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

+ CRL.M.C. 2500/2016 and Crl. M.A. No. 9390/2017

ANKIT KUMAR YADAV Petitioner
Through : Mr. Parmal Singh, Adv.

versus

THE STATE Respondent
Through : Ms. Meenakshi Dahiya, APP

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.391/2012 under Sections 25/25(54)/59 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport on the complaint of SI D.S. Jawale, CISF posted at Terminal – 3 at IGI Airport, New Delhi, may be quashed.

Brief facts are that petitioner was travelling from Delhi to Dubai on 10th December, 2012 by Spice Jet flight no. SG-11. On security check of the handbag of petitioner, one live cartridge of .32 bore was recovered. Petitioner failed to produce a valid arms and ammunition licence; therefore, FIR was registered.

Learned counsel for the petitioner submits that petitioner had borrowed the bag from his maternal grandfather, who was having a valid arms licence. Inadvertently, one live cartridge remained lying in the bag, which petitioner did not notice when he started his journey. At the airport, a live cartridge was detected when handbag of the petitioner was scanned with the help of X-ray machine. Photocopy of the arms licence has been placed on record as Annexure C-1 (colly.). It is submitted that petitioner was not in 'conscious possession' of the one cartridge, which was recovered from his handbag. Thus, ingredients of Section 25 of the Act are not attracted.

Status report has been filed by the State. However, it has not been disputed that Annexure C-1 does not belong to the maternal grandfather of the petitioner.

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.

The plea taken by the petitioner is a plausible plea that when he

started his journey, he did not notice the live cartridge, which was lying in the handbag, which he had taken from his maternal grandfather. 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 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." In Gaganjot Singh (supra), the Division Bench of this Court held, thus, "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 a 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 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).” 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.391/2012 under Sections 25/25(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. Miscellaneous application is disposed of as infructuous. Dasti.

A.K. PATHAK, J.

AUGUST 23, 2017

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