

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

Judgment delivered on: 6th January, 2016

+ CRL.M.C. 471/2015

SONAM CHAUDHARY Petitioner
Represented by: Mr. Sushil Kumar Jain,
Advocate.

Versus

THE STATE (GOVT OF NCT DELHI) Respondent
Represented by: Mr. Mukesh Kumar, Additional
Public Prosecutor for State.

AND

+ CRL.M.C. 3172/2015 & Crl. M.A. No.11317/2015

KUNDAN KUMAR SRIVASTAVA Petitioner
Represented by: Mr. Bhupendra Pratap Singh and
Mr. K.V. Sreemithun,
Advocates.

Versus

STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Mr. Hirein Sharma, Additional
Public Prosecutor for State with
SI Tribhuvan Singh, PS IGI
Airport.

AND

+ CRL.M.C. 4221/2015 & Crl. M.A. 15091/2015

NITIN VERMA Petitioner

Represented by: Mr. Maninder Singh, Mr. Sanjay
Chaubey, Ms. Smriti Asmita,
Ms. Aekia Vats, Mr. Piyush and
Mr. Diwhar Takiar, Advocates

Versus

STATE (GOVT OF NCT OF DELHI) & ANR. Respondents
Represented by: Mr. Hirein Sharma, Additional
Public Prosecutor for State with
SI Ram Charan Singh, PS
Domestic Airport.

AND

+ **CRL.M.C. 4493/2015**

DHARMENDRA SINGH Petitioner
Represented by: Mr. Yudhvair Singh Chauhan,
Mr. Yogendra Verma,
Mr. Praveen Kumar, Mr. Arungv
Tiwari and Mr. Nitin Garg,
Advocates along with Petitioner.

Versus

THE STATE (GOVT OF NCT DELHI) Respondent
Represented by: Ms. Meenakshi Chauhan,
Additional Public Prosecutor
for State with SI Tribhuvan
Negi, PS IGI Airport.

AND

+ **CRL.M.C. 4786/2015**

RONALD ALBERT CASANOVA Petitioner
Represented by: Mr. Mohit Mathur, Senior
Advocate with Mr. Vijay

Sondhi, Mr. Anirban
Bhattacharya and Mr. Varun
Sharma, Advocates.

Versus

STATE (GOVT. OF NCT DELHI) Respondent
Represented by: Mr. Mukesh Kumar, Addl.
Public Prosecutor for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, (hereinafter to be referred as 'Cr.P.C.') seeking quashing of the FIRs bearing Nos. 31/2012 (Crl. M.C. No.471/2015), 251/2013 (Crl. M.C. No.3172 /2015), 39/2014 (Crl. M.C. No.4221/2015), 99/2014 (Crl. M.C. No.4493/2015) and 464/2015 (Crl. M.C. No.4786/2015).

2. Before proceeding further, it would be relevant to narrate the facts of each petition in brief.

Crl.M.C. No. 471/2015:-

3. The case of the prosecution is that on 15.08.2012, a complaint was received at P.S. Yamuna Bank, New Delhi, from Constable Ganesh Mandal, CISF No.0946400083 that while performing duty at Anand Vihar Metro Station at X-Ray Machine from 2.00 PM to 10.00 PM, during the scanning of petitioner's hand bag, one live cartridge of

8mm/315 calibre was detected. On physically checking the handbag, one live cartridge was found inside the handbag and on questioning, since the petitioner could not give any satisfactory reply and failed to produce any license for the said cartridge, therefore, on the said complaint, case vide FIR No.31/2012 under Section 25 of the Arms Act, 1959 (hereinafter to be referred as 'the Act') was registered at Police Station Yamuna Bank, New Delhi, against the petitioner.

4. During the course of investigation, the above said live cartridge was taken into police possession through seizure memo and sent to FSL Rohini for examination. Vide FSL report dated 26.11.2012, recovered cartridge opined of 8mm/315 calibre. The petitioner was arrested in this case as she could not provide any valid licence/document regarding the possession of the live cartridge. She was produced before the learned Metropolitan Magistrate, Karkardooma Courts, Delhi, and released on bail vide order dated 17.08.2012.

5. The petitioner's case is that she had no knowledge about the presence of any bullet/live cartridge in her bag and when she was informed by the DMRC Officials about the same, the petitioner was shocked and surprised. Moreover, it was the same bag carried by her during her journey from her native place at Village Panni, Police Station Kotwali, District Muzaffar Nagar, UP to Delhi and accordingly, reached Anand Vihar Metro Station.

Crl.M.C. No.3172/2015:-

6. The case of the prosecution is that on 20.08.2013, a complaint

was received at P.S. IGI Airport, New Delhi, from ASI/EXE P.K. Martha, who while performing duty at X-BIS No.04 [Intl SHA (Security Hold Area)] detected three live ammunition of 0.325 calibre in a hand baggage belonging to the petitioner, who was travelling by Thai Airways Flight No.TG-316 to Bangkok. On physically checking the hand baggage by ASI Basant Kumar, three live cartridges were found inside the handbag and on questioning, since the petitioner could not give any satisfactory reply and failed to produce any license for the said cartridges, therefore, on the said complaint, case vide FIR No.251/2013 under Section 25 of the Arms Act was registered at Police Station IGI Airport, New Delhi, against the petitioner.

7. The petitioner's case is that he had no knowledge about the presence of any bullets/live cartridges in his bag. Even otherwise the cartridges were found between two layers of the bag reflecting forced entry therein. The petitioner is a senior software engineer in a reputed company and was on an official foreign trip. Thus, he would not dare to spoil his career by carrying bullets in a high security zone area where detection is certain. Moreover, the petitioner has never been involved in any case and has no case history.

Crl.M.C. No.4221/2015:-

8. The case of the prosecution is that on 28.05.2014, a complaint was received at P.S. IGI Airport, New Delhi, from SI/EX Vinay Kumar, CISF No.003250217, that while performing duty on X-BIS G during screening of hand bag of the petitioner, who was travelling to Kolkatta

by SG-104, one round live cartridge of 7.65mm calibre was detected. On questioning, though the petitioner told that the same belongs to his father Mr. Narender Kumar Verma, however, failed to produce any license/documents for the said cartridge, therefore, on the said complaint, case vide FIR No.39/2014 was registered at Police Station Domestic Airport, New Delhi, for the offence punishable under Section 25 of the Act.

9. During the course of investigation, the above said live cartridge was taken into police possession through seizure memo and sent to FSL, Delhi for Ballistic examination and expert opinion. Vide report dated 13.08.2014, it was opined that ammunition of 7.65 mm sent for examination is live and is an ammunition as defined in the Arms Act, 1959. The petitioner was arrested in this case as he could not provide any valid licence/document regarding possession of the live cartridge, however, released on 'Pabandinama' of himself and his father on the same day by the respondent No.2.

10. The petitioner's case is that he had borrowed the said bag from which the alleged recovery was made and the same could have been of his father, namely, Shri Narender Kumar Verma, who holds a valid Arm Licence in Delhi and that the petitioner, inadvertently forgot to check the said bag thoroughly and put his clothes inside the handbag without checking the same. He had no knowledge about the presence of any bullet/live cartridge in his bag and when he was informed by the Officials about the same, the petitioner was shocked and surprised.

Crl.M.C. No.4493/2015:-

11. The case of the prosecution is that on 21.03.2014, a complaint was received at P.S. IGI Airport, New Delhi, from ASI/EXE Kaushik Patadia that during screening of hand baggage of the petitioner, who was travelling by flight No.9W 2824 to Dehradun, one round live cartridge of 92 mm bore was detected. On questioning, since the petitioner could not give any satisfactory reply and failed to produce any license for the said cartridge, therefore, on the said complaint, case vide FIR No.99/2014 under Section 25 of the Arms Act was registered at Police Station IGI Airport, New Delhi, against the petitioner. On interrogation, the petitioner disclosed that the recovered live cartridge belongs to his father-in-law, namely, Mr. Hitender Pal Singh, who owns a licensed rifle.

12. During the course of investigation, the above said live cartridge was taken into police possession through seizure memo and sent to FSL for examination, whereby it was opined that:-

- (i) the physical examination of exhibit marked 'A-1' showed that it is an improvised cartridge made for country made firearm.
- (ii) the exhibit improvised cartridge marked 'A-1' was chambered and successfully test fired through exhibit country made pistol marked 'F1'. Hence, opined that the said exhibit improvised cartridge is an ammunition as defined in the Arms Act, 1959.

13. The petitioner was arrested in this case as he could not provide

any valid licence/document regarding possession of the live cartridge. He was produced before the learned link Additional Chief Metropolitan Magistrate-01, Patiala House Courts, New Delhi, and released on bail vide order dated 22.03.2015.

14. The petitioner's case is that he has no previous criminal history. He was not aware about the presence of any bullet/live cartridge in his hand bag. It is stated that the petitioner had borrowed the said bag from his father-in-law and inadvertently forgot to check the same thoroughly before putting his clothes inside the handbag.

Crl.M.C. No.4786/2015:-

15. Brief facts of the case are that on 29.10.2015, a complaint was received at P.S. IGI Airport, New Delhi, from Amit Malhotra that while performing his duty at 0230LT from screening area level 4 a bag from EK513/29Oct has been called for physical search with tag No.EK946613 belonging to the petitioner, who was boarding flight to Seattle via Dubai. On checking, one 5.56 mm live bullet was found inside the bag. Since the petitioner could not produce any documents supporting possession of bullet, therefore, on the said complaint, case vide FIR No.464/2015 was registered at Police Station IGI Airport, New Delhi, for the offence punishable under Section 25 of the Act against the petitioner.

16. The petitioner was arrested in this case as he could not provide any document regarding possession of the live cartridge. He was released on furnishing an undertaking that he would not leave India

without the permission of the concerned Court.

17. The petitioner's case is that he is an Ex-Police Officer and is currently working as Senior Security Specialist, Protective Operations for Bills and Melinda Gates Foundation, which is the largest private charitable foundation in the World. The petitioner holds a valid Firearm license/permit bearing No.E996592 issued by the Kirkland Police Department valid upto 11.07.2016 and is permitted to keep a fire arm and ammunition since the nature and job responsibilities of the petitioner require him to possess one. Moreover, it was the same bag carried by him during the business trip as he came to New Delhi on 21.10.2015 by Flight Nos. EK0228 and EK 0514 via Dubai, took another flight from Delhi to Lucknow on 26.10.2015 on a private charter aircraft and his luggage went through regular screening process at security checks at all the Airports.

18. It is pertinent to mention here that all the petitions noted above are covered by two issues raised during arguments. Firstly, provisions of the Arms Act, 1959, do not apply in certain cases where 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 parts acquired or possessed by that or any other person, as provided under Section 45(d) of the Act. Secondly, as per the provisions of Section 25 of the Act, possession of any firearm/ammunition must be a 'conscious possession', meaning thereby possession with the requisite mental element and mere custody without

the awareness of the nature of such possession does not amount to any offence under the Arms Act.

19. Attention of this Court was drawn to the decision of the Supreme Court in the case of ***Gunwantlal Vs. The State of Madhya Pradesh, AIR 1972 SC 1756*** to submit that the possession of a firearm must be conscious to entail prosecution under the Arms Act.

20. Reliance was placed upon the decision of ***Sanjay Dutt Vs. State Through CBI, Bombay (1994) 5 SCC 410***, wherein the Supreme Court held that for an offence punishable under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, the prosecution is required to prove that possession of firearms was conscious one.

21. Since all the aforementioned petitions raise the identical issues, therefore, arguments were heard together in these petitions and the same are being disposed of by this common judgment.

22. As regards the first issue qua exemption under Section 45(d) of the Act, this issue is no more *res integra* as the same has been decided by the Division Bench of this Court in the case of ***Gaganjot Singh Vs. State 2014 Law Suit (Del) 4968***, wherein observed as under:-

“11. In Gunwantlal (supra), the Supreme Court emphasized the necessity for the prosecution to prove that possession of the arm or ammunition is a conscious one:

“5.....The possession of a firearm under the Arms Act in our view 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 none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else.”

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As we said earlier, 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.”

This position was reiterated by the Constitution Bench in Sanjay Dutt (supra):

“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. (See Warner v. Metropolitan Police Commissioner 1969 (2) AC 256 and Sambasivam v. Public Prosecutor, Federation of Malaya. 1950 AC 458.)”

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 (supra) and Sanjay Dutt (supra).”

23. With respect to the second issue of ‘conscious possession’, it is settled law that the expression ‘possession’ occurring in Section 25 of the Act, means possession with the requisite mental element, i.e., ‘conscious possession’, however, 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.

24. The Constitutional Bench of the Supreme Court in *Sanjay Dutt’s* case (supra) observed as under:-

“19. 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."

25. The Division Bench of the Bombay High Court in ***Nurit Toker Vs. 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 by observing 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.

26. The Orissa High Court in ***William Michael Hurtubise Vs. State of Odisha and Ors. 117 (2014) CLT 303*** applied the principles laid down in the cases of ***Sanjay Dutt*** (*supra*) and ***Nurit Toker*** (*supra*) and quashed the FIR by observing as under:

"7. 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."

27. The Constitution Bench of the Supreme Court in the case of ***Gunwantlal*** (*Supra*), in Para 5 explained the meaning of ‘possession’ in the context of Section 25 of the Arms Act and held as under:-

“5.....The possession of a firearm under the Arms Act in our view 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 none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but 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 the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house.....”

28. The Supreme Court further held that:-

“5.....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.....”

29. Even the Division Bench of this Court in the case of ***Gaganjot Singh*** (*supra*), relied upon the judgements of Constitution Bench of

Sanjay Dutt (supra) as well as *Gunwant Lal (supra)* and quashed the FIR and subsequent proceedings in that case.

30. Following the dictum of earlier cases, this Court in the case of *Juan Manueal Sanchez Rosas Vs. State (Through NCT Delhi & Anr.)*, *Crl. M.C. No. 2642/2014*, decided on 29.04.2015, it was held that petitioner, a Lieutenant Colonel 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 of the Arms Act, 1959, was registered and charge sheet was filed along with the copy of FSL report. This Court relied upon *Gunwant Lal (supra)* and *Sanjay Dutt (supra)* as well as *Manueal R. Encarnacion Vs. State Through NCT of Delhi & Anr.*, *Crl M.C. No.1455/2014* decided on 22.05.2014. Accordingly, the FIR, charge sheet and all subsequent proceedings were quashed by observing that it could not be proved that the petitioner was in conscious possession and there was no reason to discard his stand.

31. Recently, this Court in the case bearing *Crl.M.C.No.4207/2104*, titled as '*Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.*', decided on 11.08.2015, held that since 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. Accordingly, while allowing the petition noted above, this Court quashed the FIR, summoning order and all proceedings emanating therefrom.

32. Thus, the law is well settled that ‘conscious possession’ is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.

33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua the petitioners under the Arms Act, 1959.

34. Therefore, applying the said principles of law, as discussed above, and considering the fact that the petitioners had left behind the live cartridge/cartridges in their luggage by mistake and/or inadvertent oversight, when they started their respective journeys and that the petitioners were not aware of the presence of the live cartridge/cartridges in their handbags till the same were detected by the security personnel during screening of the baggages at the concerned places, it can be safely inferred that the said possession does not fall within the ambit of ‘conscious possession’. Admittedly, no firearm or weapon has been recovered from any of the petitioner and they have not extended any threat to any person or police official, hence, no offence under Section 25 of the Act is made out against any of the petitioner. Therefore, allowing continuance of the criminal proceedings against them would be an abuse of the process of Court.

35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed.

36. Keeping in view the law discussed above, the facts and circumstances of each case and in the light of the aforementioned observations, the FIRs noted above alongwith subsequent proceedings are hereby quashed against the petitioners.

37. The present petitions alongwith pending applications stand disposed of accordingly.

**SURESH KAIT
(JUDGE)**

JANUARY 06, 2016
Sb/jg