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

+ CrI.M.C. 2023/2017

ASWIN SRIDHAR

.....Petitioner

Through: Mr. Ajit K. Singh, Ms. Nidhi Singh,
Mr. Shiv Shankar Singh & Mr. Deepak,
Advocates.

Versus

STATE OF NCT OF DELHI & ANR.

....Respondents

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

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

25.09.2017

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1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner for **quashing of FIR** No.75/2015, under Section 25/54/59 of the Arms Act, 1959 registered at Police Station – Domestic Airport, New Delhi and charge sheet filed consequent to the same.
2. The case of the prosecution is that on 12.07.2015 a complaint was received at P.S. Domestic Airport, Delhi from the Assistant Manager (Security)/Mrs Aradhana Prasad, alleging that during security check, one live bullet of 9 mm was detected and recovered from the check-in baggage of the petitioner. On that day, the petitioner was departing from Delhi for Bengaluru, via Flight No 6E-147. During further course of interrogation, statement of the petitioner was recorded under Section 161 Cr.P.C in which he repeatedly submitted that he has no knowledge about the recovery

of the bullet in his baggage. He even failed to produce any valid arms license or authorization regarding possession of the live bullet in his registered bag. Hence, on the said complaint, the case vide FIR No.75/2015 dated 12.07.2015 under Section 25/54/59 of the Arms Act, 1959 was registered.

3. During the course of investigation, the cartridge detected from the petitioner's registered bag was taken into police possession through seizure memo and sent to FSL Rohini for Ballistic examination and expert opinion. Vide FSL report dated _ recovered cartridge opined as a live one and of 9mm caliber. Moreso, the exhibit was stated to be "*ammunition*" as defined under the Arms Act, 1959. Based on the report, the requisite sanction of Section 39 of Arms Act was obtained from the concerned DCP. Hence charge-sheet was prepared against the petitioner on 24.12.16 under Section 25 of the Arms Act, 1959 and filed in the Court of Metropolitan Magistrate, Dwarka Courts, New Delhi whereafter the petitioner was released on bail vide order dated 02.02.2017.
4. Learned counsel for the petitioner contended that the petitioner is of young age and was travelling to take up his first job assignment and has no involvement in any criminal activity; that he was not conscious about the presence of the alleged bullet recovered from his check-in-baggage; that the evidence collected by the prosecution in support of the recovery of bullet, does not disclose the commission of any offence; that the law is well settled that conscious possession is a core ingredient to establish the guilt for the offence under Section 25 of the Arms Act, 1959; that mere

recovery of one live bullet from the petitioner's baggage during screening, cannot constitute conscious possession in order to establish the guilt for commission of offence under Section 3 and 25 of the Arms Act, 1959.

5. Reliance was placed upon *Sanjay Dutt v. State through CBI, Bombay* reported in **1994(5)SCC410** wherein it was observed as under:

“....that there was no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, as it was not a case of conscious possession of two live cartridges recovered from the baggage of the petitioner.”

6. Per contra, Mukesh Kumar, APP for the State contested the present petition on the ground that, on interrogation the petitioner-herein failed to produce any valid arms license and could not give any satisfactory reason 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 against him. He further submitted that the ballistic expert has concluded in the FSL report that the cartridge sent for examination is live one 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', the law is well settled 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 in the absence of awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

9. 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..... ”

10. The issues involved in the present case, fall within the ambit of 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 by the petitioner who has expressed his lack of awareness in respect of the said cartridge. Further there is no other material on record to show

that the petitioner was conscious of his possession of the live cartridge. 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 cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

11. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridge 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 the FIR no.75/2015 under Section 25 of the Arms Act, 1959 alongwith the charge-sheet is hereby quashed.
12. Accordingly, the present petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 25, 2017