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

+ W.P.(CRL) 2953/2017

MOHINDER SINGH

..... Petitioner

Through: Mr. Varun Malik, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Rajesh Mahajan with SI Sushil
Kumar, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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22.12.2017

1. The petitioner seeks quashing of FIR no. 108/2017 dated 01.04.2017 registered at Police Station IGI Airport for offences committed under section 25 of the Arms Act, 1959.
2. The brief facts of the matter are such that on 01.04.2017, the petitioner, a Canadian national, was on his way back to Canada by China Eastern Airlines, Flight No. MU-564 from New Delhi. The FIR was registered on account of the petitioner's possession of six live cartridges of '32 S&WL' (Mark KF) without a valid arms license or any authorization. These cartridges were found in his hand baggage during security check-in. For this reason, a case against him was registered under section 25 of the Arms Act.
3. The questions of law arising under this petition are as under:-
 - (a) *Whether a cartridge is complete ammunition within*

the meaning of Section 2(b) of Arms Act or minor part of ammunition as referred to in Section 45(d) of the Arms Act?

(b) Whether the expression 'possession' occurring in section 25 of the Arms Act, 1959, means possession with a requisite mental element, i.e. conscious possession and mere physical possession without knowledge of the same does not amount to an offence under the provisions of the Act?

(c) Whether the absence of the accused having conscious possession of a live cartridge entitles the petitioner to get the FIR and all proceedings emanating out of the same quashed?

4. Section 2(b) of the Arms Act, 1959 defines "ammunition" as under:-

- (b) "ammunition" means ammunition for any firearm, and includes—*
- (i) rockets, bombs, grenades, shells [and other missiles,]*
 - (ii) articles designed for torpedo service and submarine mining;*
 - (iii) other articles containing, or designed or adapted to contain, explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not, .*
 - (iv) charges-for firearms and accessories for such charges,*
 - (v) fuses and friction tubes,*
 - (vi) parts of, and machinery for manufacturing, ammunition, and*
 - (vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf ;*

5. According to the Status Report filed dated 1.11.2017, the ballistic examination conducted on the said cartridges has determined the same to fall under the definition of "ammunition" under the Arms Act, 1959. The relevant portion of this report is as under:-

The ammunitions recovered from the hand bag of

passenger Mohinder Singh, were sent to FSL, Rohini, Delhi for Ballistic examination and expert opinion. The Ballistic expert in its reply opined that, "The physical examination of exhibits marked 'A1' to 'A6' shows that they are cartridges of standard .32" caliber and are ammunition as defined in Arms Act, 1959."

6. Section 45(d) of the Arms Act exclude “minor parts of arms or ammunition” that are “not intended to be used along with complementary parts” from the application of the Act:-

“(d) the acquisition, possession or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person.”

7. There is no doubt that a live cartridge of the nature described in the Status Report filed is not a "minor part of ammunition" and therefore cannot enjoy exclusion from the application of the Act. The application of a live cartridge when used with any arm as defined under the Act will serve the purpose of being used as a weapon for offence or defense. For this reason, the argument that the 6 live cartridges found in the petitioner's hand luggage were in fact "minor parts of ammunition" and may be exempted from the application of the Act is shorn of reason and is accordingly rejected.

8. Apropos the question of whether conscious possession is a core ingredient to establish the guilt for the offence under Section 25 of the Act, the Supreme Court in the case of ***Gunwantlal v. State of Madhya Pradesh AIR 1972 SC 1756*** has observed that possession must mean possession with the

requisite mental element, i.e. conscious possession and not mere custody without awareness. The relevant portion is as under:-

"5.....The possession of a firearm under the Arms Act in our view 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 none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else."

9. In a similar vein, the Constitutional Bench of the Supreme Court in ***Sanjay Dutt Vs. State Through C.B.I., Bombay*** (II), (1994) 5 SCC 410 elucidated the meaning of possession to be that which is conscious possession and not based on mere custody, lacking any knowledge or intention to use:-

"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. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has been understood. (See Warner v. Metropolitan Police Commissioner 1969 (2) AC 256 and Sambasivam v. Public Prosecutor, Federation of Malaya. 1950 AC 458.)"

10. In the instant case, the petitioner did indeed possess a valid license vide Arms Licence No. 6069/DM/LDH/HMBR/Apr-2010 issued by the District Magistrate, Ludhiana, Punjab. On 01.03.2017 he had applied for the renewal of this licence, for which reason he had visited Delhi. He was informed that the validation of his licence would require him to participate in the procedure of renewal of licence again. It is also brought to the Court's notice that since he did indeed possess a valid licence, requiring renewal, the petitioner was neither arrested nor detained by the police. The mere possession of live cartridges, by an individual carrying a valid arms licence, on his way to complete the procedure of renewal of the same is insufficient to frame charges and proceed to subject her/him to the rigours of trial.

11. In ***Gaganjot Singh Vs. State*** 2014 Law Suit (Del) 4968, the Division Bench affirmed the decisions in ***Sanjay Dutt Vs. State Through C.B.I., Bombay and Gunwantlal v. State of Madhya Pradesh*** (supra) 1972 SC 1756 and reiterated that mere possession of ammunition cannot point towards suspicion, which has to be based on proven conscious possession:-

“12. As noticed previously, a solitary cartridge - which on examination by expert has been confirmed to be a live one -was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be cartridge and consequently it is "ammunition", by itself, that is insufficient to

point to suspicion - much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal (supra) and Sanjay Dutt (supra)."

12. Keeping the aforesaid discussion in mind, the charges in the present case could be framed only when there was reasonable suspicion and sufficient material of the alleged offender having committed the offence. A perusal of the records shows that the element of satisfying "reasonable suspicion" is entirely absent in the facts of the present case, which would have to be based on proven "conscious possession". Since, apart from the mere recovery of 6 live cartridges in the bag of the petitioner, there is no material apropos "conscious possession", the offence cannot be proved even after a trial.

13. In the aforesaid circumstances, keeping in mind the aforementioned dicta of the Supreme Court regarding the meaning of 'conscious possession' and the absence of the element of reasonable suspicion, – the impugned FIR (FIR No.108/2017) and all proceedings emanating from it are accordingly quashed.

14. The Writ Petition is allowed in the above terms.

NAJMI WAZIRI, J

DECEMBER 22, 2017