

# Shikha Banyal vs State Of Nct Of Delhi on 16 December, 2021

**Author: Subramonium Prasad**

**Bench: Subramonium Prasad**

\$~13

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(CRL) 1954/2021  
SHIKHA BANYAL

Through

Mr. Aamir Chaudhary, Ad

versus

STATE OF NCT OF DELHI

Through

Mr. Karanjeet Rai Sharm  
for Mr. Sanjay Lao, Sta  
for the State with SI R  
Police Station IGI Airp

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD  
ORDER

% 16.12.2021

1. This writ petition under Article 226 of the Constitution of India has been filed for quashing FIR No.98/2020 dated 18.02.2020, registered at Police Station IGI Airport, New Delhi for an offence under Section 25 of Arms Act 1959.

2. It is stated that the petitioner is a resident of Hamirpur, Himachal Pradesh. It is stated that the petitioner herein was travelling from Delhi to Goa via Air Asia flight No.I5-775 from Indira Gandhi International Airport, Delhi. During security check, one live cartridge was found in her luggage. It is stated that the ammunition belonged to her father-in-law, who was in the Indian Army. It is also stated that petitioner's father-in-law passed away on 27.10.2017. It is stated that since the petitioner could not produce the relevant documents for carrying ammunition, the live cartridge was seized and the instant FIR got registered.

3. It is the contention of the petitioner that she was not in conscious possession of the ammunition and that FIR No.98/2020 dated 18.02.2020, registered at Police Station IGI Airport, New Delhi for an offence under Section 25 of Arms Act may be quashed.

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:

¶3. 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  
xxxxx

xxxxxxx

(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)

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

6. In *Narinderjit Kaur Singh v. State (NCT of Delhi) & Anr.*, [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 vs. The State of Madhya Pradesh*, AIR 1972 SC 1756; *Sanjay Dutt vs. State through CBI, Bombay (II)*, (1994) 5 SCC 410)."

(emphasis added)

7. In *Nimesh Kumar v. State NCT of Delhi & Anr.*, [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.

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 a conscious possession of the ammunition, she cannot be prosecuted for the offence under Section 25 of the Arms Act.

9. It is stated by the petitioner that the ammunition belonged to her father-in-law, who was in the Indian Army. The certificate of service has been filed along with the petition and is annexed as Annexure A-5.

10. In the facts and circumstances of this case, this Court is inclined to quash FIR No.98/2020 dated 18.02.2020, registered at Police Station IGI Airport, New Delhi for an offence under Section 25 of Arms Act 1959 and the proceedings emanating therefrom.

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

SUBRAMONIUM PRASAD, J DECEMBER 16, 2021 hsk