

(2014) 07 DEL CK 0222**Delhi High Court****Case No:** W.P. (Crl) 1169/2014

Gaganjot Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 22, 2014**Acts Referred:**

- Arms Act, 1959 - Section 2(b), 25, 27, 40, 45
- Penal Code, 1860 (IPC) - Section 307, 34

Citation: (2014) 3 JCC 2020**Hon'ble Judges:** Pratibha Rani, J**Bench:** Single Bench**Advocate:** Sanjay Rathi, Advocate for the Appellant; Sanjeev Bhandari, ASC with SI Tulsi Ram, PS, Advocate for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Pratibha Rani, J.

The Petitioner has filed this writ petition praying for quashing of FIR no. 158/2014 under Sections 25/54/59 Arms Act, PS IGI Airport and proceedings emanating therefrom.

2. During the pendency of this petition, chargesheet has also been filed. Copy of the chargesheet has been placed on record by the State on 11.07.2014. Copy has also been supplied to learned counsel for the Petitioner.

3. The case of the Petitioner is that he is 19 years old Student and a Green Card holder in United States of America for the last 10 years. He had been staying in America with his parents. The Petitioner came to India about four years ago on Student Visa and had been pursuing his studies while staying with his real Uncle. After completing his studies, the Petitioner planned to return to his parents in United States of America and got booked his air ticket for travel in China Eastern Air

Lines having Flight No. MU-564 wherein seat 70-H was allotted against Passport No. 470434993 from International SHA T-3 (IGI Airport), New Delhi.

4. At the time of security check, one live cartridge bearing 8 MM KF at bottom of the round was noticed in the pouch kept inside the bag of the petitioner and he was confronted with same by Security Check Staff. The Petitioner pleaded ignorance but the security check staff got registered FIR No. 158/2014 under Sections 25/54/59 Arms Act at PS IGI Airport against the Petitioner. The petitioner was released on bail.

5. It is further pleaded by the Petitioner that after his apprehension, he learnt that the live ammunition found in the pouch infact belongs to his Uncle who holds valid Arms Licence and the live ammunition is also property of his Uncle having purchased by him from a licenced arms dealer. The pouch was given to him by his Uncle to keep his passport, ticket and other documents and bullet was left unnoticed in the said pouch.

6. The Petitioner Gaganjot Singh has sought quashing of FIR no. 158/2014 under Sections 25/54/59 Arms Act, PS IGI Airport for the following grounds:-

(i) Recovery of live ammunition does not amount to commission of offence u/s 25 of Arms Act in view of the fact that a single bullet is a "minor part of ammunition" and falls within the ambit of Section 45(d) of Arms Act.

(ii) In Crl.M.C. No. 3576/2011 titled as Chan Hong Saik through SPA Arvinder Singh vs. State & Anr. in similar circumstances, FIR has been quashed observing that such recovery of ammunition being minor part of ammunition as envisaged u/s 45(d) of Arms Act, this case also based on similar facts and circumstances, FIR needs to be quashed.

(iii) The Petitioner deserved protection u/s 40 of Arms Act and no action lies or required to be initiated against him when his own act falls within the ambit of good faith as the pouch was property of his Uncle and the pouch was given to him to carry his travel documents.

(iv) Single bullet in itself cannot at all be said to be a threat to the society at large or could have been said to be a ammunition which could endanger the life of public.

(v) The Petitioner is 19 years old young boy with clean antecedents and if FIR is not quashed, it will have adverse effect on his career. The alleged commission of offence was completely unintentional and occurred because of inadvertence.

7. Learned counsel for the Petitioner has placed reliance on two decisions of this Court i.e. in Crl.M.C. No. 1455/2014 titled as Manuel R. Encarnacion decided on 22.05.2014 and in Crl.M.C. No. 3576/2011 titled as Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State and Another, in support of his contention that a single bullet without fire arm is a minor ammunition which is protected under Clause (d) of Section 45 of Arms Act. Learned counsel for the Petitioner has submitted that since in the present

case also a single bullet has been recovered, his case is squarely covered by above two decisions of this Court, hence FIR in question and the criminal proceedings arising therefrom may be quashed.

8. In Crl.M.C. No. 1455/2014 titled as Manuel R. Encarnacion decided on 22.05.2014 relied upon by learned counsel for the Petitioner, three live cartridges of 9 mm were recovered from the baggage of the Petitioner and the plea taken was that the Petitioner was not in conscious possession of the same for the reason that under bonafide mistake, these three bullets were carried by the Petitioner in the jacket which he had worn on a day prior to departure while he has undergone an official shooting training to revalidate his arms licence in New York. The Learned Single Judge formed the view that even if the prosecution's case is taken as it is, still it cannot be said that the Petitioner was in conscious possession of the recovered three live cartridges.

9. Here suffice it to record that whether the possession of arms and ammunition is conscious or not has to vary depending on the facts and circumstances of each case.

10. In the case of Chan Hong Saik thr. SPA Arvinder Singh vs. State & Ors. (Supra), on 15.03.2011 at T-3 Terminal, IGI Airport, the Petitioner intended to go Kuaalalumpur by Flight No. 1 MH and was found carrying 9 mm live cartridge in his bag without any valid licence which was detected during checking for security clearance. Case FIR No. 126/2011 was registered at PS IGI Airport for committing the offence punishable u/s 25 of the Arms Act and chargesheet was filed against him.

11. By filing W.P.(Crl.) No. 3576/2011, the Petitioner Chan Hong Saik sought quashing of FIR for the reason that he had no knowledge about the presence of bullet in his luggage and it was the same bag which he had brought from Malaysia and travelled in India all along. It was also contended that Petitioner was Member of Riffle Club in Malaysia and bullet could have been left in his bag by mistake. In para 23 of the report, the controversy involved in the writ petition was described as under:

23. In the present case, the controversy revolved upon the fact that whether one live cartridge comes under the category of "minor ammunition" as provided in Section 45(d) of the Arms Act.

12. The report dated 08.04.2011 of the Ballistic Expert (FSL) has been incorporated in para 31 of the report, which is to the following effect.

31. On perusal of the FSL report dated 08.04.2011 conducted by Sr. Scientific Officer (Ballistics) which reads as under:-

FSL, Delhi FSL 2011/F-1366 page #2

3. RESULTS OF EXAMINATION/OPINION:

- (1) The 9 mm cartridge marked exhibit "A1" is live one and can be fired through 9mm calibre firearm.
- (2) The 9 mm cartridge marked exhibit "A1" was test fired through the pistol 9mm calibre marked exhibit "F1" in (FSL case no. 2010/B-3185, DD No. 10A PS: Kanjhawala).
- (3) The exhibit "A1" is an ammunition as defined in the Arms Act, 1959.

NOTE: (1) Case Exhibits/Remnants of Exhibits sent to this laboratory for examination have been sealed with the seal of PP FSL DELHI.

13. On the issue whether the Petitioner was entitled to protection u/s 45(d) of the Arms Act, learned Single Judge was of the view:-

37. Be that as it may, I find force in the submission of the Id. Counsel for the petitioner that he has a protection envisaged u/s 45(d) of the Arms Act, 1959 in which the acquisition or possession of minor parts of arms or ammunition have been stipulated.

38. In the present case, single live cartridge which is found without any fire arm and specially at the stage when he was to leave this country to his native country.

39. The case of the prosecution is not that he extended any threat to any of the authority or the fire arms or ammunition was found with any of this group persons including his own son who was travelling with him.

40. It is pertinent to mention here that when this Court called the ballistic expert, he also could not explain what is the minor ammunition. He only stated that live cartridge is ammunition.

41. It is also pertinent to mention here that Id. APP has argued that live cartridge is one single piece and there cannot be any minor part of the same. In that eventuality, for my satisfaction, I directed him to produce the seized ammunition in the Court. On production, I found that only cartridge container was produced and same was without powder and cap.

42. Therefore, whether the cartridge with ammunition i.e. live cartridge comes under the minor ammunition and; whether without powder can it be said that the container is a minor ammunition?

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.

44. He is a renowned shooter. He won medal even in India. He is member of Riffle Club of Malaysia. Though he claimed trial, but that live cartridge may have left in his

bag while practice over there. He travelled through different places in India. It could not be detected on any other Airports. Therefore, it was not so alarming without firearms. Particularly, in such situation, he cannot be punished.

45. Though, the petitioner has not admitted recovery of the cartridge and claimed trial, however, even if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without fire arm is a minor ammunition which is protected under clause (d) of section 45 of the Arms Act.

46. In view of the above discussion, the aforesaid FIR No. 126/2011 registered at PS IGI Airport, charges framed against the petitioner vide order dated 18.08.2011 and all criminal proceedings emanating therefrom are hereby quashed.

14. The chargesheet filed in the case in hand i.e. in case FIR no. 158/2014 under Sections 25/54/59 Arms Act, PS IGI Airport also contains the report of Ballistic Expert, which is to the following effect:-

Results of Examination/opinion

(1) The exhibit 8mm/.315" cartridge marked "A1" was chambered & successfully test fired through exhibit country made pistol marked "F1" (pertinent to FIR No. 753/13 U/S. 307/34 IPC & 27 Arms Act PS : Nand Nagri, FSL 2014/F-2553). Hence, it is opined that exhibit 8mm/.315" cartridge marked A1" was live ammunition before it was test fired in the laboratory.

(2) The exhibit 8mm/.315" cartridge marked "A1" is ammunition as defined in Arms Act, 1959.

15. Ammunition has been defined u/s 2(b) of the Arms Act, 1959. Section 25 of the Arms Act provides offences and the penalties. Section 45(d) of the Arms Act, under which the present Petitioner is also seeking protection, reads as under:-

45. Act not to apply in certain cases-Nothing in this Act shall apply to-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(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 part acquired or possessed by that or any other person.

16. In Crl.M.C. No. 3576/2011 titled as Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State and Another, the live cartridge recovered from the Petitioner was test fired and as per the report of the Ballistic Expert, it was ammunition as defined in Arms Act, 1959. The bullet recovered from the present petitioner was also sent to FSL and as per report of the Ballistic Expert, the said bullet was ammunition as defined in

Arms Act, 1959.

17. A Coordinate Bench of this Court has held bullet to be a minor part of ammunition falling within the ambit of Section 45(d) of Arms Act, 1959 and FIR was ordered to be quashed on arriving at the conclusion that single cartridge without fire arm is a minor ammunition which is protected u/s 45(d) of Arms Act, 1959.

18. Since ammunition has been defined u/s 2(b) of Arms Act, 1959, bullet has been held to be ammunition by the Ballistic Expert (FSL).

19. A perusal of Section 45(d) of the Arms Act reveals that the Act does not apply to acquisition, possession or carrying by a person of "minor parts of arms and ammunition".

20. It is submitted by learned counsel for the Petitioner that a bullet is a minor part of arms and ammunition which is protected under Clause (d) of Section 45 of Arms Act and this view is fortified by observations made in the judgment of Chan Hong Saik thr. SPA Arvinder Singh vs. State & Ors. (Supra).

21. I am unable to appreciate the contention of learned counsel for the Petitioner. In my view, a live bullet cannot be considered as a minor part of arms and ammunition and hence, the Petitioner cannot claim any protection u/s 45(d) of the Arms Act, 1959.

22. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction on a question of law, propriety demands that the matter be referred to a larger Bench for resolution of the issue.

23. Since the Coordinate Bench of this Court has held differently holding that single cartridge without fire arm is a minor ammunition which is protected u/s 45(d) of Arms Act, 1959, the question for reference would be:

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?

24. In the circumstances, list the writ petition before Hon"ble The Chief Justice for constituting a larger bench for the decision of the above stated question.

25. Learned counsel for the Petitioner has submitted that the Petitioner is a Student and has sought admission in a course wherein the Semester is going to start next month. Apart from that, he is also required to be in United States of America so that his Social Security Card does not lapse. He requested that a date be given to him to appear before Hon"ble The Chief Justice to make request in the matter.

26. At the request of learned counsel for the Petitioner, the matter be listed on 25th July, 2014 before Hon"ble The Chief Justice for being referred to a larger Bench.