

(2020) 01 DEL CK 0171

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 6715 Of 2019

Hardeep Kaur Gill

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Arms Act, 1959 — Section 25, 45, 45(d), 54, 59
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 01 DEL CK 0171

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Satvinder Singh, K.K. Ghei

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

CRL. M.A. 43553/2019

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

CRL.M.C. 6715/2019

3. Vide the present petition, the petitioner seeks quashing of FIR No. 86/2017 registered at Police Station - IGI Airport, Delhi for the offences punishable under Section 25/54/59 Arms Act, 1959 and all proceedings emanating therefrom.

4. The present petition is filed under Section 482 Cr.P.C. by stating that the petitioner is a qualified NRI and holder of Canadian Passport bearing No.HK861021, belongs to an educated and reputed family and is a married lady, having minor children, who came to India to meet her relatives in Punjab.

5. Counsel for the petitioner submits that the petitioner was travelling back to Canada from Delhi via Zurich by Swiss INTL Airline Flight No.LX-147 and during

physical checking of her checked-in-bag, 06 live cartridges 3cm in length, 1 cm diameter of base and '.32KF SWL' engraved on the base were recovered and the concerned Supervisor Swiss Airline personnel informed the local police in this regard and the petitioner was brought to IGI Airport Police Station, where an FIR No.86/2017 dated 17.03.2017 u/s 25/54/59 Arms Act was registered against the petitioner and after brief investigation and interrogation, the alleged bullets were seized and her arrest was deferred.

6. It is further submitted that the real brother of the petitioner namely Kuldeep Singh is the holder of a valid arm License No.326/DM/MOGA/PS BADHANI KALAN/ Jun-2010 valid upto 13.06.2022 and the recovered cartridges belonged to him. The petitioner had borrowed the said bag from her brother for the purpose of carrying her belongings etc. to Canada. The petitioner further states that the said bullets remained inside the said bag inadvertently, as the same were already lying in the said bag because her brother used to keep his arm and ammunition etc. in the said bag and in a hurry, he handed over the said bag to the petitioner and she could not detect the same that the recovered cartridges remained inside the bag and she only came to know about the same at the Airport, when the same were detected by the security personnel during screening of her baggage.

7. During the questioning/interrogation, the petitioner duly explained the situation and apprised the investigating officer that it is a case of inadvertent mistake and sheer oversight-ness. Since the petitioner did not have any intention or requisite mens rea to carry the said cartridges for harming anybody else at the Airport, thereafter the petitioner was let off after sometime.

8. The investigating agency proceeded to file a charge sheet/final report before the Ld. Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi for prosecuting the petitioner under Section 25 of the Arms Act.

9. Learned APP for State has verified that the brother of the petitioner has a valid arms licence and had also verified that the bag which the petitioner was carrying, belongs to her brother and the records for the ammunition, which have been seized from the petitioner, have also been verified. It is also been verified that the brother of the petitioner herein has a licenced weapon for the seized ammunition.

10. While arguing the case for the petitioner, learned counsel for the petitioner has relied upon decision of this Court delivered in Chan Hong Saik vs. State and Anr., 2012 (130) DRJ 504 (decided on 02.07.2012 in CRL.M.C. 3576/2011), whereby the Court opined that a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 45 of the Arms Act.

11. In addition to above, learned counsel also relied upon the other cases decided by different High Court giving the same opinion. However, the fact remains that the judgment delivered by this Court dated 02.07.2012 was referred to the larger Bench and vide judgment dated 06.01.2016 in case of Dharmendra vs. State in CRL.M.C. 4493/2015, the Court opined that single

cartridge is ammunition and comes under the Arms Act, 1959.

12. The fact remains that this Court in *Chan Hong Saik* (Supra) quashed the FIR by holding that a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 45 of the Arms Act. The larger Bench referred above did not agree with the opinion of this Court but however, opined that the possession of the ammunition was unconscious and there was no arm with the accused and there was no threat to anyone, therefore this Court has rightly quashed the FIR.

13. In the case in hand, it is not the case of the prosecution that there was fire arm recovered from the petitioner or there was any threat to anyone at the Airport.

14. Thus, in the present case also, the possession of the ammunition was unconscious and there was no threat to anyone.

15. Accordingly, for the reasons afore-recorded, FIR No. 86/2017 registered at Police Station - IGI Airport, Delhi for the offences punishable under Section 25/54/59 Arms Act, 1959 and all proceedings emanating therefrom are hereby quashed.

16. The petition is allowed and disposed of accordingly.

17. Dasti.