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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3790/2017**
NYAGRONGTSANG TSCHENZIG Petitioner
Through: Mr. L. Ojha, Adv.
versus

THE STATE GNCT OF DELHI Respondent
Through: Ms. Meenakshi Chauhan, APP.

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

ORDER
% **23.10.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 29/2017 under Sections 25/54/59 of the Arms Act, 1959 ('the Act', for short) registered at police station IGI Airport on the complaint of Ms. Inderjeet Kaur, Customer Service Agent in Swiss International Airlines may be quashed.

Brief facts of the case are that petitioner was travelling from Delhi to Zurich by Flight No. LX-147 of Swiss International Air Lines on 29th January, 2017. From the check in baggage of petitioner, one live cartridge was detected on the X-ray Machine. The said baggage was offloaded and on opening the same one live cartridge of 7.2 mm was found in the pocket of the bag. Petitioner failed to produce the valid arms licence.

Learned counsel for the petitioner has contended that petitioner is a

Tibetan national. Now, petitioner has obtained political asylum in Switzerland. Petitioner has been issued residential identity certificate bearing no. A25027622 by the concerned authority in Switzerland. Petitioner came to India to attend “Kalachakra Teachings” held at Bodh Gaya, Bihar. While petitioner was going back to Zurich, his baggage was checked at the airport when one live cartridge was recovered. Petitioner had no knowledge of this live cartridge when he commenced his journey. The live cartridge remained lying in Khau (Religious Box), kept in the bag, inadvertently. Petitioner does not possess any arm. The live cartridge is very old. Petitioner was not in ‘conscious possession’ of the live cartridge, therefore, ingredients of offence under Section 25 of the Arms Act were not attracted.

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.

The plea taken by the petitioner is a plausible plea that when he started his journey, he did not notice the live cartridge, which was there in the 'Khau'. In order to attract the ingredient of Section 25 of the Act, it is necessary that accused is in 'conscious possession' of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in 'conscious possession' of a solitary live cartridge, which was recovered at the IGI Airport from his checked-in 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 live cartridge.

For the foregoing reasons, FIR No. 29/2017 under Sections 25/54/59 of the Arms Act, 1959 registered at police station IGI Airport and the consequent proceedings emanating therefrom are quashed.

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

OCTOBER 23, 2017
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