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

+ W.P.(CrI.) 3598/2016 & CrI. M.A.19586/2016

Decided on 29th March, 2017

SANDEEP MUKHERJEE Petitioner
Through: Mr. D.K. Sharma, Advocate
versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Avi Singh, ASC

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. By this petition under Article 226 of the Constitution of India read with section 482 Cr.P.C., petitioner has prayed for quashing of the FIR No.460/2016 under Section 25 of the Arms Act, registered at Police Station IGI Airport on the complaint of Mr. R.N. Gupta, Assistant Security Duty Manager, Air India.

2. Petitioner has alleged that he had gone to the United States of America in the month of January, 2008 to pursue his master's degree in Computer Science from Illinois Institute of Technology in Chicago. Thereafter, he took up a job in the United States of America as a software engineer and had been working there in different companies. In the year 2011, he joined a shooting group event in Chicago and purchased 50

cartridges, out of which all the cartridges except the one were used at the shooting range. The unused cartridge kept on lying in his bag. On 10th December, 2016, petitioner, along with his wife, boarded the Air India Flight No.AI 174 from San Francisco at 09:15 PST and de-boarded at IGI Airport on 10th December, 2016. Petitioner was to go to Calcutta therefore, he had to board another flight. While transferring the luggage of petitioner from Flight no. AI 174 to Flight No. AI 022, it was noticed that one live cartridge was there in his luggage, which led to the registration of the present FIR.

3. It is submitted that petitioner was not in a conscious possession of the said live cartridge which remained lying in his bag after the shooting event. Petitioner was let off after the investigations. Learned counsel for petitioner has contended that possessing live cartridges which are used in the shooting events is not an offence as per the laws of the United States of America. Petitioner had participated in the shooting event along with his friends for which purpose the cartridges were purchased. All the cartridges except the one were utilized. The unutilized cartridge, inadvertently, remained in the bag of petitioner, which bag he used to bring luggage for his India trip. Petitioner was not in a conscious possession of the live cartridge; therefore,

FIR may be quashed. Learned counsel for petitioner has placed reliance on Gaganjot Singh Vs. State, MANU/DE/3227/2014, Abdul Nasir Barich Vs. The State (NCT of Delhi), MANU/DE/3642/2016 and Sonam Chaudhary & Ors. Vs. The State (Govt. of NCT Delhi) & Ors., MANU/DE/0026/2016.

4. In Sonam Chaudhary (Supra), learned Single Judge has considered several judgments on the point in issue and has concluded thus “Law is well settled that ‘conscious possession’ has to be established for guilt in offence punishable under Section 25 of the Arms Act.” By the said judgment five cases were disposed of. In all the cases, live cartridges were recovered from the bags of the petitioners, resulting in the registration of the FIRs under Section 25 of the Arms Act, 1959. Learned Single Judge held that since petitioners were not in a ‘conscious possession’ of the live cartridges, FIRs were liable to be quashed and accordingly, quashed the FIRs. Learned Single Judge relied on Gunwantlal Vs. The State of Madhya Pradesh, AIR 1922 SC 1756, Sanjay Dutt Vs. State through CBI, Bombay, (1994) 5 SCC 410, Gaganjot Singh Vs. State, 2014 Law Suit (Del) 4968, Nurit Toker Vs. State of Maharashtra, 2012 BomCR (Cri) 154 and William Michael Hurtubise Vs. State of Odisha & Ors., 117 (2014) CLT 303.

5. In Abdul Nasir Barich (Supra) also, eight live rounds (bullets) were detected from the check-in baggage of the petitioner, which resulted in the registration of the FIR under Section 25 of the Arms Act. Petitioner took a plea that he was not in a 'conscious possession' of the eight live cartridges in his check-in baggage. Petitioner further 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 in the baggage 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.

6. In the present case, petitioner was living in the United States of America right from 2008. He completed his master's degree in Chicago, United States of America. Thereafter, he took up a job there. Petitioner's wife is also working in the United States of America. It is probable and plausible that live cartridge remained unnoticed in the bag when petitioner began his journey from U.S.A. Nothing has come on record, during the

investigation, to suggest that petitioner was in 'conscious possession' of the solitary live bullet found in his bag.

7. For the foregoing reasons, FIR No.460/2016 under Sections 25 of Arms Act registered at police station IGI Airport and consequent proceedings emanating therefrom, are quashed.

8. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

MARCH 29, 2017/dk