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

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Judgment delivered on: 08.05.2018

+ CRL.M.C. 282/2018 & CrI.M.A. 1085/2018

MICHAEL JOSEPH HAYDEN

..... Petitioner

versus

STATE (GNCT) OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Mr. Amish Aggarwal, Mr. Kuldeep
Jauhauri and Mr. Mohit Agarwal, Advs.

For the Respondents :

Mr. G.M. Farooqui, APP for the State.
SI Rajiv Gulati

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
08.05.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks quashing of FIR No. 468/2014 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also the summoning order dated 01.10.2016.

2. The allegations in the FIR are that the petitioner, who is an American national, was travelling to Kolkata from Delhi. The petitioner was en route from St. Louis-Missouri via Chicago. During

screening/scanning of the handbag, one live cartridge was found in baggage of the petitioner.

3. The contention of learned counsel for the petitioner is that the petitioner was visiting Kolkata and had taken the connecting flight and was not aware that his handbag contained a live cartridge. It is contended that the petitioner was not aware as to how the said cartridge came in his bag. Further it is contended that since the petitioner has taken a connecting flight and his handbag was also scanned United States and it was highly improbable that the live cartridge would have escaped the scanning carried out in the United States. It is submitted that there was no conscious possession of the live cartridge.

4. Learned counsel for the petitioner submits that it is not only mere presence of a live cartridge which is to be established, what is necessary to be established is conscious possession. He submits that there is no evidence to show that the petitioner was conscious of the presence of a live cartridge in his hand baggage and, as such, since, there is absence of *mens rea*, the petitioner could not be charged with such offence.

5. Learned Counsel for the petitioner submits that further it is apparent that if the petitioner had any *mens rea* or *mala fide* intention, he would not have carried the live cartridge in his hand baggage, without making any attempt to conceal the same as he is aware that

hand baggage is always screened/scanned

6. It is a settled proposition of law that possession under Section 25 of the Arms Act refers to not only physical possession but also the requisite mental element i.e. *mens rea* of conscious possession. Mere custody without *mens rea* would not constitute an offence under the Arms Act. Conscious possession of any fire arm/ammunition is a necessary ingredient of the statutory offence entailing strict liability on the offender.

7. Reference may also be had to the decisions of coordinate benches of this court in *Gaganjot Singh vs. State (Govt. of NCT of Delhi)*, 2014 SCC Online Del 6885; *Jaswinder Singh Vs. State (Govt of NCT of Delhi)*, 2015 SCC Online Del 10894 ; *Sonam Chaudhary vs. State*: 2016 SCC Online Del 47; *Mandeep Lambs vs. State (Govt. of NCT of Delhi)*: 2017 SCC Online Del 9885 and of the Supreme Court in *Gunwantlal vs. State of Madhya Pradesh*: (1972) 2 SCC 194.

8. In the absence of the conscious possession of a live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act would be applicable and it would be justified to end all such proceedings to secure the ends of justice.

9. Perusal of the record shows that the subject case is clearly covered by the decisions referred to above and the principle of law laid down by the Supreme Court. There isn't sufficient evidence or

reasonable ground of suspension to justify conscious possession of the live cartridge recovered from the baggage of the petitioner. There is no material on record to show that the petitioner was conscious of the possession of the live cartridge.

10. From the perusal of the record it can be safely interpreted that the said possession of the cartridge does not fall within the ambit of conscious possession, which is a basic ingredient to establish guilt for an offence under Section 25 of the Arms Act.

11. In view of the above, the petition is allowed.

12. Consequently, FIR No. 468/2014 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also the summoning order dated 01.10.2016 and the consequent proceedings emanating therefrom are accordingly quashed.

13. Order *Dasti* under the signatures of the Court Master.

May 08, 2018
‘rs’

SANJEEV SACHDEVA, J