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

+ CRL.M.C. 3173/2018 & Crl. M. A. No. 11118-11119/2018

BIRJOGINDER GILL Petitioner

Through: Mr. Mahavir Sharma with Mr.
Kanwarpreet Singh, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. M P Singh, APP for the State
SI, Anuj Kumar, PS: IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **23.08.2018**

Notice. Learned APP accepts notice on behalf of the State.

Arguments heard.

It is stated that the petitioner is resident of United States of America (USA). Petitioner had come to attend a marriage in India. While returning back, he borrowed a bag from his uncle, Mr. Shiv Raj Singh as his luggage did not fit in the bag, which he had brought with him. Petitioner was unaware of the presence of two live bullets in the said bag. During the security check at the IGI Airport on 24th November, 2015 two live bullets/cartridges were detected by the security personnel in the bag. Consequently, present FIR No. 498/2015 under Section 25 of the Arms Act, 1959 was registered at IGI Airport.

The learned counsel for petitioner submits that the petitioner was not in 'conscious possession' of two live bullets, which were recovered from the bag. At the time of commencing his journey, petitioner did not check the bag

thoroughly and this was his only fault. Live bullets were of his uncle, who was having a valid arms licence. Thus, offence under Section 25 of the Arms Act, 1959 is not sustainable.

The learned counsel has placed reliance upon *Sanjay Dutt Vs. The State through C.B.I., Bombay*, JT 1994 (5) S.C. 540, *Rakesh Kumar and Company Vs. Union of India Through the Dy. Chief in 2015 VII AD (DELHI) 44*, and *Rahul Dhir Vs. State (NCT of Delhi) & Anr.* 2015 (4) JCC 2577 to contend that offence under Section 25 of the Act are attracted only if accused is found to be in 'conscious position' of the arms and ammunition.

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 the two live cartridges, inasmuch as, learned APP on instructions of Investigating Officer, submits that petitioner's uncle Mr. Shiv Kumar Singh was having an arms licence, which was duly verified during the investigation.

In view of the above, I am of the opinion that there is every likelihood of petitioner not noticing the two live cartridges in the bag when he commenced his return journey. There is nothing to show that petitioner was in 'conscious possession' of the live bullets.

For the foregoing reasons, FIR No.498/2015 under Sections 25 of the Act registered at P.S. IGI Airport and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

Dasti.

A.K. PATHAK, J

**AUGUST 23, 2018/P
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