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

+ CRL.M.C. 2033/2017

HARVINDER PAUL SINGH

..... Petitioner

Through

Mr. Manoj Ohri, Sr. Advocate with Mr.
Vineet Tayal, Mr. Abhimanyu Singh,
Mr.Nawab Singh Jaglan& rajeev ranjan
Raj, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Mr. M.S. Oberoi, APP with SI Ravi
Kumar, P.S. Domestic Airport, New
Delhi

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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11.01.2018

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No.122/2015 under Section 25 of the Arms Act, 1959 ('the Act', for short) registered at P.S. Domestic Airport on the complaint of ASI Gautam, CISF, IGI Airport, New Delhi and the consequent proceedings emanating therefrom, may be quashed.

It is submitted that petitioner is an Ex-Army Officer. After his retirement he is working with Union Bank of India at Ahemdabad as Chief Manager (Security). Petitioner is the resident of Ludhiana, Punjab.

Petitioner is having a valid arms licence and could have possessed 50 cartridges within the State of Punjab. Petitioner had come to visit his native place in Ludhiana, Punjab. While commencing his return journey from Ludhiana to Ahmedabad, petitioner had kept his coat in his trolley bag without checking the same. Petitioner was not aware that six live cartridges were in the pocket of his coat when he kept the same in his bag. At Delhi Airport, when trolley bag was passed through the X-ray screening machine, six live cartridges were noticed and recovered, resulting in registration of the present FIR. Petitioner was not in 'conscious possession' of the live cartridges. It is prayed that FIR may be quashed.

He has placed reliance on Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994, Nurit Toker vs. The State of Maharashtra, 2012 Bom CR (Cri) 154, William Michael Hurtubise vs. The State of Odisha and Ors. MANU/OR/0016/2014, Gunwantlal vs. The State of Madhya Pradesh, MANU/SC/0130/1972 and Gaganjot Singh vs. State, MANU/DE/3227/2014 to contend that ingredients of offence under Section 25 of the Arms Act are not attracted in absence of the 'conscious possession' of the cartridges.

The plea taken by the petitioner is a plausible plea that when he

started his journey, he did not notice the live cartridges in his coat pocket. It is trite law that 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 six live cartridges, which were recovered at the IGI Airport from his trolley bag.

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, petitioner produced his arms licence before the Investigating Officer and the same has been verified. No material could be collected by the Investigating Officer to show that the petitioner was in 'conscious possession' of the six live cartridges recovered from him.

For the foregoing reasons, FIR No.122/2015 under Section 25 of the

Act registered at P.S. Domestic Airport and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

JANUARY 11, 2018
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