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

+ W.P.(CRL) 3540/2017 & CRL. M.A. 20957/2017

NIMESH KUMAR Petitioner

Through: Mr. Satvinder Singh, Advocate.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Ranbir Singh Kundu, ASC for
State along with Mr. Premnagar Pal
and Mr. Bhagat Singh, Advocates
with SI Vinod, P.S IGI Airport.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **19.12.2017**

1. Issue notice.
2. Mr. R.S. Kundu, the learned Additional Standing Counsel accepts notice on behalf of the State.
3. This petition seeks quashing of FIR No. 392/2015 registered under section 25 of the Arms Act, 1959. The petitioner was found in the possession of a live cartridge in his handbag during the course of baggage security screening at the airport, for travel from Delhi to Bangalore on flight no. AI-803. He borrowed a handbag from his elder brother. He did not check whether there was any live cartridge in the bag. Since he was in a rush to catch the flight, he simply stuffed the handbag with his belongings in a hurry and did not check its prior contents. It is his case that his brother possesses a valid arms license for a .32 caliber bearing No 1369/GV/P.S. Rudrapur/USN/2013.

4. Mr. Kundu, the learned Additional Standing Counsel for State states, upon instructions, from the Investigating Officer, who is present in the Court, that the factum of the license belonging to the petitioner's brother has been verified. The petitioner contends that he was neither aware of nor in “conscious possession” of the said bullet. Unbeknownst to him it simply lay in the handbag and belonged to its licenced owner.

5. In support of his contention, the learned counsel for the petitioner relies upon the following judgments of this Court in CRL.M.C. 3576/2011 & Crl.M.A.No.12699/2011 titled as **Chan Hong Saik Thr. SPA: Arvinder Singh vs State & Anr**; W.P.CRL. 1169/2014 titled as **Sh. Gaganjot Singh vs. State**; CRL.M.C.1455/2014 and CRL.M.A.4965/2014 titled as **Manuel R. Encarnacion vs. State Through NCT of Delhi and Anr**; CRL.M.C. 471/2015 titled as **Sonam Chaudhary vs. The State (Govt of NCT Delhi)**; CRL.M.C. 3593/2016 & Crl.M.A.15169/2016 titled as **Dhanwant Kaur vs. State & Anr.**; W.P. (Crl) 3341/2016 and CRL. M.A. No. 18131/2016 titled as **Alka Raj vs. State, NCT of Delhi & Anr**; W.P.(CRL) 354/2017 titled as **Vinay Khandelwal vs. State & Anr.**; W.P.(CRL) 102/2017 titled as **Jaivir Gopal Singh vs. State of NCT of Delhi & Anr.**; WP(CRL) 783/2017 titled as **Parmjeet Rana vs. State & Anr.**; CRL M.C. 729/2017 titled as **Ranvir Arora vs. State & Anr**; W.P. (Crl) 1669/2017 titled as **Narinderjit Kaur Singh vs. State of NCT of Delhi & Anr.**; CRL M.C. 2642/2014 titled as **Juan Manuel Sanchar Rosas vs State through NCT of Delhi & Anr.**; CRL MISC. No. 3172/2015 titled as **Kundan Kumar Srivastava vs. State (Govt. of NCT of Delhi)**; CRL. Misc. No. 4221/2015 titled as **Nitin Verma vs. State (Govt. of NCT of Delhi)** and CRL. Misc. No. 4786/2015 titled as **Ronald Albert vs. State (Govt. of NCT of Delhi)**.

6. 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."

7. 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.)"

8. In the present case, the petitioner was carrying a handbag which contained one live cartridge inside it. He has claimed that the bag belongs to his brother, who has a valid firearm licence, the latter fact has been confirmed by the police. The petitioner's claim of ignorance of the presence of this cartridge in the bag removes the element of "conscious or knowing possession". The petitioner claims that he was in a hurry to catch his flight, therefore, he quickly stuffed his belongings in the handbag borrowed from his brother. This version is plausible and there is no reason why a rational person would carry a live firearm cartridge in his handbag on a flight, unless it was inadvertently. Apart from the cartridge being in the handbag, there is no incriminating material against the petitioner. *Ex facie* there is insufficient material to frame charges against the petitioner and to subject him to the rigours of a trial.

9. Charges can be framed only when there is reasonable suspicion or sufficient material to indicate that the alleged offender had committed the offence. A perusal of the records show that the elements satisfying "reasonable suspicion" are entirely absent in the present circumstances. The case would have to be based and proven on "conscious possession". However, since there is no such material, apart from the mere recovery of a live cartridge in the bag of the petitioner, the offence cannot be proved even after a trial.

10. In the circumstances, the petition is allowed. The FIR No. 392/2015 registered under section 25 of the Arms Act, 1959 and all proceedings emanating therefrom is hereby quashed.

11. The petition is disposed off in the above terms.

NAJMI WAZIRI, J

DECEMBER 19, 2017

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