

2022 LiveLaw (Del) 238

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
W.P. (CRL) 2193/2021 & CRL.M.A. 2352/2022; 22nd MARCH, 2022
GURJIT SINGH SANDHU *versus* STATE OF NCT OF DELHI

Arms Act, 1959 - FIR registered against a Canadian citizen whose flight check-in baggage was found with 50 live cartridges - *Prima facie*, there was commission of offence - Refused to quash the FIR.

Petitioner Through: Mr. Shreeyash U. Lalit, Advocate.

Respondent Through: Mr. Sanjay Lao, Standing Counsel for the State with Mr. Karan Jeet Rai Sharma, Advocate.

1. The instant writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeks quashing of FIR No. 46/2021 dated 10.02.2021, registered at Police Station I.G.I. Airport, New Delhi, for an offence under Section 25 of the Arms Act, 1959.

2. The facts in brief, leading to the present case are as follows:-

i. The petitioner, is a Canadian citizen, who also holds an Overseas Citizen of India card. He arrived in Delhi from Canada on 09.02.2021 and was supposed to catch a connecting flight from New Delhi to Amritsar on 10.02.2021.

ii. It is stated that during the check-in at the IGI Airport, New Delhi, the baggage of the petitioner was found with 50 live cartridges of .22 mm caliber. Thereafter, the petitioner was asked to produce a valid licence for the said ammunition, and he was unable to produce the same.

iii. On the said complaint, the instant FIR No.46/2021 dated 10.02.2021, at Police Station I.G.I. Airport, New Delhi, for an offence under Section 25 of the Arms Act, 1959 was registered against the petitioner.

3. It is stated that the petitioner holds a valid arms licence in Canada. However, the petitioner has no registered firearm under his licence.

4. The petitioner was granted bail and he was permitted to go to Canada for a period of six months *vide* order dated 15.05.2021 passed by the learned ACMM, Patiala House Courts.

5. The petitioner has filed the instant petition before this Court for quashing of FIR No.46/2021 dated 10.02.2021, registered at Police Station I.G.I. Airport, New Delhi, for an offence under Section 25 of the Arms Act, 1959

6. Notice was issued on 10.11.2021. Status Report stands filed. The Status Report confirms the fact that the petitioner has a valid fire arm licence issued by the Canadian authorities. However, he has no registered firearm under his licence.

7. Mr. Shreeyash U Lalit, learned counsel for the petitioner, contends that under the firearm licence issued at Canada, a licensee can have three classes of firearms (a)

non-restricted, (b) restricted, (c) prohibited. He contends that the non-restricted firearm need not be registered under a firearm licence. However, the restricted and prohibited firearm needs mandatory registration. He further states that since a non-restricted firearm does not require any registration, there was no law in Canada for purchase of cartridges for such fire arms. The petitioner herein acquired a .22 LR (long rifle), which is predominantly used for target practice and hunting purposes. Since it is a non-restricted firearm, the licence does not indicate that the petitioner has the possession of the same. He states that for the purpose of net practice, the petitioner purchased a box of cartridges containing 50 cartridges of Stinger 22 LR (long rifle). The cartridge box has dimension of 8 cm x 4 cm x 3 cm and weighs approximately 190 grams. He states that it is a very small box and there is a possibility of the box being left unwittingly in the bag.

8. Mr. Shreeyash U Lalit, learned counsel for the petitioner, contends that he boarded a flight from Winnipeg to Vancouver to Delhi and had to board a flight to Amritsar. He states that 08.02.2021, the petitioner took a Air Canada Flight No.8625 from Winnipeg to Vancouver at 6:20 AM local time. The luggage was checked-in and the cartridges were not detected. He states that there was no possibility of the petitioner to insert the firearms after his bag was checked-in. He states that he reached Vancouver at 7:30 AM local time. The petitioner landed in Delhi on 09.02.2021 at 10:00 PM IST. The petitioner was to board the Air Vistara flight No. UK-687 to reach Amritsar at 9:30 AM IST. He further states that the check-in for domestic flight commences only two hours prior to departure and again there is no possibility that the petitioner could have inserted the firearm in his baggage. He, therefore, states that this demonstrates that the petitioner was not in conscious possession of the firearm.

9. Mr. Shreeyash U Lalit, learned counsel for the petitioner, emphasizes that the Central Government has brought in Baggage Rules, 2016 under the Customs Act and under Rule 3 read with Annexure-I of the Baggage Rules, 2016 a tourist of Indian origin shall be allowed to buy 50 cartridges. He has placed on record Baggage Rules along with Annexures to substantiate his contentions. He contends that the size of the cartridges is small enough that it can be left behind in his baggage. He further states that the weight and dimensions of the cartridges demonstrate that it is possible for an unwitting traveller to leave the cartridges without noticing them in the baggage. He further states that the petitioner has valid fire arm licence in Canada and is permitted to purchase the cartridges in Canada. He further relies on the judgment passed by this Bench in **Dr. Rupinder Sidhu v. State & Anr., W.P. (CRL) 452/2020** where the FIR against the petitioner was quashed when the petitioner was found in possession of 26 cartridges.

10. *Per contra*, Mr. Sanjay Lao, learned Standing Counsel for the State, contends that the petitioner has been found with 50 cartridges and he was travelling overseas into the country. He states that since it was a box full of cartridges weighing almost about 200 grams, the petitioner could not raise the bogey of unconscious possession. He further states that whether the petitioner was in conscious possession of the

cartridges or not is an issue that must be decided during the trial.

11. The issue as to whether a person carrying a single live cartridge could be in conscious possession of the cartridge and whether in such cases the FIR can be quashed or not has been decided by this Court in various judgments.

12. The Division Bench of this Court *vide* order dated 01.12.2014 in **Sh. Gaganjot Singh v. State, W.P.(CRL).1169/2014** has observed as under:-

"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)

13. The FIR was quashed in the above-mentioned case. Similarly in **Dhanwant Kaur v. State & Anr, CRL.M.C. 3593/2016**, this Court observed as under:-

"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. xxx 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 he 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.” (emphasis added)

14. In **Narinderjit Kaur Singh v. State (NCT of Delhi) & Anr., W.P.(CRL).1669/2017**, this Court has 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)

15. In **Nimesh Kumar v. State NCT of Delhi & Anr., W.P.(CRL) 3540/2017**, this Court has 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.” (emphasis added)

16. In most of these cases, a single live cartridge has been found in possession of the accused and this Court found that there was reasonable or sufficient material to indicate that the person carrying one live cartridge might not have been in conscious possession of the same. Furthermore, in all these cases, the accused or his near family members possessed a valid arms licence in India.

17. Similarly, in **Dr. Rupinder Sidhu v. State & Anr., W.P. (CRL) 452/2020**, wherein this Bench had quashed the FIR, therein the petitioner was carrying 26 cartridges and the facts were that the petitioner was resident of Bathinda and a doctor by profession,

employed as Medical Officer in Civil Hospital, Faridkot, Punjab, who had to travel every day from Bathinda to Faridkot, which is a distance of about 70 kms, and due to the concern for her safety, the petitioner applied for arms licence which was duly granted to her. She had purchased cartridges in the country on the basis of the arms licence which was issued to her in the country. While she was travelling from Delhi to Hyderabad, 26 cartridges of .22 mm bore were recovered from her bag. In view of the fact that she had an arms licence in India which was procured by her for her safety, this Court quashed the FIR on the ground that that it was possible that she was not in conscious possession of the cartridges when she was boarding her flight.

18. However, the facts of that case cannot be applied in the present case. In the present case, the petitioner has been found with a box containing 50 cartridges and has an arms licence in Canada. It has to be established by the petitioner that he does not require a licence to purchase cartridges for .22 long range caliber rifle in Canada. It has also to be established by the petitioner that he can purchase any number of cartridges and ammunition in Canada. The reliance of the petitioner on the Baggage Rules, 2016 is of no consequence for the reason that the Baggage Rules, 2016 under the Customs Act is for the purpose of payment of duty, and this cannot absolve the petitioner of an offence under the Arms Act, 1959.

19. A person of Indian origin is permitted to bring 50 cartridges into India and need not pay duty for the same. This cannot mean that the petitioner can be exonerated for an offence under the Arms Act, 1959 in India which prohibits a person from carrying arms and ammunition without a proper licence.

20. This Court finds considerable force in the contention of Mr. Sanjay Lao, learned Standing Counsel for the State, that the box containing 50 cartridges weighing around 200 grams cannot be inadvertently kept in the bag. The petitioner could have assumed that he was permitted to carry these ammunitions in the country on the ground that he has a valid licence in Canada and that he would not have to pay duty on the same but that reason is not sufficient to quash the FIR. The petitioner would have to face trial and get himself exonerated in the trial by proving that he was not in conscious possession of the cartridges.

21. The facts of this case do not warrant quashing of the FIR because the FIR brings out a *prima facie* commission of an offence under the Arms Act, 1959. The instant case does not come within the four corners of the law laid down by Apex Court in **State of Haryana and Ors. v. Bhajan Lal and Ors., 1992 Supp (1) SCC 335**, which lays down the parameters for quashing of an FIR.

22. The petition is dismissed with the above observations. Pending application(s), if any, stand disposed of.