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

+ CRL.M.C. 3540/2017

UMESH KUMAR BERIYA ..... Petitioner

Through: Mr. Varun Malik, Adv.

versus

THE STATE NCT OF DELHI ..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State  
with SI Vinod Ahlawat, P.S. IGI  
Airport.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **04.09.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No.464/14 under Section 25 of the Arms Act, 1959 registered at P.S. IGI Airport, Delhi on the complaint of Shri Ritesh Kumar, Sr. Assistant, Dial Security Manager, IGI Airport, New Delhi, may be quashed.

Brief facts are that petitioner is a resident of Guwahati, Assam. He was travelling from Delhi to Guwahati by Air India Flight No. 889. On the X-ray screening of his baggage, three live cartridges were recovered from the pocket of his jacket, which was there in the said baggage. Consequently, FIR No. 464/2014 under Section 25 of the Arms Act was registered at police station IGI Airport.

It is contended that petitioner was not aware of the presence of live cartridges in his jacket, which he had kept in his baggage at Guwahati.

Learned counsel for the petitioner has contended that petitioner was not in 'conscious possession' of the three live cartridges. Petitioner has a revolver pursuant to a valid arms licence issued by the Competent Authority at Guwahati. Petitioner was not carrying the revolver with him. Inadvertently, three live cartridges remained lying in his jacket which he did not notice when he began his journey. It is prayed that present FIR and the consequent proceedings emanating therefrom may be quashed, since petitioner was not in 'conscious possession' of the three live cartridges recovered from his baggage.

He has placed reliance 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 to contend that ingredients of offence under Section 25 of the Arms Act are not attracted in absence of the 'conscious possession' of the cartridges.

Learned APP submits that arms licence has been verified. Petitioner is indeed having a valid arms licence for possessing a revolver and 30 live

cartridges, within the State of Assam; however, petitioner could not have carried the revolver or cartridges outside the State of Assam. Since petitioner was found in possession of three live cartridges at the airport, FIR was rightly registered. It is admitted that during the investigation, no material has been collected to indicate that petitioner was in 'conscious possession' of the three live cartridges recovered from his baggage.

The plea taken by the petitioner is a plausible plea that when he started his journey, he did not notice the live cartridges, which kept lying in his jacket. In order to attract the ingredients of Section 25 of the Act, it is necessary that accused was in 'conscious possession' of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in 'conscious possession' of the three live cartridges, which were recovered at the IGI Airport from his baggage.

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 the three live cartridges.

For the foregoing reasons, FIR No.464/14 under Section 25 of the Arms Act, 1959 registered at P.S. IGI Airport, Delhi and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms.

Dasti.

**A.K. PATHAK, J.**

**SEPTEMBER 04, 2017**

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