

Shailesh Kumar Pandey vs State Of Nct Of Delhi on 30 May, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 1773/2024
SHAILESH KUMAR PANDEY

STATE OF NCT OF DELHI

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

% 30.05.2024

1. Allowed, subject to all just exceptions.

W.P.(CRL) 1773/2024 & CRL.M.A. 17232/2024

2. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 CrPC seeking quashing of FIR No.0662/2023 under Section 25 of Arms Act registered at PS IGI Airport and all consequential proceedings emanating therefrom.

3. The case of the prosecution is that on 06.11.2023, when the petitioner was travelling from New Delhi to Gorakhpur via Indigo Airlines flight no.6E 2087, during the physical checking of his baggage at IGI Airport, 03 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 23:02:48 live ammunitions were recovered by the security personnel at IGI Airport, New Delhi and pursuant thereto the present FIR came to be registered against the present petitioner as he had no valid document in support of the said recovery.

4. Learned counsel for the petitioner submits that the petitioner possesses a valid licence of fire arm and at the time of his travelling he was not aware that there are live cartridges in his baggage.

5. Issue notice. Learned ASC for the State accepts notice. He submits, on instructions from the IO, who is present in the Court, that it has been verified that the petitioner possesses a valid licence for the fire arm.

6. As the issue involved in the present petition is covered by various decisions of this Court and further the license of fire arm has already been verified, the petition is taken up for disposal with the consent of the parties, without calling for status report/counter affidavit from the respondent/State.

7. I have heard the learned counsel for the petitioner, as well as, the learned Standing Counsel for the State.

8. The allegation against the present petitioner is only to the effect that 03 live cartridges were recovered at IGI Airport at the baggage security check up without any supporting license.

9. It is not in dispute that the petitioner possesses a licenced weapon and the license in respect thereof is valid, has been verified.

10. 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, 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 This is a digitally signed order.

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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, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 23:02:48 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--

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(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."

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 This is a digitally signed order.

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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:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/06/2024 at 23:02:48 "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 This is a digitally signed order.

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(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.

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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."

11. From the judgments, it manifests that for prosecution and subsequent conviction under the Arms Act, 1959, the accused should have the requisite conscious possession or knowledge of ammunition. The petitioner holds a valid licence to possess ammunition, however, being in a hurry to catch his flight from Delhi and failing to notice the ammunition in his bag, is a plausible explanation furnished by the petitioner.

12. 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 and accordingly, he cannot be

prosecuted for the offence under Section 25 of the Arms Act.

13. This being the position, the FIR No.0662/2023 under Section 25 of Arms Act registered at PS IGI Airport along with all other consequential proceedings emanating therefrom, is quashed

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

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

VIKAS MAHAJAN, J MAY 30, 2024/MK This is a digitally signed order.

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