

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

% **Judgment delivered on: 27th March, 2017**

+ **CRL.M.C. 5663/2014**

GOLAP SAIKIA

..... Petitioner

Through: Mr.Aditya Gaur, Advocate

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.G.M. Farooqui, APP for State
S.I. Vipin Kumar, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of the FIR No. 352/2013, under Sections 25/54/59 of the Arms Act, 1959 registered at P.S. IGI Airport and all the proceedings emanating there from which are pending before the Court of learned ACMM, Patiala House Courts, New Delhi.
2. The brief facts stated are that on 8th December, 2013 a complaint was received at P.S. IGI Airport, Delhi from one Deepak Chadha, Manager on duty of Cathay Pacific Airways that during the inline X-ray and physical search by Airport Operator Delhi International Airport Ltd. observed that the petitioner was in possession of ammunition in his check-in baggage, which was lying in the pocket of his track suit without there being any explanation

for carrying the same. Therefore, on the said complaint, a case vide FIR No. 352/2013 dated 8th December, 2013 under Sections 25/54/59 of the Arms Act, 1959 was registered at P.S. IGI Airport, Delhi and the petitioner was arrested. On the same day, the petitioner was departing for Bangkok by Cathay Pacific Airways Flight No. CX 708 on the strength of his Indian Passport No. J3784434.

3. During the course of investigation, the single cartridge was sealed with seal No. 5 IGIA and the same was taken into police possession through seizure memo. The total length of the ammunition was found to be 3 cms and on the bottom of the round K.F. 32 S & W was engraved. Thereafter, the petitioner produced a photocopy of his Arms Licence No. 372/A/Kamrun dated 30th February, 2008 issued by DM Distt- Kamrup, which was valid only till 31st December, 2011 and the area of validity was limited to the State of Assam.
4. Thus by bringing the ammunition beyond the area of its validity i.e. Delhi, the petitioner has committed an offence punishable under Sections 25/54/59 of the Arms Act, 1959 and an FIR No. 352/13 dated 8th December, 2013 was registered and the petitioner was arrested. The statements of witnesses were recorded under Section 161 Cr.P.C. on the same day and the petitioner was produced before the Court below and was sent to Judicial Custody. Thereafter, on 9th December, 2013 the petitioner was admitted on bail.
5. Thereafter, the seized single cartridge was deposited at FSL Rohini, Delhi for ballistic/expert opinion and FSL report. The FSL

report was procured and the same revealed that the cartridge recovered from the petitioner was of .32 caliber and the same is a live one which can be fired through a .32 caliber firearm. It was test fired successfully and the same is an ammunition as defined in the Arms Act, 1959.

6. The charge-sheet was prepared against the petitioner after getting the sanction under Section 39 of the Arms Act and the same had been filed in the Court of learned ACMM, Patiala House Courts, New Delhi.
7. Aggrieved by the said FIR and the proceedings emanating therefrom, the petitioner has filed the present petition.
8. The whole question hinges around whether a cartridge is complete ammunition within the meaning of Section 2(b) of Arms Act, 1959 or minor part of ammunition as referred to in Section 45(d) of the Arms Act, 1959?
9. The stand of the learned counsel for the petitioner is that the petitioner is protected under clause (d) of Section 45 of Arms Act, 1959 and urges that the alleged recovery of the single cartridge amounts to possession of minor parts of Arms or Ammunition as prescribed under the provision of Section 45 (d) of Arms Act and a live cartridge can not be used for any threat purpose without firearm even if it is allegedly recovered from the possession of the petitioner.
10. The learned counsel for the petitioner has further submitted that allegation qua petitioner is finding of a live cartridge which *ipso facto* does not causes any crime as per ***Sh.Gaganjot Singh v. State***,

W.P.(Crl)No.1169/2014 decided by Division Bench of this Court on **1st December, 2014** and which is followed in subsequent cases such as ***Sonam Choudhary v. State, Crl.M.C.471/2015*** decided on **6th January, 2016**.

11. On the other hand, the learned APP on behalf of the State vehemently opposed the arguments advanced by the counsel for the petitioner and urges that the live cartridge was found in the check-in-baggage of the petitioner who was carrying it without having any valid license and thereby committed an offence under Section 25 of the Arms Act, 1959. Therefore, the IGI Airport being a sensitive area from the threat perception and the petitioner was in the conscious possession of the said cartridge. Hence, it is not a fit case for quashing of FIR under Section 482 Cr.P.C.
12. It is well settled law that the expression ‘possession’ occurring in the Section 25 of the Arms Act, 1959 means conscious possession involving mental element and mere custody without the element of consciousness or knowledge of that possession does not amount to any offence under the Arms Act, 1959.
13. The Constitution Bench of the Hon’ble Supreme Court in ***Sanjay Dutt v. State, 1944 (5) SCC 410*** has observed in para 19 that,

“The meaning of the first ingredient of “possession” of any arms etc. is not disputed. Even though the word ‘possession’ is not preceded by any adjective like ‘knowingly’, yet it is common ground that in the context the word ‘possession’ must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the

concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood."

14. The Constitutional Bench of the Hon'ble Supreme Court in the case of ***Gunwantlal v. The State of Madhya Pradesh, (1972) 2 SCC 194*** in para 5 explained the meaning of possession in the context of Section 25 of the Arms Act, 1959 and held as under:-

"The possession of a firearm under the Arms Act in our view 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 none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house."

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"As we said earlier, 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.”

15. The present case is covered by the above said decisions of the Hon'ble Supreme Court as the prosecution has failed to prove that the possession was conscious possession and therefore, on the basis of mere possession of a single live cartridge without having any criminal intention, the proceedings cannot continue qua the petitioner under the Arms Act, 1959.
16. In the instant case, it is apparent on the face of the record that a single live cartridge was recovered from the check-in-baggage of the petitioner without there being any firearm. Absence of firearm itself shows that the petitioner was not having conscious possession of the live cartridge. The recovery of single cartridge *ipso facto* does not prove that the petitioner had *animus possidendi*.
17. In view of the aforesaid reasons and circumstances in the present case and in the light of the abovementioned caselaws, the FIR No.352/2013 under Sections 25/54/59 of the Arms Act, 1959 registered at P.S. IGI Airport, Delhi and all the proceedings emanating therefrom pending before the Court of learned ACMM, Patiala House Courts, New Delhi are hereby quashed.
18. Consequently, the present petition is allowed and disposed of in the above terms.
19. No order as to Costs.

I.S.MEHTA, J

MARCH 27, 2017