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

+ CRL.M.C. 2301/2017

ASHOK KUMAR MAINIPetitioner

Through: Mr. Mohan K. Kukreja, Advocate.

Versus

STATE GOVT OF NCT OF DELHI & ANR.

....Respondent

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

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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26.09.2017

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner seeks **quashing of FIR** No.0102/2015 dated 15.09.2015, under Sections 25/54/59 of the Arms Act, 1959 registered at Police Station – Domestic Airport, New Delhi.
2. The case of the prosecution is that on 15.09.2015 a complaint was received at P.S. Domestic Airport, Delhi from the Assistant Manager Security (Go-Airlines)/Deepak Khanduri, alleging that during screening of the check-in baggage, some suspicious object was detected and after physical search, 9 live cartridges of .32mm and 1 live cartridge of .22mm were recovered from the check-in baggage of the petitioner. On that day, the petitioner was travelling from New Delhi to Bagdora, via Go-Air flight No.G8/153. During interrogation, the petitioner neither produced any valid arms license nor any authorization regarding possession of the live

cartridges in his check-in baggage. Hence, on the said complaint, the case vide FIR No.0102/2015, dated 15.09.15, under Section 25/54/59 of Arms Act, 1959 was registered. However, the petitioner was not arrested in the present case as his arrest was deferred as there was no need of custodial interrogation.

3. During the course of investigation, statements of the witnesses were recorded and the ammunitions recovered from the petitioner's bag were sent to FSL, Rohini, Delhi for Ballistic examination and expert opinion. The FSL report disclosed that the 9 cartridges recovered from the accused were .32 mm standard cartridges which can be fired through .32” caliber firearm and 1 live cartridge of .22mm and the same were live ones. The exhibits were stated to be "ammunition" as defined in the Arms Act, 1959. Hence charge-sheet against the petitioner under Section 25/54/59 of the Arms Act, 1959 was filed in the Court of Metropolitan Magistrate, Dwarka Court, New Delhi where cognizance of the offence under Section 25 Arms Act, 1959 was taken. The petitioner was summoned to appear before the Court on 12.01.2017 and on appearance he was granted bail.
4. Learned counsel for the petitioner submitted that the petitioner is a retired Additional Chief Medical Officer, Kasganj District Hospital; that he used to visit district/field units in rural areas where there were cases of dacoity, theft, kidnapping/abduction etc., so for security purpose, the petitioner was granted an arms license; that the said license bearing number 8150/PS Kasganj has been renewed timely till date and even verified; that the pouch in which

the alleged cartridges were recovered was packed by wife and daughter of the petitioner; that the petitioner was totally unaware of the pouch and cartridges and was taken by utter surprise, shock and dismay on the alleged finding of cartridge; that the alleged cartridges may have been unintentionally, inadvertently and accidentally been kept in the said pouch/suitcase.

5. It was further submitted by the learned counsel for the petitioner that mere possession of the cartridge, without any consciousness of the same does not constitute any offence in the eyes of law; that no firearm or weapon has been recovered from the petitioner and the cartridges are useless without the firearm; therefore, as the possession in the present case was neither 'conscious' nor 'intended', offence under the Arms Act, 1959 could not be made out against the petitioner.
6. Refuting the contentions of the petitioner, Mr. Amit Ahlawat, learned APP for the State opposed the present petition on the ground that on interrogation, the petitioner failed to produce a valid arms license or 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. Further, the ballistic expert has opined in the FSL report that the cartridges which were sent for examination are live ones 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 regard 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. Therefore 'conscious possession' of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

9. Moreover, the issue of conscious possession has been precisely 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. Returning to the issues involved in the present case, the same are covered by the principles laid down in above said decision of the

Supreme Court, as there is no sufficient evidence available on record to justify the conscious possession of the live cartridges recovered from the baggage of the petitioner. The petitioner expressed his lack of awareness of the alleged cartridges. The petitioner has also brought on record Arms and ammunition license bearing no. 8150/Police Station Kasganj in relation to .32 bore revolver which was valid on the date of incident i.e. on 15.09.15. Though the ballistic report confirms it to be cartridges falling within the meaning of 'ammunition', the report by itself is inadequate to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. There is no material on record to show that the petitioner was conscious of his possession of the live cartridges. Hence, it can be safely inferred that the said possession of 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, as it would be an exercise in futility 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 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.0102/2015 under Section 25/54/59 of the Arms Act, 1959 and proceedings emanating therefrom are hereby quashed.

12. Accordingly, the present petition stands disposed of.

Crl.M.A.No.9364/2017(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.

SEPTEMBER 26, 2017