airport, one live cartridge was detected and recovered from his shaving pouch kit, which was kept in his suitcase trolley.

8. Learned counsel for the petitioner submits that he was not aware of the cartridge in his bag. He submits that the possession of cartridge was unconscious. He further submits that since the live cartridge was seized from the bag of the petitioner during security check-up without any corresponding arms, this itself shows that the petitioner was not in conscious possession of the live cartridge.

9. It is the case of the petitioner that he has no knowledge as to how he came in possession of the single live cartridge.

10. Learned counsel for the petitioner submits that the petitioner does not possess any licensed arm, therefore, the possession of said live cartridge cannot be said to be conscious possession.

11. The learned counsel has placed reliance on the decision of the



Supreme Court in ***Gunwantlal vs. State of Madhya Pradesh: (1972) 2 SCC 194*** wherein the Hon'ble Supreme Court has held as under:-

“3. Before us the learned advocate for the appellant contends that the High Court has palpably misconstrued the case of Golak Chand v. The King 75 Indian Ca a case where it was held that a charge cannot go beyond the scope of the sanction, (2) that admittedly as the revolver was seized from Chhaganlal from Karoonda in the State of Rajasthan, the Court at Neemuch in Madhya Pradesh has no jurisdiction to try the case against the appellant who was a resident of Neemuch in the State of Madhya Pradesh, and (3) that it was Miroo who is alleged to have handed over the pistol to Chhaganlal after receiving it from the accused, which would show that the revolver was not in the constructive possession of the appellant on 17-9-1966.”

12. The reliance has also been placed on a decision of a Coordinate Bench of this Court in ***Sonam Chaudhary and Ors. vs. The State (Govt.) of NCT of Delhi) and Ors.: (2016) 226 DLT 638*** wherein this Court dealing with a similar situation where a one live cartridge was recovered at the metro station during screening of the luggage, quashed the FIR observing as under:-

“23. With respect to the second issue of 'conscious possession', it is settled law that the expression 'possession' occurring in Section 25 of the Act, means possession with the requisite mental element, i.e., 'conscious possession', however, mere custody without the awareness of the nature of such possession does not amount to any offence of the Arms Act. The possession of any fire arm/ ammunition must be a conscious possession.”

13. *Per contra*, learned APP for the State submits that live cartridge is ammunition in terms of Section 2(e) of the Arms act and there was a



conscious possession and according to FSL it is a live cartridge.

14. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.

15. A Coordinate Bench of this Court in W.P (Crl) 1681/2020 “*Baljit Fantu vs. Govt. of NCT Delhi and Ors.*” 2021 SCC OnLine Del 3705 decided on 12.07.2021, relying upon four other decisions of this court, quashed the FIR under Section 25 of the Arms Act that was registered on similar facts viz. recovery of live cartridge during scanning of baggage at Delhi Airport. The relevant part of the said judgment reads as under:

4. The question as to whether a cartridge, which is 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—*

xxxx xxxx xxxxx xxxxx

(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 (1977) 4 SCC 39 : AIR 1977 SC 2018 and State of Andhra Pradesh v. Golconda Linga Swamy (2004) 6 SCC 522 : 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)

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

6. Similarly, in Dhanwant Kaur v. State, (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. v. Golconda Linga Swamy (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 v. State* through NCT Delhi Crl.M.C.2642/2014; *Chan Hong Saik Thr. SPA : Arvinder Singh v. State* Crl.M.C. 3576/2011; *Jaswinder Singh v. State Govt. of NCT of Delhi* Crl.M.C. 4207/2014 and *Sonam Chaudhary v. 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)

7. In *Narinderjit Kaur Singh v. State (NCT of Delhi)*, [W.P.(Crl).1669/2017], this Court observed as under:

“For prosecution under the Arms Act, it needs to be proved that the accused had the knowledge or consciousness of possession. “Possession”, for the purposes of prosecution must mean possession with the requisite mental element, i.e. conscious possession and not mere custody without awareness (refer to Gunwantlal v. The State of Madhya Pradesh, (1972) 2 SCC 194 : AIR 1972 SC 1756; Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410).”

(emphasis added)

8. In *Nimesh Kumar v. State NCT of Delhi*, [W.P.(Crl)



3540/2017], this Court observed as under:

“8. In the present case, the petitioner was carrying a handbag which contained one live cartridge inside it. He has claimed that the bag belongs to his brother, who has a valid firearm licence, the latter fact has been confirmed by the police. The petitioner's claim of ignorance of the presence of this cartridge in the bag removes the element of “conscious or knowing possession”. The petitioner claims that he was in a hurry to catch his flight, therefore, he quickly stuffed his belongings in the handbag borrowed from his brother. This version is plausible and there is no reason why a rational person would carry a live firearm cartridge in his handbag on a flight, unless it was inadvertently. Apart from the cartridge being in the handbag, there is no incriminating material against the petitioner. Ex facie there is insufficient material to frame charges against the petitioner and to subject him to the rigours of a trial.

9. Charges can be framed only when there is reasonable suspicion or sufficient material to indicate that the alleged offender had committed the offence. A perusal of the records show that the elements satisfying “reasonable suspicion” are entirely absent in the present circumstances. The case would have to be based and proven on “conscious possession”. However, since there is no such material, apart from the mere recovery of a live cartridge in the bag of the petitioner, the offence cannot be proved even after a trial.”

16. The aforesaid decisions clearly lays down that where the accused is not in a conscious possession of the ammunition/live cartridge, he cannot be proceeded for the offence under Section 25 of the Arms Act, 1959.

17. In the present case, only a single live cartridge was recovered from the baggage of the petitioner without any corresponding arms. Further, no suspicious circumstances have been pointed out in the FIR which would



indicate that the possession of cartridge was conscious.

18. In the given circumstances and regard being had to the aforesaid legal position, it can be said that the petitioner was not in conscious possession of the ammunition. Accordingly, he cannot be prosecuted for the offence under Section 25/54/59 of the Arms Act, 1959. This being the position, the FIR No.0078/2016 under Sections 25/54/59 of the Arms Act registered at Police Station IGI Airport alongwith all other proceedings emanating therefrom, is quashed.

19. The petition stands disposed of in the above terms.

20. Order be uploaded on the website of this court.

VIKAS MAHAJAN, J

APRIL 4, 2024
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