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

+ CrI.M.C. 3836/2017 & CrI.M.A. No.15504/2017 (Stay)

AMIT VERMAPetitioner

Through: Mr. Arindam Mukherjee with Mr. G.
Tuli, Advocates.

versus

GOVT. OF NCT OF DELHIRespondents

Through: Mr. Akshai Malik, APP for State with SI
Vasant Kumar, PS IGI Airport.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

09.10.2017

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1. By the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks **quashing of FIR** No.211/2016, under Section 25 of the Arms Act, 1959 registered at Police Station – Indira Gandhi International Airport, New Delhi.
2. The brief facts of the instant case are that on 10.06.2016 a complaint was received at P.S. IGI Airport, New Delhi from the DIAL(Security Staff)/Mr. Bharat Bhushan Prasad, alleging that the petitioner was off loaded from the flight due to detection of a live cartridge from his checked-in baggage during security check. On that day, the petitioner was departing from Delhi to Bombay, via Flight No 9W358. During the course of interrogation, the petitioner was interrogated at length in which he repeatedly submitted that he has no knowledge about the recovery of the bullet in his baggage. He even failed to produce any valid arms license or authorization to justify the possession of the cartridge. Hence, on the said

complaint, the case vide FIR No.211/2016 dated 10.06.2016 under Section 25/54/59 of the Arms Act, 1959 was registered.

3. During further course of investigation, the cartridge detected from the petitioner's registered bag was taken into police possession through seizure memo and sent to FSL for Ballistic examination. The FSL report 2016/F-4522 opined the recovered cartridge as a live one and of .32 caliber and the exhibit was stated to be "*ammunition*" as defined under the Arms Act, 1959. Based on the above report, the requisite sanction of Section 39 of Arms Act was accorded from the concerned DCP. Hence charge-sheet was prepared against the petitioner on 27.12.16 under Section 25 of the Arms Act, 1959 before the Ld. Trial Court.
4. Learned counsel for the petitioner contended that the petitioner has no criminal record and has been wrongly arrayed as an accused in the present case; that he had borrowed the alleged trolley bag from his father-in-law while travelling who has a valid arms license and that the bullet in question must have belonged to him; that he was not aware about the presence of the bullet in question recovered from his check-in-baggage; that the police authorities did not approach the father-in-law of the petitioner to cross-check the alibi of the petitioner with regard to the possession of the bullet in question; that the soft copy of the valid weapons license issued in the name of the father-in-law was neither placed on record along with the charge-sheet nor the father-in-law was asked to verify the authenticity of the said document; that the law is well settled that conscious possession is a core ingredient to establish the guilt for

the offence under Section 25 of the Arms Act, 1959 and the FIR deserves to be quashed.

5. Reliance was placed upon *Gunwantlal v. State of M.P.* reported in *(1972) 2 SCC 194* wherein it was held that conscious possession is the *sine qua non* for the charge under Section 25 of the Arms Act to be brought home against the accused person. The aforesaid principle was further reiterated in the case of *Sanjay Dutt v. State through CBI, Bombay (II)*, reported in *(1994) 5 SCC 410*. The said two judgments have unequivocally held that the basic requirement for a charge under section 25 of the arms act to succeed is the conscious possession of the “*ammunition*” in question.
6. On the converse, Akshai Malik, APP for the State refuted the contentions of the counsel for the petitioner on the ground that, on interrogation the petitioner-herein failed to justify the possession of the ammunition as legal and thus prima facie an offence under Section 25 of the Arms Act, 1959 was made out against him. Further it was submitted that the ballistic expert has opined in the FSL report that the alleged cartridge recovered from the check-in-baggage of the petitioner is live one and covered under 'ammunition' as defined in the Arms Act, 1959.
7. I have heard the submissions of the learned counsel for the parties and perused the material available on record.
8. At the outset, it is perceived that with regard to the issue of 'conscious possession', the law is well settled that the expression 'possession' under Section 25 of the Arms Act, 1959 refers

to possession backed with the requisite mental element, that is, conscious possession. Mere custody in the absence of awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

9. Moreso, the question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of ***Gunwantlal Vs. State of Madhya Pradesh***, reported in ***(1972) 2 SCC 194***, wherein it was observed as under:

“ the possession of a firearm under the Arms Act must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly, where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues besides physical possession being in someone else. The first pre-condition for an offence under Section 25(1) (a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control..... ”

10. The issues involved in the instant case, fall within the ambit of principles laid down in above said decision of the Supreme Court, as there is no recovery of any firearm and insufficient evidence or reasonable ground of suspicion to justify conscious possession of the live cartridges by the petitioner who has expressed his lack of awareness in regard of the alleged cartridge. Further there is no

other material on record to show that the petitioner was conscious of his possession of the live cartridge. The ballistic report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. Hence, it can be safely inferred that the said possession by the petitioner does not fall within the ambit of 'conscious possession' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959. Therefore on the basis of mere possession of the live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

11. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridge in the bag till the same was detected in the security check during the screening of the baggage, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking. Consequently the FIR no.211/2016 under Section 25 of the Arms Act, 1959 alongwith the charge-sheet is hereby quashed.

12. Accordingly, the present petition stands disposed of.

Crl.M.A. No. 15504/2017 (stay)

In view of the order passed in the main petition. The application for stay is rendered infructuous. Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

OCTOBER 09, 2017