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

+ CRL.M.C. 522/2017 & CrI. M.A. No. 2267/2017

IQRAMUL HAQ SHAMSI Petitioner
Through : Mr. Dinhar Takiar, Mr. Rishi Sood
and Ms. Aekta Vats, Adv.

versus

STATE OF DELHI Respondent
Through :Ms. Manjeet Arya, APP with SI
Vasant Kumar, P.S. IGI Airport

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **23.08.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 341/2014 under Section 25 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport, may be quashed.

Brief facts are that petitioner is a resident of Moradabad, Uttar Pradesh aged about 70 yrs. He was travelling from New Delhi to Mumbai by Air India flight no. AI-624 on 20th September, 2014. On screening of his baggage by the X-ray machine, one live cartridge of 0.32 bore was recovered from his handbag. Consequently, aforesaid FIR was registered at Police Station IGI Airport on the complaint of ASI Panduranga Rao, CISF

(DOM SHA). Charge-sheet has been filed. Trial is pending.

Learned counsel for the petitioner has contended that petitioner has a valid arms licence issued by the City Magistrate, Moradabad, Uttar Pradesh (Annexure P/2). He was possessing arms and ammunition, pursuant to the said licence. One live cartridge remained in the handbag inadvertently and he did not notice the live cartridge in his handbag when he started his journey from Moradabad and came to know about it only at the airport . Petitioner was not in 'conscious possession' of one live cartridge. Therefore, ingredients of Section 25 of the Act are not attracted. Reliance has been placed on Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994, Nurit Toker vs. The State of Maharashtra, 2012 Bom CR (Cri) 154, William Michael Hurtubise vs. The State of Odisha and Ors. MANU/OR/0016/2014, Gunwantlal vs. the State of Madhya Pradesh, MANU/SC/0130/1972 and Gaganjot Singh vs. State, MANU/DE/3227/2014.

Status report has been filed by the State. Learned APP has admitted that petitioner holds a valid licence issued by the competent authority; Meaning thereby, petitioner could have possessed the arms and ammunition within the territorial bounds of Moradabad. Case of the petitioner is that one

live cartridge remained in his handbag inadvertently, which he did not notice when he started his journey from Moradabad, Uttar Pradesh. The plea taken by the petitioner is a plausible plea. There is nothing to indicate that petitioner was in 'conscious possession' of a live cartridge, which was recovered at the IGI Airport from his handbag.

In Sanjay Dutt (supra), Supreme Court held, thus, "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." During the investigation, no material could be collected by the Investigating Officer to show that the petitioner was in conscious possession of a live cartridge.

For the foregoing reasons, FIR No. 0341/2014 under Section 25 of the Act registered at P.S. IGI Airport and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

AUGUST 23, 2017

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