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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 06th September, 2024***

+ **W.P.(CRL) 3802/2023 & CRL.M.A. 35361/2023**

SARPREET SINGH JOHAL

.....Petitioner

Through: Mr. Jagmeet Singh Randhawa,
Advocate.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel,
Crl. for State.

S.I. Ashok, PS IGI Airport, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking to quash of FIR No. 0529/2023 dated registered under Section 25 Arms Act, 1959 (*hereinafter referred to as the "Act, 1959"*) at Police Station IGI Airport, Delhi.
2. The petitioner is the citizen of United Kingdom of Great Britain and later shifted to Germany in 2018 and started living there as a permanent resident. The petitioner and his brother are running the garment business in 7-8 major cities of Germany in the name and style of M/s Five Rivers Fashion GmbH which is a limited company registered in Germany.
3. The petitioner owns the agricultural as well as urban land and several business in Punjab, India. The family members of the petitioner are Indian citizens and are permanent resident of India.



4. On 28.08.2023, the petitioner was travelling to Amritsar, India from Frankfurt, Germany through New Delhi and was to take connected flight *via* New Delhi. At IGI Aiport, New Delhi, the petitioner's baggage was scanned at a security check and was thereafter referred for physical check. During the said check, five empty magazines were found in his check-in bag.

5. The petitioner has explained that a few years ago, Punjab Police apprehended criminals/gangsters and during the investigations, it was revealed that they were planning to target the petitioner and his family for ransom. The local Police warned the petitioner's family to be careful and thus, he and his brother got the weapon licences and also bought weapons for their protection and the same have never been misused by the petitioner.

6. Pertinently, the petitioner, his father and brother have licences for .45 pistol each. The copies of the armed licences are annexed with the petition.

7. The petitioner has submitted that he tried to explain the local Police that the magazines were old and rusted and were not available in India. The Security Officer, however, seized the empty magazines and registered the FIR No. 0529/2023 under Section 25 of the Act, 1959 at Police Station IGI Airport, Delhi.

8. Therefore, the petitioner has sought the quashing of the present FIR on the ground that the empty magazines recovered from his possession can be defined as minor ammunition and are exempted under Section 45(d) of the Act, 1959.

9. Moreover, the conscious possession is the core ingredient to establish the guilt of the offence under Section 25 of the Act, 1959. The possession of these empty magazines cannot be termed as conscious, as has been held in



the case of Chang Hong Siak Thr SPA: Arwinder Singh vs. State & Anr, 2012 SCC OnLine Del 3320, Gunwantlal vs. State of Madhya Pradesh, 1972 2 SCC 1994, Sanjay Dutt vs. State, 1994 (5) SCC 410.

10. Reliance has also been placed on the decision in Nurit Toker vs. State of Maharashtra, decided *vide* W.P.(CRL) 3569/20211 by the Constitution Bench of Apex Court, State of Karnataka vs. L. Muniswamy and Others, AIR 1977 SC 1189 and State of Haryana vs. Bhajan Lal, 1992, Supp. (1) SCC 335.

11. Therefore, the prayer is made that the FIR No. 0529/2023 under Section 25 of the Act, 1959 at Police Station IGI Airport, Delhi be quashed.

12. **The Status Report** has been filed on behalf of the State, wherein it is submitted on the directions of the Court, armed licences of the petitioner have been verified and are found to be in the name of the petitioner, his father, namely, Simarjeet Singh and his brother, namely, Alvel Singh Johal.

13. It is submitted that all three armed licences have been verified from the District Magistrate, Barnala, Punjab, and are found to be valid till December, 2026 in State of Punjab only.

14. It is further submitted that the empty magazines are covered in the definition of arms and ammunitions as defined in the Schedule 1 of the Arms Rules, 2016.

15. **Submissions heard.**

16. Admittedly, five empty magazines have been recovered from the possession of the petitioner while he was travelling to Amritsar, India from Frankfurt, Germany through New Delhi and was to take connected flight *via* New Delhi. At IGI Aiport, New Delhi, the petitioner's baggage was scanned at a security check and was thereafter referred for physical check.



During the said check, five empty magazines were found in his check-in bag.

17. The first thing which is required to be ascertained whether empty magazine recovered comes within the definition of arms and ammunition.

18. Section 2B of the Arms Act, 1959 is relevant which reads as under: -

“Section 2. Definitions and interpretation.—

(b) “ammunition” means ammunition for any firearm, and includes—

(i) rockets, bombs, grenades, shells [and other missiles,]

(ii) article 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.”

19. Sub-Clause (iv) of Section 2 (b) provides for charges for firearms and accessories for such charges.

20. Sub-Clause (vi) of Section 2 (b) provides for parts of, and machines for manufacturing, ammunition.

21. Section 2(e) of the Arms Act, 1959 defines firearms to mean arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy and defines



various artilleries and accessories which are included in the definition of firearm.

22. Section 25 of the Arms Act, 1959 further provides that any person, who is found in possession of any arm or ammunition in contravention of Sections 5 and 6 without a *licence*, is guilty of the offence with the punishment as defined therein.

23. The first aspect which comes up for adjudication would whether empty magazine comes within the definition of ammunition. As already discussed above, it is covered within the definition of Section 2(b) of the Arms Act, 1959 and is ammunition.

24. Learned counsel for the petitioner has argued that five empty magazines recovered from the possession is an offence in terms of Section 45(d) of the Arms Act, 1959 which provides for 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, would not come within the scope of this Act.

25. Learned counsel for the petitioner has placed reliance on the decision in Chang Hong Saik Thr. SPA: Arvinder Singh, (supra) to argue that the empty magazine is classified as minor ammunition and is, therefore, exempted under Section 45(d) of the Arms Act, 1959.

26. However, the judgment in Chang Hong Saik Thr. SPA: Arvinder Singh, (supra) relied on behalf of the petitioner had been overruled by the Division Bench of this Court in Sh.Gaganjot Singh vs. State, 2014 SCC OnLine Del 6885, wherein it was observed that a single cartridge/empty magazine is not a part of an ammunition, it is the whole ammunition and cannot be termed as minor ammunition. Therefore, it cannot be termed as a



minor ammunition falling under Section 45(d) of the Arms Act, 1959 and interpreted so, is contrary to the Act and erroneous. It was, therefore, held that single cartridge/empty magazine recovered from the possession of an individual is a minor part which is exempted from Section 45(d) of the Arms Act, 1959.

27. Pertinently, the word minor ammunition is not defined under the Arms Act, 1959 or in the Arms Rules, 2016. However, Rule 29 of the Arms Rules, 2016 defines main firearm component which means the barrel, frame or receiver, slide, bolt or breech-block of a firearm. From this definition of main components of a firearm, it can easily be inferred that such small parts which are not necessary for making up of arm, can be termed as a minor part.

28. Having held that Section 45(d) of the Arms Act, 1959 is not applicable and even a single empty magazine recovered from the possession of a person amounts to recovery of ammunition.

29. The second aspect which comes up for consideration is whether the petitioner can be termed in a conscious possession of the empty magazines.

30. The first pre-condition for an offence under Section 25(1)(a) of the Arms Act, 1959 is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession given holds it subject to that power and control.

31. In Ritesh Taneja vs. State and Another, 2022 SCC OnLine Del 971, it has been explained by the Co-ordinate Bench of this Court that conscious



possession of any firearm/ammunition entails strict liability on the offender.

32. In Gunwantlal, (supra), the Constitution Bench of the Apex Court observed as under: -

“the possession of a firearm under the Arms Act must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly, where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues besides physical possession being in someone else. The first pre- condition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control.”

33. In Gaganjot Singh, (supra), the Co-ordinate Bench of this Court observed as under: -

“12. As noticed previously, a solitary cartridge - which on examination by expert has been confirmed to be a live one -was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be cartridge and consequently it is “ammunition”, by itself that is insufficient to point to suspicion much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal case and Sanjay Dutt vs. State.



16. In *Chan Hong Saik v. State*, 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."

34. Similar, observations have made consistently by the Co-ordinate Bench of this Court in *Narinderjit Kaur Singh vs. State (NCT of Delhi)* decided vide W.P.(CRL) 1669/2017 and *Nimesh Kumar vs. State of NCT of Delhi*, decided vide W.P.(CRL) 3540/2017.

35. In *Sanjay Dutt*, (supra), the Constitution Bench of the Apex Court had reiterated as under: -

"The meaning of the first ingredient of "possession" of any such arms etc. is not disputed. Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public



Prosecutor, Federation of Malaya, (1950) AC 458.”

36. The circumstances in which the empty magazine was recovered from his possession have been explained by the petitioner who has stated explained that a few years ago, Punjab Police apprehended criminals/gangsters and during the investigations, it was revealed that they were planning to target the petitioner and his family for ransom. The local Police warned the petitioner’s family to be careful and thus, he and his brother got the weapon licences and also bought weapons for their protection and the same have never been misused by the petitioner.

37. In the light of the aforesaid judgments, it is evident that the recovery of empty magazine, from the bag of the petitioner, which he was legally permitted to possess, does not disclose commission of any offence punishable under Section 25 of the Arms Act, 1959. The circumstances as explained by the petitioner clearly establish that there was neither criminal intent.

38. Therefore, the essential ingredient for constituting an offence under Section 25 of the Arms Act, 1959 is not established.

39. Accordingly, FIR bearing No. 0529/2023 registered at Police Station IGI Airport, Delhi, for offence punishable under Section 25 of the Act, 1959 and all consequential proceedings emanating there from are quashed.

40. The present petition along with pending application is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 6, 2024

S.Sharma