

Tarun Raghav vs State, Govt. Of Nct Delhi & Anr on 2 February, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 2493/2020
TARUN RAGHAV

Through : Mr. Satvinder Singh, Ad
versus

STATE, GOVT. OF NCT DELHI & ANR.

Through : Mr.Amit Ahlawat, APP fo

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 02.02.2021

1. The hearing has been conducted through Video Conferencing.
2. This petition is filed for quashing of the FIR No.232/2018 under Section 25 of Arms Act for possessing three live cartridges, registered at police station IGI Airport New Delhi and impugned order dated 07.11.2020 passed by learned ACMM, Patiala House Courts, New Delhi and the proceedings emanating therefrom.
3. The learned counsel for the petitioner submitted the petitioner is engaged in the Real Estate business of his father and is a holder of Diploma/degree of PGDM in Marketing (Master Degree of Business in marketing) from Pune and he belongs to a respectable family and permanent resident of Gurgaon, Haryana. On 10.05.2018 the petitioner left from Gurgaon, Haryana to Delhi to take a flight for Pune and he reached at IGI Airport, New Delhi to board Vistara Flight No. UK-989 and during screening of his bag, three live ammunitions/cartridges were recovered from his bag.
4. The father of the petitioner namely Lekhraj Singh Raghav is a businessman, who is the holder of a valid arm License No.51/ACP/GSN/2010 and the recovered cartridges belonged to him and the said license was renewed time to time and same is now valid upto 29.03.2022 and the said licence has already been verified and found to be genuine by the Investigating Officer concerned and the same facts has been mentioned in the charge sheet also.
5. The petitioner had carried the bag normally used by his father for the purpose of carrying his belongings etc and said bullets remained/left in the said bag inadvertently as the same were already lying in the said bag because his father used to keep arm and ammunition etc. in the said bag and he handed over the said bag to the petitioner in a hurry and he could not detect the same and the said

cartridges remained inside the bag and he came to know about the same at the Airport only when the same were detected and recovered by the security personnel during screening of his baggage.

6. The learned counsel for the petitioner urges the petitioner was not in conscious possession of three cartridges for the reasons and circumstances stated above.

7. In Chan Hong Saik Thr SPA: Aryinder Singh vs. State and Another Crl.M.C.No.3576/2011 decided on 02.07.2011 the FIR under Section 25 Arms Act was quashed having similar facts and the Court held:-

"43. Single live cartridge cannot be used for any threat purpose without fire arms. Value of the same in the market is also not attractive. It cannot be used for any third purpose. If the intention of the petitioner was not of either of the purpose mentioned above, then he cannot be held guilty and punished for the charge framed against him."

8. In Gaganjot Singh vs. State W.P.(Crl) No.1169/2014 decided on 01.12.2014 this Court noted:-

16. xxxxxxxx. 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.

9. In Manuel R. Encarnacion vs State through NCT of Delhi and Another Crl.M.C.No.1455/2014 decided on 22.05.2014 this Court noted:-

"Upon hearing both the sides and on perusal of the FIR of this case, the status report, the material on record and the decisions cited, I find that even if the prosecution case is taken as it is, still it cannot be said that petitioner was in conscious possession of the recovered three live cartridges. Thus, applying the dictum of the Apex Court in Sanjay Dutt v. State through C.B.I., Bombay (II) (1994) 5 SCC 410 followed in Nurit Toker (supra) and William Michael (supra), this Court finds that continuance of

proceedings arising out of the FIR in question would serve no purpose.

In view of the aforesaid, this petition is allowed and the proceedings arising out of the FIR in question are quashed qua petitioner.

10. And in Dhanwant Kaur vs State and Another CrI.M.C. No.3593/2016 decided on 04.10.2016 this Court also noted:-

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.

11. In view of the decisions and facts of the instant case, the petitioner cannot be considered to be in conscious possession of the three live cartridges found at the time of screening of his baggage at the airport.

12. Accordingly, the petition is allowed and FIR No.232/2018 under Section 25 of Arms Act registered at police station IGI Airport New Delhi and the proceedings emanating therefrom are quashed. The pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

FEBRUARY 02, 2021 M