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

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Judgment delivered on: 22.05.2018

+ CRL.M.C. 1727/2018

GURINDER SINGH

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Amardeep Maini with Mr. Manmeet Singh,
Advocates.

For the Respondent : Mr. Arun Kumar Sharma, APP for the State.
SI Arun Kumar, IGI Airport.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

22.05.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks quashing of FIR No.259/2014 under Sections 25 of the Arms Act, Police Station IGI Airport.
2. The allegations in the FIR are that the petitioner, who is an Indian national, was travelling to London from Delhi. During scrutiny one live cartridge was found in his *Check-in Baggage*.
3. The contention of learned counsel for the petitioner is that the petitioner was visiting his daughter, who is based in London and was not

aware that the said baggage contained a live cartridge.

4. The petitioner produced his arms licence, 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 petitioner.

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 his 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. 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.259/2014 under Sections 25 of the Arms Act, Police Station IGI Airport as also Order-on-Charge dated 15.02.2016 and the consequent proceedings emanating therefrom are accordingly quashed.

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

SANJEEV SACHDEVA, J

MAY 22, 2018
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