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

+ **W.P.(CRL) 770/2018**

SHYAM JI NIGAM

..... Petitioner

Through: Mr. Satya Ranjan Swain, Mr. Ajay P.
Tushir and Mr. Varun Malik,
Advocates.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Piyush Singhal for Mr. Ashish
Aggarwal, Additional Standing
Counsel for State with SI Vipin
Kumar, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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10.07.2018

1. By way of this petition filed under section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No. 446/2017 registered at Police Station IGI Airport, New Delhi, for the offences punishable under section 25 of the Arms Act, 1959 and the consequential proceedings emanating therefrom against him.
2. It is the petitioner's case that he owned a revolver having a valid Arms License issued from Uttar Pradesh. The respondent has verified the same. The Arms License was valid at the time when the live cartridge was found in the baggage of the petitioner, who was seeking to travel from Delhi to Dubai. It is the petitioner's case that unknowingly one cartridge came to be left in the bag which he subsequently used as his hand baggage for his

air-travel; that in effect, he was not in conscious possession of the said cartridge, therefore, he cannot be prosecuted under the aforesaid section.

3. 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 the possession must mean possession with the requisite mental element, i.e. conscious possession and not a 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."

4. In a similar vein, the Constitution 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, as a conscious possession and it is not based on mere custody, without any knowledge or intention to use the arm. It held:-

"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.)"

5. This Court too held similarly in many cases, for instance:
 - (i) CRL.M.C. 3576/2011 & CrI.M.A.No.12699/2011 titled as **Chan Hong Saik Thr. SPA: Arvinder Singh vs. State & Anr;**
 - (ii) W.P.CRL. 1169/2014 titled as **Sh. Gaganjot Singh vs. State;** CRL.M.C.1455/2014;
 - (iii) CRL.M.C. 471/2015 titled as **Sonam Chaudhary vs. The State (Govt of NCT Delhi);**
 - (iv) W.P. (CrI) 3341/2016 and CRL. M.A. No. 18131/2016 titled as **Alka Raj vs. State, NCT of Delhi & Anr;**
 - (v) W.P. (CrI) 1669/2017 titled as **Narinderjit Kaur Singh vs. State of NCT of Delhi & Anr.;**

6. In the present case, the petitioner was carrying a handbag which contained one live cartridge inside it. He has claimed that unknowingly one cartridge came to be kept in his hand baggage and that he has a valid firearm licence, the latter fact having 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", as there is no reason why a rational person would carry a live firearm cartridge in his handbag on a flight, unless it was carried inadvertently. Apart from the cartridge being present 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 criminal trial.

7. Charges can be framed only when there is a 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 the requirement of “reasonable suspicion” are absent in the present case. 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 from the bag of the petitioner, the offence cannot be proved even after a trial.

8. In view of the above, insofar as the petitioner is not in conscious possession of the live cartridge, the prosecution would not be able to prove its case. Therefore, the FIR No. 446/2017 registered at Police Station IGI Airport, New Delhi, for the offences punishable under section 25 of the Arms Act, 1959 and all proceedings emanating therefrom is hereby quashed.

9. The petition is disposed-off in the above terms.

NAJMI WAZIRI, J.

JULY 10, 2018

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