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

+ CRL.M.C. 2282/2017

SAYAD NOSADUN NAVI @ PAPPU KHANPetitioner

Through: Mr. Vinay Kumar Sharma with
Ms. Yashima Sharma, Advocates.

Versus

STATE NCT OF DELHIRespondent

Through: Mr. Mukesh Kumar, APP for the State with
SI Dinesh Kumar, PS Domestic Airport.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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27.09.2017

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing of FIR No.86/2015, under Section 25 of the Arms Act, 1959 registered at Police Station – Domestic Airport, New Delhi.

2. The case of the prosecution is that on 01.08.2015, a complaint was received at P.S. Domestic Airport, New Delhi by the Assistant Manager Security/Amit Talwar, alleging that during the screening, some suspicious object was detected and on physical search of the check-in baggage, 3 live cartridges of 0.32 bore were recovered from the baggage of the petitioner. On that day, the petitioner was travelling to Bangalore from Delhi via Spice-Jet flight No.SG-147. During further interrogation, the petitioner could not produce a valid arms license or any authorization with regard to possession of the live cartridges in his registered bag. Hence, FIR No.86/2015 dated 01.08.2015 under Section 25 of Arms Act,

1959 was registered. However, the petitioner's arrest was deferred in the present case as custodial interrogation was not required.

3. During the course of investigation, the seized live cartridges recovered from the registered bag of the petitioner were sent to FSL, Rohini, Delhi for Ballistic Examination and expert opinion. The FSL report revealed that the recovered cartridges are live ones and can be fired through .32 caliber firearm. It was also opined by the examiner that the exhibits fall in the category of "ammunition" as defined in Arms Act, 1959. Charge-sheet was prepared against the petitioner and filed before the concerned Court, New Delhi.

4. Learned counsel for the petitioner submitted that the petitioner is about 41 years old innocent and law abiding citizen of India; that the petitioner is ex-MLA from Bihar Sharif; that the petitioner had kept the alleged cartridges in his suitcase long back and had forgot about the same; that the petitioner was having a valid arms license from August 1995-2007. He further contended that the petitioner had no knowledge of the presence of the cartridges in his baggage; that the present act was just due to a mistake with no intention to harm any person. Moreso, as the petitioner was unaware of the possession of the said cartridge in the bag, he did not declare the same at security check and when he was informed about the same by the security officials, he extended his fullest co-operation to them.

5. On the converse, Mukesh Kumar, APP for the State strongly contested the present petition on the ground that on interrogation, the petitioner failed to produce any valid arms license to authenticate the possession of the cartridges as legal and thus prima facie an offence

under Section 25 of the Arms Act, 1959 was made out. He further contended 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.

6. I have heard the submissions of the learned counsel for the parties and perused the material available on record.

7. The question of conscious possession has been elaborately dealt with by the Constitution Bench Supreme Court in the case of **Gunwantlal Vs. State of Madhya Pradesh**, reported in **(1972) 2 SCC 194**, wherein the Supreme Court 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..... ”

8. It is a settled law with respect to the issue of ‘conscious possession’, that the expression 'possession' occurring in Section 25 of the Act, means possession with the requisite mental element, i.e., ‘conscious possession’, however, mere custody without the awareness of the nature

of such possession does not amount to any offence under the Arms Act, 1959. The possession of any fire arm/ ammunition must be a conscious possession.

9. In the present case, the petitioner was in possession of 3 live cartridges however he expressed his lack of awareness of the same. Though, the ballistic report confirms it to be cartridges falling within the meaning of 'ammunition', the report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. There is no material to show that the petitioner was conscious of his possession of the live cartridges. Thus, it can be safely inferred that the petitioner's possession of the cartridge 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. The prosecution has failed to prove that the possession was 'conscious, therefore, on the basis of mere possession of the live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 to secure the ends of justice.

10. Consequently FIR No.86/2015 under Section 25 of the Arms Act, 1959 and proceedings emanating therefrom are hereby quashed.

11. Accordingly, the present petition stands disposed of.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 27, 2017

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