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

+ CRL.M.C. 3801/2017

SCOTT R WILSON

..... Petitioner

Through Mr. Manu Shrama, Adv

versus

STATE NCT OF DELHI

..... Respondent

Through Mr. M S Oberoi, APP for State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **26.10.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 421/2015 under Sections 25 of the Arms Act, 1959 ('the Act', for short) registered at police station IGI Airport on the complaint of SI Ali Murtaza of CISF IGI Airport, New Delhi, may be quashed.

Brief facts of the case are that petitioner was travelling from Delhi to Bangalore by Jet Airways, Flight No.92235 on 23rd September, 2015. Petitioner is an American National. He had come to India for business purposes. His bag was scanned in pre-embarking section area, by the scanned personals, when one 99mm live cartridge was found therein. Petitioner failed to produce a valid arms licence, consequently, FIR was registered.

Learned counsel for the petitioner has contended that petitioner was not aware about the presence of live cartridge in his bag. Live cartridge might have remained lying in his bag when he commenced his journey from

USA. It was first time noticed at the airport when the petitioner was going from New Delhi to Bangalore. It is contended that petitioner was not in 'conscious possession' of the live cartridge, therefore, ingredients of offence under Section 25 of the Arms Act are 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.

The plea taken by the petitioner is a plausible plea that when he started his journey, he did not notice the live cartridge in his bag. In order to attract the ingredient of offence under 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. 421/2015 under Sections 25 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 26, 2017

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