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

+ CRL.M.C. 4904/2016

SURINDER PAL BENIWAL Petitioner
Through : Mr. Rajesh Kajla, Adv.

versus

STATE OF DELHI Respondent
Through :Ms. Manjeet Arya, APP with SI
Vasant Kumar, P.S. IGI Airport

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **23.08.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 225/2009 under Section 25 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport, may be quashed.

Brief facts are that petitioner is a resident of Gurgaon, Haryana. He was travelling from Delhi to Kolkata by Air India flight no. AI-112 on 23rd May, 2009. On screening of his baggage by the X-ray machine, three live cartridges of 0.32 bore were recovered from his handbag. Consequently, aforesaid FIR was registered at Police Station IGI Airport on the complaint of Inspector Sombir Singh, CISF. Charge-sheet has been filed. Trial is

pending.

Learned counsel for the petitioner has contended that petitioner has a valid arms licence issued by the Joint Commissioner of Police, Gurgaon, Haryana. He was carrying arms and ammunition, pursuant to the said licence. Three live cartridges remained in the handbag inadvertently and he did not notice the three live cartridges in his handbag when he started his journey from Gurgaon and came to know about it only at the airport. Petitioner was not in 'conscious possession' of three live cartridges. Therefore, ingredients of Section 25 of the Act are not attracted. Reliance has been placed on Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994, Nurit Toker vs. The State of Maharashtra, 2012 Bom CR (Cri) 154, William Michael Hurtubise vs. The State of Odisha and Ors. MANU/OR/0016/2014, Gunwantlal vs. the State of Madhya Pradesh, MANU/SC/0130/1972 and Gaganjot Singh vs. State, MANU/DE/3227/2014.

In the reply, respondent has admitted that petitioner holds a valid licence issued by the competent authority. Meaning thereby, petitioner could have possessed the arms and ammunition within the territorial bounds of Haryana. Case of the petitioner is that three live cartridges remained in his

handbag inadvertently, which he did not notice when he started his journey from Gurgaon, Haryana. The plea taken by the petitioner is a plausible plea. There is nothing to indicate that petitioner was in 'conscious possession' of three live cartridges, which were recovered at the IGI Airport from his handbag.

In Sanjay Dutt (supra), Supreme Court held, thus, "the meaning of the first ingredient of 'possession' of any such 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." During the investigation, no material could be collected by the Investigating Officer to show that the petitioner was in conscious possession of three live cartridges.

For the foregoing reasons, FIR No. 225/2009 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. Dasti.

A.K. PATHAK, J.

AUGUST 23, 2017

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