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

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Judgment delivered on: 23.04.2018

+ CRL.M.C. 960/2018 & CrI.M.A.3520/2018

UNDIS VATVEDT SINGH

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Madhav Khurana with Mr. Varun Singh Thapa,
Advocates.

For the Respondents : Mr. Akshai Malik, APP for the State.
SI Vipin Kumar, PS IGI Airport.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

23.04.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks quashing of FIR No.223/2015 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Order-on-Charge dated 11.01.2018.

2. The allegations in the FIR are that the petitioner, who is a Norwegian national, was travelling to Norway from Delhi. During scrutiny one live cartridge was found in her *Check-in Baggage*.

3. The contention of learned counsel for the petitioner is that the petitioner had gone to visit the relatives of her husband in Nabha, Punjab and thereafter she was to travel to Norway. Since, she ran short of space in her baggage, a Bag was borrowed from one of the relatives of her husband namely Mrs. Sandesh Mohinder Kaur. It is contended that the petitioner was not aware that the said Bag contained a live cartridge. At the time when the petitioner was apprehended, the petitioner immediately stated that the bag was borrowed from Mrs. Sandesh Mohinder Kaur.

4. The arms licence of Mrs. Sandesh Mohinder Kaur had been produced, which has been got duly verified by the Investigating officer and the bore of the live cartridge tallies with the weapon registered in favour of the Mrs. Sandesh Mohinder Kaur

5. 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 her baggage and, as such, since, there is absence of *mens rea*, the petitioner could not be charged with such offence.

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 is no sufficient evidence or reasonable ground of suspension to justify conscious possession of the live cartridge recovered from the baggage of the petitioner. The baggage from which it is recovered belongs to a relative of the husband 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. FIR No.223/2015 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Order- on-Charge dated 11.01.2018 and the consequent proceedings emanating therefrom are accordingly quashed.

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

APRIL 23, 2018
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SANJEEV SACHDEVA, J