

Sh. Surinder Kumar @ Surinder Kumar ... vs The State (G.N.C.T. Of Delhi) & Anr on 27 September, 2019

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2143/2019

SH. SURINDER KUMAR @ SURINDER KUMAR
SINGH

..... Petitioner

Through: Mr Dugesh Pal and Mr Manoj Kumar,
Advocates.

versus

THE STATE (G.N.C.T. OF DELHI) & ANR.

..... Respondents

Through: Mr Ranbir Singh Kundu, ASC for
State with SI Devendra Kumar, P.S.
I.G.I. Airport.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER

% 27.09.2019

1. The petitioner has filed the present petition, inter alia, praying that FIR bearing no. 348/2018 under Section 25 of the Arms Act, 1959 registered with P.S. I.G.I. Airport and all proceedings emanating therefrom, be quashed.

2. The said FIR was registered pursuant to the report that a live cartridge was found in the baggage of the petitioner. The petitioner was scheduled to travel from Delhi to Amritsar by an Air India flight (Flight No. AI-114) on 05.07.2018 at 12:45 p.m. After check-in, his baggage was scanned and one live cartridge bearing the marking 'KF 325 WL' was found.

3. The petitioner submits that he holds a valid arms license (bearing no. CP/ASR/DUP/CD/0811/058). The said license has been issued for an NPB- Pistol .32 Bore W/NO RP-121549 and twenty-five cartridges. The petitioner claims that the said live ammunition remained in his baggage inadvertently and he was not aware of the same. The petitioner was not carrying the licence for the said weapon at the material time and claims that the single live cartridge would serve little purpose.

4. Mr Kundu, learned ASC appearing for the State, submits that inquiries were conducted and it was verified that that the petitioner was issued the said arms licence for a .32 calibre pistol. However, the said licence had expired at the material time. He fairly states that the said licence was subsequently renewed and is now valid till 06.06.2020.

5. Admittedly, inquiries have not resulted in any material to suggest that the petitioner's claim that he had inadvertently not removed the said live cartridge from his baggage, is incorrect. This Court finds no reason to doubt the petitioner's contention that he was not conscious of the fact that his baggage contained a live cartridge at the material time.

6. In *Manuel R. Encarnacion v. State (NCT of Delhi) & Anr.*: CRL. M.C. No. 1455/2004 decided on 29.04.2014 and *Chang Hong Saik through SPA: Arvinder Singh v. State & Anr.*: 2012 (130) DRJ 504, coordinate Benches of this Court have held, in similar circumstances, that where the accused was not conscious of carrying a live cartridge, no offence under Section 25 of the Arms Act, 1959 could be stated to have been committed by the accused. In *Gaganjot Singh v. State: W.P. (Crl.) 1169/2014* decided on 01.12.2014, the Division Bench of this Court relied upon the decisions of the Supreme Court in *Gunwantlal v. The State of Madhya Pradesh* (1972):

AIR SC 1756 and *Sanjay Dutt v. State Through CBI, Bombay (II)*: (1994) 5 SCC 410 and held that unless it was established that the accused was fully conscious that he/she was carrying a live ammunition, he/she could not be held guilty of an offence under the Arms Act, 1959.

7. In view of the above, this petition is allowed and FIR No. 348/2018 under Section 25 of the Arms Act, 1959 registered with P.S. I.G.I. Airport and all proceedings emanating therefrom, are quashed VIBHU BAKHRU, J SEPTEMBER 27, 2019 pkv