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

Date of decision: 29th October, 2018

+ CRL.M.C. 2986/2018 & Crl.M.A.10530/2018 (stay)

MRS. RAJVIR KAUR

..... Petitioner

Through: Mr.Vivek K. Thakur with Mr.Devender
Singh Thakur and Mr.Rajat Dhillon,
Advs.

versus

STATE OF NCT OF DELHI

..... Respondents

Through: Mr.Mukesh Kumar, APP for the State.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under section 482 of the Cr.P.C seeks quashing of F.I.R No. 0136/2016 under Section 25 of the Arms Act, 1959 registered at PS IGI Airport, New Delhi and all criminal proceedings emanating therefrom.

2. The facts emerging from the record are that the petitioner who is the wife of one Mr. Jaswant Singh, was travelling to Canada via Hong Kong by Cathay Pacific Airlines Flight No. CX-694 on 09.04.2016, when during the screening of her baggage, it transpired that the same contained some live ammunition. A physical search of the petitioner's

baggage was carried out and one 0.38 mm live cartridge was found therein. As the petitioner was unable to produce any legal document or license in respect of the recovered ammunition at the time of seizure, the captioned FIR was registered against her on 10.04.2016.

3. It is claimed by the learned counsel for the petitioner that when the aforementioned cartridge was recovered from her baggage, the petitioner had informed the Investigating Officer that she had borrowed the said bag from her father-in-law, Sh. Ajit Singh, who possessed a valid arms license for the cartridge and she was not at all aware that a single cartridge had been inadvertently left behind in his bag. During the course of investigation, the petitioner had also submitted a photocopy of the arms license in the name of her father-in-law.

4. On the last date, this Court had issued notice and the learned APP, while accepting notice, had submitted that the aforesaid arms licence had been verified and the same belongs to the petitioner's father-in-law. Today, he reiterates the same position.

5. Learned counsel for the petitioner submits that the petitioner's husband is a Permanent Resident of Canada and has been residing there for the last many years, as a result of which she has a multiple-entry visa for Canada that is valid till 26.03.2019. In fact, he submits, even the petitioner's daughters are currently married and settled in Canada. However, although her entire family resides in Canada, the petitioner lives in a small village in Tehsil Dasuya, Hoshiarpur, Punjab alongwith her father-in-law, in support of which contention learned counsel for the

petitioner places reliance on a copy of the ration card issued in the name of the petitioner's father-in-law.

6. Learned counsel for the petitioner further submits that after the petitioner had borrowed the bag from her father-in-law for the purposes of her impending travel to Canada to visit her daughters and husband, she was not at all aware of the fact that it contained any ammunition and she had carried the same to the airport without any knowledge of the fact that a single live cartridge belonging to her father-in-law had inadvertently remained inside her baggage. By placing reliance on Section 45(d) of the Arms Act, he further submits that nothing in the Act applies to situations like the present case where the petitioner was found to be in possession, and that too unknowingly, of ammunition which was not intended to be used with the complementary parts of any arms or other such ammunition possessed by any person. He submits that in view of the admitted position that there is nothing to show that the petitioner was in *conscious* possession of the single live cartridge recovered from her baggage, the FIR and consequential proceedings are liable to be quashed. In support of his aforesaid contentions, learned counsel for the petitioner also relies on the decision of this court in ***Sonam Chaudhary v. State (Govt. of NCT of Delhi) and Anr. [2018 SCC OnLine Del 10218]***.

7. I have considered the submissions of the learned counsel for the parties and perused the records. The undisputed position that emerges is that while the petitioner's husband is a Permanent Resident of Canada

and has been residing there for the last 20 years, she herself has been residing in a small village in Punjab alongwith her father-in-law, Mr. Ajit Singh, who has an arms license that is valid till 31.12.2018. When the petitioner was travelling to Canada on 09.04.2016 to meet her daughters and husband, only a single live cartridge was recovered from her baggage, which she had borrowed from her father-in-law for the purposes of her impending travel. In fact, a perusal of the status report filed by the Investigating Officer reveals that when the statement of the petitioner's father-in-law was recorded during investigation, he categorically stated that he had given his own bag to the petitioner for travelling purposes.

8. When the aforesaid facts are considered in the light of the explanation given by the petitioner that she was unaware that a single cartridge was kept in her baggage which she had borrowed from her father-in-law for the purpose of travelling to Canada, it becomes evident that there is nothing to show that the petitioner was in conscious possession of the said ammunition. There is every reason to believe the explanation offered by the petitioner, especially in the light of the admitted position that the ammunition was recovered from a bag which she had been borrowed from her father-in-law, who has a valid arms license. Reliance may be placed on the decision of this court in ***Sonam Chaudhary (supra)***, the relevant paragraph 23 of which reads as under:-

“23. With respect to the second issue of ‘conscious possession’, it is settled law that the expression

‘possession’ occurring in Section 25 of the Act, means possession with the requisite mental element i.e., ‘conscious possession’, however, mere custody without the awareness of the nature of such possession does not amount to any offence of the Arms Act. The possession of any fire arm/ammunition must be conscious possession.”

9. Reliance may also be placed on the decision of this Court in ***Jaswinder Singh vs. State (Govt. of NCT of Delhi)***,[2015 SCC Online Del 10894], the relevant paragraphs 10 and 11 of which read as under:-

“10. It is settled law that the expression „possession” occurring in the Section 25 of the Arms Act, 1959 means possession with the requisite mental element, that is, conscious possession and mere custody without the awareness of the nature of such possession does not amount to any offence of the Arms Act. The possession of any fire arm/ammunition must be a conscious possession, and only then will the ingredient of possession in similar context of a statutory offence, importing strict liability, on account of mere possession of an unauthorized substance be understood. 11. The Constitutional Bench of the Supreme Court in Sanjay Dutt v. State, (1994) 5 SCC 410 held in para 19 that, „„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.”

10. When I consider the present case in the backdrop of the settled legal position that the core ingredient for imposing strict liability on a person under the Arms Act is conscious possession of the arms/ammunition in question, it becomes evident that no offence under the Arms Act can be made out against the petitioner as she cannot at all be stated to have been in conscious possession of the ammunition recovered from her baggage.

11. In the light of my aforesaid conclusion, this Court finds that the continuation of criminal proceedings in a case like this where the petitioner was not found to be in conscious possession of ammunition belonging to her father-in-law, would be wholly unwarranted. In my view, the ends of justice demand that the aforesaid FIR and all consequential proceedings be quashed.

12. Accordingly, the petition is allowed and the captioned FIR is quashed, subject to the petitioner depositing a sum of Rs. 50,000/- with the Delhi High Court Lawyers Welfare Trust, within two weeks from today. The receipt of deposit of costs shall be handed over to the Investigating Officer.

13. The petition is disposed of alongwith the pending application in the aforesaid terms.

(REKHA PALLI)
JUDGE

OCTOBER 29, 2018

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