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

+ CRL.M.C. 4419/2018

SUKHJEET KAUR SIDHU

..... Petitioner

Through: Mr.Sunil Singh Parihar with  
Mr.Aditya Dev Triguna, Advs.

versus

STATE ( NCT OF DELHI) & ANR

..... Respondents

Through: Mr.Mukesh Kumar, APP for the State  
with SI Devendra Kumar, PS IGI  
Airport.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**ORDER**

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**25.10.2018**

1. The present petition under Section 482 of the Cr.P.C seeks quashing of FIR No.96/2018 under Section 25 of the Arms Act, 1959 registered at PS IGI Airport, New Delhi and all criminal proceedings emanating therefrom.

2. The facts as emerge from the record are that the petitioner who is the widow of Late Shri Sarwan Singh Sidhu, was travelling to Toronto via London by British Airways Flight No. BA-256 on 27.02.2018, when during the screening of her baggage, it transpired that the same contained some ammunition. A physical search of the petitioner's baggage was carried out and six live cartridges were recovered in the presence of the passengers and other staff members

of the Airlines. It is claimed by the learned counsel for the petitioner that when the aforesaid ammunition was recovered from her baggage, the petitioner categorically informed the Airlines' staff that the same belonged to her deceased husband, a Government employee with Punjab Mandi Board who had expired on 26.09.2017 while holding a valid arms licence at the time of his death. Since the petitioner was unable to produce the arms licence at the time of seizure of the ammunition, the aforesaid FIR was registered against her.

3. However, subsequently, the arms licence of the petitioner's husband was verified and it also transpired that soon after her husband's death on 26.09.2017 and much before her visit to Toronto, the petitioner had voluntarily handed over the weapon belonging to her husband to Punjab Gun House on 03.10.2017.

4. On the last date, this Court while issuing notice had directed the learned APP to verify the aforesaid arms licence, pursuant whereunto a status report has been filed. Mr. Mukesh Kumar, learned APP submits that upon verifying the said arms licence, it has been found that it belonged to the petitioner's deceased husband and was valid upto 07.02.2019.

5. Learned counsel for the petitioner submits that after she had deposited the main fire arm, the petitioner was not at all aware that any cartridges were left behind in the personal belongings of her husband and, therefore, when she was on her way to meet her daughter in a state of shock due to her husband's untimely death, the said cartridges were also unintentionally placed in her baggage as part of her husband's folder, the contents of which she had no knowledge.

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 along with the complementary parts of any arms or other such ammunition possessed by any person. In support of his aforesaid contention, learned counsel for the petitioner also relies on the decisions of this Court in *Jaswinder Singh vs. State (Govt. of NCT of Delhi)*, [2015 SCC Online Del 10894] and *Mandeep Lamba vs. State (Govt. of NCT of Delhi) & Anr.* [2017 SCC Online Del 9885].

6. I have considered the submissions of the learned counsel for the parties and perused the record. What emerges is that the petitioner had admittedly surrendered the weapon belonging to her husband immediately after his death, even though the arms licence in his name was valid till 07.02.2019. It is also undisputed that on the date when the petitioner was found carrying the cartridges enroute Toronto, the weapon belonging to her late husband stood surrendered. When the aforesaid facts are considered in the light of the explanation given by the petitioner that the cartridges had been placed in a folder belonging to her husband and she was carrying the said folder without being aware that there were any cartridges inside, it becomes evident that there is nothing to show that the petitioner was in conscious possession of the said ammunition.

7. When I consider the above 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. There is every reason to believe the explanation offered by the petitioner, especially in light of the admitted position that the fire arm stood surrendered by her long before her impending travel to Toronto. Reliance may be placed on the decision of this Court in ***Jaswinder Singh (supra)***, 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.’*

8. In the light of my aforesaid conclusion that in the peculiar facts

of the present case, no offence under the Arms Act has been made out against the petitioner, this Court finds that the continuation of criminal proceedings in a case like this where the petitioner, who is the widow of a person who had a valid arms licence and had duly surrendered the very weapon belonging to her deceased husband, would be wholly unwarranted. In my view, the ends of justice demand that the aforesaid FIR and all consequential proceedings be quashed.

9. Accordingly, the petition is allowed and the captioned FIR is quashed, subject to the petitioner depositing a sum of Rs.20,000/- 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.

10. The petition is disposed of in the aforesaid terms.

**REKHA PALLI, J**

**OCTOBER 25, 2018**

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