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

+ CRL.M.C. 4020/2017

S A SAMPATH KUMAR Petitioner

Through Mr. Krishna K Singh, Adv

versus

STATE NCT OF DELHI Respondent

Through Mr. Amit Gupta, APP for State
SI Mukesh, PS IGI Airport

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. 347/2015 under Sections 25/54/59 of the Arms Act, 1959 ('the Act', for short) registered at police station IGI Airport on the complaint of Duty Manager (Security), IGI Airport may be quashed.

Petitioner is an Indian citizen and is Member of Legislative Assembly of State of Telengana. He is resident of District Mehboob Nagar, State of Telengana. Petitioner holds a valid licence for possession of arms within the State of Telengana, issued by competent authority located at Hyderabad. Petitioner could have carried arms and ammunities within the State of Telengana, but could not have possessed the same within the National Capital Territory of Delhi.

Brief facts of the case are that petitioner was boarding flight from New Delhi to Hyderabad by Flight No.AI-839 of Air India on 9th August,

2015. He had checked in his baggage. On the X-ray belt five live cartridges were detected in the bag. The bag was offloaded and on opening the same five live cartridges of 0.32 bore were found in the bag. Consequently, the aforesaid FIR was registered.

Learned counsel for the petitioner has contended that petitioner had no knowledge of the presence of live cartridges present in his bag when he commenced his journey. The live cartridges inadvertently remained lying in his bag which he could not notice when he kept his clothes etc in the bag. Petitioner was not in 'conscious possession' of the recovered live cartridges, 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.

The plea taken by the petitioner is a plausible plea that when he started his journey from Hyderabad, he did not notice the live cartridges, in his bag. In order to attract the ingredient of Section 25 of the Act, it is necessary that accused is in 'conscious possession' of the recovered 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. 347/2015 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 26, 2017

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