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

+ **CRL.M.C. 1418/2025 & CRL.M.A. 6308/2025**

THEO GIOVANNA @ THEO DAVID GIOVANNAPetitioner

Through: Mr. Aditya Singla, Ms. Supriya Juneja, Ms. Shreya Lamba and Mr. Ritwik Sana, Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Mukesh Kumar, APP.
SI P.R. Hudda, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.08.2025**

1. The present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 482 of the Code of Criminal Procedure, 1973²) seeks quashing of FIR No. 26/2025 dated 10th January, 2025, registered under Section 42(3)(d) of the Telecommunications Act, 2023, at P.S. IGI Airport and all consequential proceedings emanating therefrom.

2. The relevant facts are summarised as follows:

2.1. The Petitioner, a French national, has been residing in Zurich, Switzerland, for the past six years. He has been employed as a Security Engineer with Google Inc. since 2021 and holds an undergraduate degree in

¹ "BNSS"

² "CrPC"



Computer Science and Cyber Security. In November 2023, while planning a trip to Namibia for his engagement ceremony with his fiancée, he purchased a ‘Garmin inReach Mini 2’ (“the Device”) in Switzerland on 12th October, 2023. The Device is a compact, lightweight satellite communication beacon equipped with features such as location tracking and sharing, interactive SOS alerts to a 24/7 emergency coordination centre, and a “trackback” routing function to navigate back to a starting point in the event of disorientation.

2.2. The Petitioner first tested the Device at his residence in Zurich on 2nd November, 2023 and later used it in Namibia on 14th November, 2023 to verify its functionality. In September 2024, he lent the Device to a friend who used it while hiking alone in Kagoshima and Yakushima, Japan, on 14th and 17th September, 2024, respectively. On 25th September, 2024, after the Petitioner joined his friend in Japan, the Device was returned to him. He states that he placed it in his camera bag and forgot about it thereafter, as it was not used again.

2.3. In January 2025, the Petitioner and his fiancée travelled to Maldives for a holiday from 1st to 11th January, 2025, with a three-day stopover in India to visit the Taj Mahal and Agra Fort. They arrived in New Delhi on 8th January, 2025, stayed overnight, and proceeded to Agra by train on 9th January, 2025. During the security check at the Taj Mahal, the Device was found in the Petitioner’s camera bag. The security personnel inspected the device by switching it on and off, informed the Petitioner that it could not be carried inside, and directed him to deposit it in a locker.

2.4. On 10th January, 2025, while boarding a flight from IGI Airport, Delhi to Switzerland, the Device was detected during baggage screening and



seized. An FIR was registered under Section 42(3)(d) of the Telecommunications Act, 2023, and a notice under Section 35(3) of BNSS was issued. As the Petitioner is not ordinarily a resident in India, he was permitted to depart and accordingly he returned to Switzerland.

3. The Petitioner seeks quashing of the FIR on the ground that the Device was inadvertently brought into India and came to his notice only during the security check at the Taj Mahal. He asserts that there was no intention to possess or operate any radio equipment within Indian territory. Furthermore, at the time of entry into India, the Device had no active subscription plan, a prerequisite for its operation, rendering it incapable of functioning as a communication tool. In such circumstances, he contends, there was no possibility of its use in violation of the provisions of the Telecommunications Act.

4. The Court has heard the submissions advanced by counsel for the Petitioner and by Mr. Mukesh Kumar, APP for the State.

5. The Petitioner contends that he was not in conscious possession of the Device, which may, on a plain reading, fall within the description of “radio equipment” under Section 42(3)(d) of the Telecommunications Act, 2023. It is submitted that the Device was inadvertently carried into India, remained unused throughout his visit, and, at the relevant time, had no active subscription plan, a precondition for its operation. The absence of activation, it is urged, rendered the Device incapable of performing any function contemplated under Section 42(3)(d) of the Act, which penalises the possession or use of unauthorised radio equipment capable of transmission within Indian territory.

6. Section 42(3)(d) of the Telecommunications Act, 2023 prohibits the



possession, operation, or use of radio equipment without the requisite authorisation from the competent authority. Its object is to protect the integrity of the telecommunications network and prevent unauthorised transmissions that may threaten public safety, national security, or lawful communication systems. The term “radio equipment” is defined under Section 2(l) of the Act to mean any telecommunication equipment used or capable of being used for the purpose of telecommunication by means of hertzian or radio waves.

7. In construing penal provisions of this nature, two elements are material: first, conscious possession, understood as awareness and control over the object; and second, the capability of the device, in its then-existing state, to perform the prohibited function. Mere physical custody of an inoperative device, one that is technically incapable of unlawful use, does not by itself satisfy the statutory mischief. Penal statutes must be applied strictly, and the legislative intent cannot be read as criminalising the inadvertent carriage of an inert or deactivated device. The provision is aimed at preventing possession or deployment of functioning equipment that is used or capable of being used to transmit or receive signals without authority. Where, as in the present case, the uncontroverted technical facts establish that the device was incapable of operating as “radio equipment” at the relevant time, the element of capability is absent and the offence under Section 42(3)(d) is not made out.

8. Furthermore, it is an admitted position that the Petitioner never operated the Device within India. At the time of its seizure, it had no active subscription plan, and no Indian service provider had activated it. In the absence of such activation, the Device was incapable of transmitting or



receiving any signal, thereby nullifying its utility as a communication tool. There is neither any allegation nor any material to indicate that the Petitioner made any attempt to overcome or circumvent these technical limitations.

9. For possession to entail penal consequences, it must amount to more than bare custody; it must involve conscious possession coupled with the inherent capability of the device to operate unlawfully. Here, the material shows that the Device had been lying in the Petitioner's bag since September 2024, was discovered only during the security check at the Taj Mahal and was non-functional in India due to the absence of activation. These facts, taken together, *prima facie* negate conscious possession in the penal sense.

10. The continuation of criminal proceedings would serve no legitimate purpose and would amount to an abuse of process. This is, therefore, a fit case for the exercise of inherent powers under Section 528 of BNSS (corresponding to Section 482 of CrPC) to secure the ends of justice by quashing the FIR at the threshold.

11. That said, the Court observes that greater care ought to have been exercised by the Petitioner in carrying such equipment into India, even if inadvertently. In these circumstances, while quashing the FIR, costs of INR 10,000/- are imposed on the Petitioner, to be deposited with the Delhi Police Welfare Fund, within a period of three weeks from today.

12. In light of the foregoing, FIR No. 26/2025 dated 10th January, 2025, registered at P.S. IGI Airport under Section 42(3)(d) of the Telecommunications Act, 2023, together with all consequential proceedings arising therefrom, is hereby quashed.

13. The petition is disposed of accordingly. Pending applications, if any,



are disposed of as infructuous.

SANJEEV NARULA, J

AUGUST 6, 2025/as