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

+ CRL.M.C. 2133/2017 & Crl. M.A. no. 8770/2017 (stay)

ATUL ARORA

..... Petitioner

Through Mr. Vikram Chaudhary, Sr. Advocate
with Mr. Harshit Sethi and Mr. R.P.
Saini, Advs.

Versus

STATE NCT OF DELHI & ORS

..... Respondents

Through Mr. Amit Gupta, APP with SI Pawan
Kumar, P.S. IGI Airport, ND for the
State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **07.11.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No.524/2015 under Section 25 of the Arms Act, 1959 ('the Act', for short), registered at P.S. IGI Airport on the complaint of SI Santosh Kumar Yadav, CISF and the consequent proceedings emanating therefrom, may be quashed.

Brief facts are that petitioner was travelling to Dubai by flight no. SG 011 from IGI Airport, New Delhi. In the check-in area, his handbag was screened, when six live cartridges of .32 bore were noticed and the same were seized. Aforesaid FIR was lodged by the security personnel. After

investigation, charge-sheet has been filed.

Learned Senior Counsel for the petitioner contends that petitioner was not in 'conscious possession' of the six live cartridges, which were recovered from his handbag. Petitioner was carrying handbag of his cousin and was not aware about the presence of six live cartridges. Petitioner's cousin, namely, Gaurav Arora, was also travelling with him by the same flight. As per the status report, during the investigation, Gaurav Arora was also interrogated. He admitted that these cartridges belonged to him. He said that the cartridges remained lying in the handbag inadvertently. Gaurav Arora provided his arms licence no. 1806/PS/Civil Lines/DM/ASR/98, which was duly verified from the office of District Magistrate, Amritsar. However, validity of the arms licence had expired in the year 2011.

In a nutshell, case of the petitioner is that the live cartridges remained lying in the handbag inadvertently and could not be noticed before commencing journey. Petitioner was not in 'conscious possession' of the cartridges.

In Abdul Nasir Barich vs. The State (NCT of Delhi) MANU/DE/3642/2016, eight live cartridges were recovered in the checked-in baggage of the petitioner. Petitioner took a plea that he was not in a 'conscious possession' of eight live cartridges. He pleaded that eight bullets belonged to

his father, who was holding a licensed revolver, inasmuch as, the said bullets had been issued in respect of the said licensed revolver. Inadvertently, the said bullets remained lying in the bag of petitioner and were detected during the screening of baggage at the airport. Petitioner was not aware that his father had kept the bullets in the bag. Learned Single Judge held that petitioner was not in a 'conscious possession' of the bullets and quashed the FIR.

In *Gunwantlal vs. State of Madhya Pradesh* (1972) 2 SCC 194, Supreme Court held 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 precondition 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. In

any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult to postulate as to what the evidence will be. If the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver”

Similar view has been expressed by this Court in Juan Manuel Sanchez Rosas Vs. State through NCT Delhi & Anr. CrI.M.C.2642/2014; Chan Hong Saik Thr. SPA: Arvinder Singh Vs. State & Anr. CrI.M.C. 3576/2011; Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr. CrI.M.C. 4207/2014 and Sonam Chaudhary Vs. The State (Govt. of NCT Delhi) CrI.M.C.471/2015.

During the investigation, nothing has come on record to indicate that petitioner was in ‘conscious possession’ of six live cartridges.

For the foregoing reasons, FIR No.524/2015 under Section 25 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.

NOVEMBER 07, 2017
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