

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

% *Judgment pronounced on : 11th August, 2015*

+ **CRL.M.C. 4207/2014 & CrI.M.A.No.14518/2014**

JASWINDER SINGH Petitioner
Through Mr. Maninder Singh, Adv. with
Ms. Aekta Vats, Mr. Jaskaran
Sibia, Mr. Dinhar Takiar,
Mr.Prateek Sisodia, Adv.
versus

STATE GOVT. OF NCT OF DELHI & ANR. Respondents
Through Mr. M.N. Dudeja, APP for the
State along with SI Rajiv Gulati,
PS IGI Airport in person

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of the FIR bearing No.302/2013, under Section 25/54/59 of the Arms Act, 1959 registered at P.S. IGI Airport, the charge-sheet filed therein as well as the summoning order dated 31st July, 2014 and all proceedings emanating there from which are pending before ACMM, Patiala House Courts, New Delhi.

2. The case of the prosecution is that on 5th October, 2013 a complaint was received at P.S. IGI Airport, Delhi from SI Vikas Kumar CISF No.022240071 that while he was performing his duty at X-ray Machine No.X-BIS-06, Intl. SHA (Security Hold Area), Departure

Wing IGI Airport Delhi, during the scanning of petitioner's hand bag, one live cartridge of .32 calibre was detected. On physically checking the handbag, one live cartridge was found inside the handbag and on questioning, the petitioner could not give any satisfactory reply and therefore, on the said complaint, the case vide FIR No.302/2013 dated 5th October, 2013 under Section 25/54/59 of Arms Act was registered at P.S. IGI Airport, Delhi. On that day, the petitioner was departing for Guangzhao by China Southern Airlines Flight No.CZ-3028 on the strength of his Indian Passport No.H-80280651.

2.1 During the course of investigation, the above said live cartridge was taken into police possession through seizure memo and then deposited in PS Malkhana. After that, the petitioner was interrogated and he stated that he is serving as a Sub-Inspector in 80th Battallion, Punjab Armed Police and he was departing to meet his family who is settled in California, USA. He also stated that he borrowed the said handbag from one of his friend, namely, Inderjeet Singh who is holding a valid Arms Licence in Punjab. As he did not check the bag thoroughly and had put the clothes inside the handbag without checking the same, so the said cartridge was detected from his handbag during the scanning at IGI Airport.

2.2 The petitioner was arrested in this case as he could not provide any valid licence/document regarding the possession of the live cartridge. He was produced before the MM, Patiala House Court, Delhi and he was released on bail vide order dated 6th October, 2013. The statements of witnesses were recorded who stated that his handbag was checked in their presence and on checking one live

cartridge was recovered. The seized cartridge was deposited at FSL Rohini, Delhi for ballistic/expert opinion and the FSL report. The FSL report was procured and the same revealed that the cartridge recovered from the accused is .32 calibre and the same is a live one which can be fired through .32 calibre firearm. It has test fired successfully. The same is ammunition as defined in Arms Act, 1959.

3. The charge-sheet was prepared against him after getting the sanction under Section 39 of the Arms Act and the same had been filed in the Court of ACMM, Patiala House Court, New Delhi. The notice had been issued to petitioner.

4. The petitioner's case is that on the bare perusal of the charge-sheet filed by the police, it evidently shows that there is no evidence against the petitioner of possessing any live cartridge except the statements of the police personnel present at the spot.

5. No live cartridge was ever recovered from the possession of the petitioner or his bag, and the FIR and the subsequent proceedings deserve to be quashed. There were many public witnesses present at that time but none of them were made witnesses to the alleged recovery nor were asked to join investigation.

5.1 It is stated that since the petitioner had borrowed the said bag from which the allegedly recovery was made from, the live cartridge could have been of his friend, namely Inderjeet Singh S/o Ravinder Singh R/o Jyoti Nagar, Jalandhar, who holds a valid Arm License of .32 bore in Punjab and that he inadvertently forgot to check the said bag thoroughly and put his clothes inside the handbag without

checking the same. The petitioner told the police officers that it was not his bullet as he is also serving as Police Officer in Punjab police and he has been issued a 9 mm pistol.

6. On 31st July, 2014, the ACMM, Patiala House Court, New Delhi took cognizance of the matter and directed that the petitioner be summoned for the next date of hearing, i.e. 10th November, 2014.

7. Feeling aggrieved by the said FIR as well as the summoning order and the charge-sheet, the petitioner has filed the present petition.

8. Questions of law arising in the present petition are as under :

- a) Whether a cartridge is complete ammunition within the meaning of Section 2(b) of Arms Act or minor part of ammunition as referred to in Section 45(d) of the Arms Act?
- b) Whether the conscious possession is not the core ingredient to establish the guilt for the offence under Section 25 of the Arms Act, 1959?
- c) Whether the expression 'possession' occurring in the Section 25 of the Arms Act, 1959, means possession with the requisite mental element, i.e. conscious possession and mere custody without the awareness of the nature of such possession doesn't amount to any offence of the Arms Act?
- d) Whether the possession of any fire arm/ ammunition must not be a conscious possession and only then will the ingredient of possession in similar context of a statutory offence, importing strict liability on account of mere possession of an unauthorized substance be understood?

- e) In the absence of the accused having conscious possession of a live cartridge, whether he is entitled to get quashed all the proceedings arising out of the FIR in order to secure justice at an early date?
- f) If two possible and reasonable constructions can be put upon a penal provision, can the Court lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty?

9. Both sides have made their submissions and they have also relied upon various decisions in support of their submissions.

10. It is settled law that the expression 'possession' occurring in the Section 25 of the Arms Act, 1959 means possession with the requisite mental element, that is, conscious possession and mere custody without the awareness of the nature of such possession does not amount to any offence of the Arms Act. The possession of any fire arm/ ammunition must be a conscious possession, and only then will the ingredient of possession in similar context of a statutory offence, importing strict liability, on account of mere possession of an unauthorized substance be understood.

11. The Constitutional Bench of the Supreme Court in **Sanjay Dutt v. State**, 1994 (5) SCC 410 held in para 19 that, *"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 unauthorized substance has been understood."

12. The Division Bench of the Bombay High Court in **Nurit Toker v. State of Maharashtra**, 2012 BomCR(Cri) 154 relied upon the decision of Constitution Bench of the Supreme Court in the case of **Sanjay Dutt** (supra) and quashed the FIR on the grounds that there was no conscious possession and observed in para 11 that ".....that there was no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, as it was not a case of conscious possession of two live cartridges recovered from the baggage of the petitioner."

13. In the absence of the petitioner having conscious possession of a live cartridge, it is right to end all proceeding arising out of the FIR in question, to secure the ends of justice as there is no application of offences as per Arms Act. The Orissa High Court in **William Michael Hurtubise v. State of Odisha** (2014) 117 CLT 303 applied the principles laid down in **Sanjay Dutt** (supra) and **Nurit Toker** (supra) quashed the FIR and observed as under:

"8. The Division Bench of the Bombay High Court in relying upon the Constitution Bench decision of the apex Court in the case of **Sanjay Dutt v. State** through CBI, Bombay, 1994 5 SCC 410, came to hold that merely because

the petitioner was found to be carrying two live cartridges which were detected during screening of her baggage at Mumbai International Airport, the same cannot constitute conscious possession in order to establish the guilt for commission of offences under Sections 3 and 25 of the Act.

16. The law is well settled that conscious possession is a core ingredient to establish the guilt for the offence under Section 25 of the Act and the Apex Court in Sanjay Dutt (supra), while dealing with a case under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, has held that the expression 'possession' occurring in the Section 5 of the said Act 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, which means that the possession must be conscious possession. The Apex Court has held that only then the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has to be understood.

17. Applying the said principles, as discussed above, ... that the petitioner had left behind 8 nos. of 0.22 mm bullets in his handbag by mistake and/or inadvertent oversight, when he started his journey from USA. He was not aware of its presence in his handbag till it was detected by the security personnel during screening of his baggage at the Bhubaneswar Airport and therefore it was not a conscious possession. ... Admittedly no firearm or weapon has been recovered from him. Therefore, no offence under Section 25 of the Act is made out against the petitioner and allowing continuance of the criminal proceeding against him would be an abuse of the process of Court."

14. The Constitution Bench of the Supreme Court in the case of ***Gunwantlal v. The State of Madhya Pradesh***, (1972) 2 SCC 194 in

Para 5 explained the meaning of possession in the context of Section 25 of the Arms Act and held as under:-

“The possession of the Arms under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charge with such offence and secondly where he has not the actual physical possession, he has nonetheless a power and control over that weapon so his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who lives and unlicensed gun in that house hut is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of house during the day and in the mean time someone concealed a pistol in his house and during his absence, the police arise and discover the pistol, he cannot be charge with the offence unless it can be shown that he had been knowledge of the weapon being placed in the house.”

The Supreme Court further held that:-

“As we said earlier, 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 fire arm before it can be said 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 hold it subject to their power and control.”

15. The present case is covered by the above said decisions of the Supreme Court as the prosecution has failed to prove that the possession was conscious possession and therefore, on the basis of

mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959.

16. Even the Division Bench of this Court in the case of **Gaganjot Singh v. State**, W.P.(Crl) No. 1169/2014 decided on 1st December, 2014, relied on the judgement of Constitution Bench of **Sanjay Dutt** (supra) as well as **Gunwant Lal** (supra) and quashed the FIR and subsequent proceedings in the case while holding in Para 12 as under:

"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 a 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 trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in **Gunwantlal** (supra) and **Sanjay Dutt** (supra)."

17. Following the dictum of earlier cases, Single Bench of this Court in the case of **Juan Manuel Sanchez Rosas vs. State (Through NCT Delhi & Anr.)**, Crl. M.C. No. 2642/2014, decided on 29th April, 2015 wherein it was held that petitioner, a Lt. Col. in the Armed Forces of Columbia was returning back to his country after participating in the 6th International Defence Exhibition held in New

Delhi and on checking of his baggage at the Airport, two live bullets of 9 mm were found. A case under Sections 25/54/59 of the Arms Act, 1959, was registered and charge sheet was filed along with the copy of FSL report. This Court relied on ***Gunwant Lal*** (supra) and ***Sanjay Dutt*** (supra) as well as ***Manueal R. Encarnacion v. State Through NCT of Delhi & Anr.***, CrI M.C. No.1455/2014 decided on 22nd May, 2014. The FIR, charge sheet and all subsequent proceeding was quashed and it was held that it could not be proved that the petitioner was in conscious possession and there was no reason to discard his stand. The case of the petitioner is squarely covered with the above said judgment and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed.

18. It is the settled rule of construction of penal provisions that if there is reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction and if there are two reasonable construction we must give the more lenient one and if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempt the subject from penalty rather than the one which imposes penalty.

19. The trial Court in the present case did not verify the genuineness of the case of the prosecution which has caused immense hardship and prejudice to the petitioner who has been put

to trial. The ACMM has passed the order by taking the cognizance in a mechanical manner as per the case of the prosecution. Even the prosecution has not investigated the friend of the petitioner, i.e. Inderjeet Singh who allegedly held a valid Arm Licence of .32 Calibre and from him the petitioner had borrowed the bag which contained the alleged live cartridge. Nothing contrary is placed to show that the petitioner had knowledge or had conscious possession of the alleged cartridge even if the story of the prosecution is believed. It is settled law that in the absence of the conscious possession of a live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act shall be applicable and it would be justified to end all such proceedings to secure the ends of justice.

20. With regard to the arguments addressed by the learned APP for the State that the Court has limited jurisdiction to interfere with the summoning order, it is true that normally, while exercising the discretion, the High Court should not interfere, unless it is found from the impugned order passed by the trial Court that it is a perverse order and against the law. However in the present case the trial Court has not discussed the law laid down by the Supreme Court and High Courts on this aspect and passed a non-speaking order. The High Court therefore has jurisdiction to examine the law.

20.1 The Supreme Court in ***State of Karnataka v. L. Muniswamy and Others*** AIR 1977 SC 1489, observed as under:-

“ In the, exercise of this whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require

that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

20.2 In ***State of Haryana v. Bhajan Lal***, 1992, Supp. (1) SCC 335, the Supreme Court has observed in Para 102 as under:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Article 482 of the Code which have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value

and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) XXX

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) XXX

(5) XXX

(6) XXX

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

21. For the aforesaid reasons and circumstances in the present case and in the light of the observations, the FIR along with the subsequent proceedings in the present case is to be quashed.

22. The prayer is accordingly allowed by passing the order for quashing the FIR bearing No.302/2013 registered at P.S IGI Airport, New Delhi and the charge-sheet and the summoning order dated 31st July, 2014 and all proceedings emanating there from pending before ACMM, Patiala House Courts, New Delhi.

23. No costs.

(MANMOHAN SINGH)
JUDGE

AUGUST 11, 2015