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

+ CRL.M.C. 2575/2018

MAMTA HAJONG

..... Petitioner

Through

Mr. Rahul Kumar and Mr. David A,
Advs.

versus

STATE NCT OF DLEHI

..... Respondent

Through

Mr. Amit Chadha, APP with SI
Mahesh, P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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14.05.2018

Crl. M.A. no.9138/2018 (condonation of delay)

Delay condoned. Application is disposed of.

Crl. M.A. no.9137/2018 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.M.C. 2575/2018 & Crl. M.A. no.9136/2018 (stay)

By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of the FIR No. 217/2014 under Sections 25/54/59 of the Arms Act, 1959 registered at Police Station I.G.I. Airport.

Brief facts are that petitioner was going to Imphal by Flight no. S2

4391 via Guwahati on 28th June, 2014 from Delhi (IGI Airport). On screening of her baggage, one live cartridge of .38mm was detected. This resulted registration of the present FIR.

Learned counsel for the petitioner has contended that petitioner is working as Inspector in Central Bureau of Investigation and is posted in Anti-corruption Branch at Imphal, Manipur. She had come to attend a training program at CBI Academy, Ghaziabad. While she was returning home, from her baggage, one live cartridge was recovered. Her husband is also a Sub-Inspector in State police. While commencing her journey from Imphal, petitioner had taken the bag of her husband and kept her articles in the said bag. The live cartridge remained lying in the bag inadvertently. Petitioner was not aware about the presence of live cartridge in the bag. Petitioner was not in 'conscious possession' of the live cartridge, recovered from her bag.

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 to contend that ingredients of offence under Section 25 of the Arms Act are not attracted in absence of the ‘conscious possession’ of the cartridges.

Learned APP submits that Investigating Officer has verified the facts that petitioner is Inspector in CBI and posted with Anti-corruption Bureau at Imphal. Her husband is also a Sub-Inspector in State Police of Manipur. During the investigation, nothing has come out that petitioner was in ‘conscious possession’ of the live cartridge.

The plea taken by the petitioner is a plausible plea that when she started her journey, she did not notice the live cartridge, which was lying in her baggage. In order to attract the ingredients of Section 25 of the Act, it is necessary that accused is in ‘conscious possession’ of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in ‘conscious possession’ of the live cartridge, which was recovered at the IGI Airport from her 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 a live cartridge.

For the foregoing reasons, FIR No. 217/2014 under Sections 25/54/59 of the Arms Act, 1959 registered at Police Station I.G.I. Airport and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

MAY 14, 2018

r.bararia