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

+ CRL.M.C. 3344/2018 and Crl. M.A. no. 12120/2018 (stay)

PREM SINGH SANGA

..... Petitioner

Through Mr. Suresh Chaudhary and Mr. I.J.
Verma, Advs.

Versus

THE STATE (NCT) OF DELHI

..... Respondent

Through Ms. Manjeet Arya, APP with SI
Mukesh, P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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27.08.2018

By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of FIR No.35/2016 under Sections 25/54/59 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport on the complaint of Mr. Diwakar Bhatnagar, Assistant Security Manager, Malaysia Airlines Berhad, IGI Airport, New Delhi since one live bullet was recovered from the bag of petitioner during the screening of his checked-in baggage.

Learned counsel for the petitioner submits that petitioner was going to Kuala Lumpur with his wife by Flight No. MH 191/25 of Malaysian

Airlines. Both sons of petitioner are in Indian Army. The bag, which petitioner had picked up from his house and was carrying with him after putting his luggage therein, was also used by his sons. One live bullet remained undetected in the bag. When petitioner commenced journey, he did not notice the live bullet inside the bag. Petitioner was not in 'conscious possession' of the live bullet. In order to attract the ingredients of Section 25 of the Act, it is necessary that accused is in 'conscious possession' of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in 'conscious possession' of the live bullet, which was recovered at the IGI Airport from his checked-in baggage.

Learned APP, on instructions of the Investigating Officer, submits that no material could be collected during the investigation that petitioner was in 'conscious possession' of the live bullet recovered from his baggage. It is further submitted that petitioner's sons are indeed in Indian Army.

In *Gunwantlal vs. The State of Madhya Pradesh*, AIR 1972 SC 1756, it is held that possession of a firearm must be conscious to entail prosecution under the Arms Act. In *Sanjay Dutt vs. State Through CBI, Bombay* (1994) 5 SCC 410 also it has been held that the prosecution is required to prove that possession of firearms was 'conscious' one. In *Nurit Toker vs. State of*

Maharashtra, 2012 BomCR (Cri) 154 and William Michael Hurtubise vs. State of Odisha and Ors. 117 (2014) CLT 303 also similar view has been taken.

For the foregoing reasons, FIR No.35/2016 under Sections 25/54/59 of the Arms Act, 1959 and consequent proceedings emanating therefrom, are quashed.

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

A.K. PATHAK, J.

AUGUST 27, 2018
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