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

+ CRL.M.C. 1034/2016

HARKIRAT SINGH

..... Petitioner

Through :Mr. V.P. Katiyar and Mr. Neeraj
Pandey, Advs.

versus

THE STATE

..... Respondent

Through :Mr. Amit Gupta, APP with SI Vasant
Kumar, P.S. IGI Airport, New Delhi

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.275/2015 under Sections 25/54/59 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport on the complaint of Shri Prakash Chand, Duty Manager Security, Jet Airways, IGI Airport, New Delhi, may be quashed.

Brief facts are that petitioner has alleged that he is working as a gold-miner and is working as a Managing Director with M/s. Resources Africa Limited and 79 Ventures Ltd. at Accra Ghana, West Africa. Petitioner is having a valid gun licence no. 0012207 issued by the competent authority at Accra Ghana, West Africa. Petitioner commenced his journey from Accra

Ghana, West Africa. On 3rd July, 2015, petitioner was to board Jet Airways Flight no.9W0740 for going to Amritsar via Dubai and New Delhi. Petitioner reached at IGI Airport, New Delhi on 4th July, 2015. He was in the terminal area, waiting for the Jet Airways flight no. 9W0740, for going to Amritsar. He was still a transit passenger. Petitioner was informed that three live cartridges were there in his checked-in baggage. Petitioner was not aware of the presence of live cartridges in his baggage, which he kept lying in his baggage, when he began his journey from Ghana.

Learned counsel for the petitioner has contended that petitioner was not in 'conscious possession' of the three live cartridges. During the investigation, petitioner had handed over the copy of the arms licence to the Investigating Officer. Presently, petitioner is on bail. He is in Ghana, where he is working.

He has placed reliance 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 to contend that ingredients of offence under Section

25 of the Arms Act are not attracted in absence of the ‘conscious possession’ of the cartridges.

The plea taken by the petitioner is a plausible plea that when he started his journey, he did not notice the live cartridges, which were lying in the handbag. In order to attract the ingredients of Section 25 of the Act, it is necessary that accused is in ‘conscious possession’ of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in ‘conscious possession’ of the three live cartridges, which were recovered at the IGI Airport from his checked-in baggage.

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 the three live cartridges.

For the foregoing reasons, FIR No.275/2015 under Sections 25/54/59 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/rb