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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CrI.M.C. 1803/2017 & CrI.M.A. No.7355/2017(stay)
MANIK KUMARPetitioner
Through: Mr.Awnish Kumar, Advocate.

versus

STATE NCT OF DELHI & ANR.Respondents
Through: Mr. Mukesh Kumar, APP for the State
alongwith SI Manoj Kumar from Police
Station I.G.I. Airport.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
30.08.2017

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1. The present petition under Article 227 of Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of FIR No.0447/2016, under Section 25 of the Arms Act, 1959 registered at Police Station – IGI Airport, New Delhi.
2. The case of the prosecution is that on 28.11.2016 a complaint was received at P.S. IGI Airport, Delhi from the Assistant Security Officer/Lakhvinder Singh, alleging that during screening 5 live cartridges of .32 bore kept in a match box were detected and recovered from the check-in baggage of the petitioner. On that day, the petitioner was departing from New Delhi to Guhawati, via Air Asia Flight No 15-787. During further course of interrogation, the petitioner failed to produce any valid arms license or authorization regarding possession of the live cartridges in his registered bag. Hence, on the said complaint, the case vide FIR No.0447/2016

dated 28.11.016 under Section 25 of Arms Act, 1959 was registered. However, the petitioner was not arrested in the present case as his arrest was deferred and was relieved on a written undertaking that he would appear before court and investigating agency as and when required.

3. During the course of investigation, the ammunitions recovered from the petitioner's registered bag were sent to FSL, Rohini, Delhi for Ballistic examination and expert opinion. The FSL report revealed that the 5 cartridges recovered from the accused were live ones and of .32 bore which can be fired through a .32 caliber firearm, moreso, the exhibits were stated to be "ammunition" as defined in Arms Act, 1959. Hence charge-sheet was prepared against the petitioner under Section 25/54/59 of the Arms Act, 1959 and filed in the Court of ACMM, Patiala House Court, New Delhi.
4. Learned counsel for the petitioner contended that the petitioner had borrowed the alleged bag which contained 5 live cartridges from his friend/Balkar Singh, who holds a valid Arms License bearing number 648/10/P/2004, Panipat, Haryana and as the petitioner was unaware of the presence of said cartridges in the bag, he did not declare the same at security check and was informed about the same by the Security Staff only.
5. It was further submitted by the Learned counsel for the petitioner that the petitioner was neither in the constructive possession nor in the conscious possession of the alleged live cartridges and even no weapon or arms were recovered from the petitioner during the

physical check-up. Learned counsel for the petitioner also argued that though the articles seized and subsequently tested in this case are live cartridges and therefore constitutes “ammunition”, nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence under the Arms Act. Therefore, as the possession in the present case was neither ‘conscious’ nor ‘intended’, offence under the Arms Act, 1959 could not be made out.

6. Per contra, Mukesh Kumar, APP for the State opposed the present petition on the ground that on interrogation, the petitioner-herein failed to produce any valid arms license to authenticate the possession of the ammunition as legal and thus prima facie an offence under Section 25 of the Arms Act, 1959 was made out. He further argued that the ballistic expert has opined in the FSL report that the cartridges sent for examination are live and covered under ‘ammunition’ as defined in the Arms Act, 1959.
7. I have heard the submissions of the learned counsel for the parties and perused the material available on record.
8. At the outset, it is observed that with respect to the issue of ‘conscious possession’, it is settled law that the expression ‘possession’ under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, conscious possession. Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

9. In the case of ***Sanjay Dutt Vs. State*** reported in ***1994(5) SCC410*** the Supreme Court *inter alia* observed that;

“.....the word ‘possession’ must mean possession with the requisite mental element ,that, is conscious possession and not mere custody with the awareness of the nature of such ‘possession’.....”

Therefore 'conscious possession' of any fire arm/ ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

10. Further, the question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of ***Gunwantlal Vs. State of Madhya Pradesh***, reported in ***(1972) 2 SCC 194***, wherein it was observed as under:

“ the possession of a firearm under the Arms Act must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly, where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues besides physical possession being in someone else. The first pre-condition for an offence under Section 25(1) (a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control.....”

11. The issues involved in the present case, are covered by the principles laid down in above said decision of the Supreme Court, as there is no sufficient evidence or reasonable ground of suspicion

to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. The petitioner was in possession of the said cartridges, however he expressed his lack of awareness in respect of the said cartridges as the bag from which they were recovered belonged to his friend who holds a valid arms license No. 648/10/P/2004. The said license has been duly verified from the Office of Sub-Divisional Magistrate Panipat vide Sr. No. 113/X/P/SDM/Panipat. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridges. The ballistic report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. Hence, it can be safely inferred that the said possession by the petitioner does not fall within the ambit of 'conscious possession' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959. Therefore on the basis of mere possession of the live cartridges the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

12. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridges in the bag till the same were detected by the security staff during the screening of the baggage, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking. Consequently FIR no.0447/2016 under Section 25 of the Arms Act,

1959 and proceedings emanating therefrom are hereby quashed.

13. Accordingly, the present petition stands disposed of.

Crl.M.A.No.7355/2017 (stay)

In view of the order passed in the main petition. The application for stay is rendered infructuous.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

AUGUST 30, 2017

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