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

+ CRL.M.C. 651/2017

MRS MAMTA DWIVEDI

..... Petitioner

Through: Mr. Rakesh U. Upadhyay and Ms.
Aarti U. Mishra, Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. M.S. Oberoi, APP with SI
Mukesh, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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29.11.2017

By this petition under Section 482 of the Code of Criminal Procedure, 1973, petitioner has prayed for quashing of FIR No. 25/2015 under Section 25 of the Arms Act registered at police station I.G.I. Airport, on the complaint of Assistant Sub Inspector, CISF posted at I.G.I. Airport.

Brief facts of the case are that petitioner was travelling from Indore to Varanasi via Delhi. She landed at Delhi Airport by Air India Flight No. 635. She was to board Air India Flight No. 406 at 1200 hours for going to Varanasi. She was a transit passenger at Delhi Airport. During the security check of her hand bag, 5 live cartridges of .32 mm were noticed in her purse and recovery thereof led to the registration of aforesaid FIR.

Learned counsel for the petitioner submits that petitioner was not in

‘conscious possession’ of these 5 live cartridges which was found in her bag. Petitioner’s husband is an Assistant Excise Officer posted at Indore. He is having a valid licence. Petitioner’s husband was having a .32 bore pistol. He kept his pistol and live cartridges in the purse of the petitioner when he came to drop the petitioner at Indore Airport. While going back, petitioner’s husband took out his pistol from petitioner’s bag but inadvertently forgot to take out the cartridges. Petitioner also did not notice these cartridges. Petitioner had not come out of the Airport as she was a transit passenger, thus could not have required the same at Delhi. Petitioner was herself astonished to find at the security check-in area that five live cartridges were there in her bag.

Learned APP, on instructions of Investigating Officer, submits that during the investigation licence of petitioner’s husband has already been verified. Petitioner’s husband is indeed having an arms licence, duly issued by the competent authority at Indore.

In the above facts, the plea taken by petitioner appears to be a plausible and probable plea. No material could be collected by the Investigating Officer, during the investigation, to indicate that petitioner was in ‘conscious possession’ of the recovered live cartridges.

It is trite law that to attract the ingredients of offence under Section 25 of the Arms Act, prosecution has to show that accused was in 'conscious possession' of the arms and ammunition. Reliance can be safely placed on Sanjay Dutt vs. State 1994 (5) SCC 410, Nurit Toker vs. State of Maharashtra 2012 BomCR (Cri) 154, Gunwantlal vs. The State of Madhya Pradesh (1972) 2 SCC 194 and Gaganjot Singh vs. State 2014 Law Suit (Del) 4968.

For the foregoing reasons, aforesaid FIR and the consequent proceedings emanating therefrom are quashed.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

NOVEMBER 29, 2017

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