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

+ CRL.M.C. 420/2016

ESA KOROLAINEN

..... Petitioner

Through :Mr. Amit Singh Chauhan, Mr.
Deepak Thakur and Mr. Vaibhav
Chaudhary, Advs.

versus

STATE, NCT OF DELHI

..... Respondent

Through :Ms. Manjeet Arya, APP with SI
Rajiv Gulati Kumar, P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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23.08.2017

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 0021/2016 under SectionS 25/54/59 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 National of Finland. He is the director of a company named Elemantic(Finland) which deals in production and marketing of precast moulds and machineries and has its subsidiary unit at Alwar,Rajasthan because of which the petitioner is a frequent traveller to

India. He was travelling from Delhi to Pune on 13th January, 2016 by Flight No. 9W 0365. On screening of his baggage by the X-ray machine at the IGI airport, one live cartridge of (308 WIN SAKO 14 calibre) was recovered from his handbag. Consequently, aforesaid FIR was registered at Police Station IGI Airport on the complaint of SI Santosh Kumar Yadav. The matter is pending investigation and charge-sheet has not been filed.

Learned counsel for the petitioner has contended that petitioner has a valid arms licence issued by the competent authority of Finland (Annexure P/4). He was carrying arms and ammunition, pursuant to the said licence. It is further submitted that live cartridge remained in the handbag inadvertently when he started his journey from Finland. He had gone through several security checks at multiple airports and was not aware of its presence in his handbag until it was detected at the IGI Airport. Petitioner was not in 'conscious possession' of a 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 Finland. Case of the petitioner is that one live cartridge remained in his handbag inadvertently, which he did not notice when he started his journey and came to know about it only at the airport. 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. 0021/2016 under Sections 25/54/59 of the Act registered at P.S. IGI Airport, which is at the investigation stage, is quashed.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

AUGUST 23, 2017

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