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

+ **CRL.M.C. 4738/2018**

RAM LAKHAN KUSHWAHA

..... Petitioner

Through: Ms. Manisha Bhandari & Mr.
Divyadeep Chaturvedi, Advocates

versus

STATE & ANR

..... Respondents

Through: Ms. Manjeet Arya, APP for State
Mr. Digvijay Rai & Mr. Kustubh
Singh, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **18.09.2018**

CRL.M.A. 32313/2018

Allowed, subject to all just exceptions. Application is disposed of.

CRL.M.C. 4738/2018 & CRL.M.A. 32312/2018

The petitioner is a resident of Indira Nagar, Banda, Uttar Pradesh. He is working as Senior Manager in Allahabad UP Gramin Bank.

On 27.01.2015, the petitioner was travelling along with his wife and daughter from New Delhi to Mangalore for his daughter's M.D. Entrance Examination. During the security check at the IGI Airport, 4 live cartridges were noticed in the checked in baggage of petitioner. The recovery of 4 live cartridges led to the registration of FIR No. 41/2015 under Sections 25/54/59 of the Arms Act, 1959 at Police Station IGI Airport.

By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of the aforesaid FIR on the ground that the petitioner was not in 'conscious possession' of the four live cartridges which were detected and recovered from his baggage at the Airport. It is submitted that the petitioner holds a valid arms licence issued by the District Magistrate, Banda, U.P. and the license is valid within the State of Uttar Pradesh.

It is submitted that four live cartridges remained lying in the bag undetected when petitioner commenced his journey from Banda. It is contended that to attract ingredients of offence under Sections 25/54/59 of the Arms Act, 1959, the prosecution has to prove that accused was in 'conscious possession' of the arms and ammunition. Reliance has been placed on Sandeep Mukherjee vs. State (NCT of Delhi) 2017 SCC OnLine Del 7888, Sonam Chaudhary vs. The State (Govt. of NCT of Delhi) 2016 SCC OnLine Del 47 and Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994.

I have perused the judgments. It has been held in the judgments that to attract the ingredients of Section 25 of the Arms Act, it has to be shown by the prosecution that the accused was in 'conscious possession' of the arms and ammunition.

In this case, the petitioner has a valid licence issued by the District Magistrate, Banda, U.P. He is a resident of Banda. There is every possibility of the four live cartridges remaining undetected in the bag of the petitioner when he commenced journey from Banda to Mangalore via New Delhi. During the investigation, no material could be collected by the Investigating Officer to indicate that the petitioner was in 'conscious possession' of the four live cartridges, on the contrary, a perusal of the

chargesheet shows that the Investigating Officer has verified the licence of the petitioner.

For the foregoing reasons, FIR No.41/2015 under Sections 25/54/59 of the Arms Act, 1959, registered at P.S. IGI Airport and the consequent proceedings emanating therefrom, are quashed.

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

Dasti.

A.K. PATHAK, J

SEPTEMBER 18, 2018
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