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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 3000/2018, CRL.M.A. 35475/2018
JASMIL SINGH AULAKH Petitioner
Through: Mr. Jagmeet Randhawa, Adv.
versus
STATE (GOVT OF NCT OF DELHI) & ANR Respondent
Through: Ms. Jyoti Babbar, Adv. for Mr. Rajesh
Mahajan, ASC for State with Inspector Prashani
Yadav, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 31.10.2018

1. The petitioner seeks quashing of FIR No. 101/2018, Police Station IGI Airport, under section 25 Arms Act filed by the police on account of two live cartridges being found in his checked in luggage. The petitioner scheduled to fly from Delhi to Moscow. The petitioner has a licence for two weapons i.e. a 12 bore gun and a pistol; copies of the same are annexed to this petition. It is his case that he was not in “conscious possession” of the live cartridges and, in any case, he could not have used it because they were in his checked in luggage. It is his case that he had packed his belongings in a suitcase and in which inadvertently the two live cartridges had been lying from before; he ought to have carefully checked his suitcase of any prior objects in it, before packing his clothes, etc. for his flight. He regrets his shoddiness. two fire arms were left in the suitcase. He contends that it was not done deliberately and therefore it could not deem as conscious possession.

2. Apropos the question of whether conscious possession is a core

ingredient to establish the guilt for the offence under section 25 of the Act, the Supreme Court in the case of ***Gunwantlal v. State of Madhya Pradesh*** **AIR 1972 SC 1756** has observed that the possession must mean possession with the requisite mental element, i.e. conscious possession and not a mere custody without awareness. The relevant portion is as under:-

"5.....The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else."

3. In a similar vein, the Constitution Bench of the Supreme Court in ***Sanjay Dutt vs. State Through C.B.I., Bombay*** (II), (1994) 5 SCC 410 elucidated the meaning of possession, as a conscious possession and it is not based on mere custody, without any knowledge or intention to use the arm. It held:-

"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. (See Warner v. Metropolitan Police Commissioner 1969 (2) AC 256 and Sambasivam v. Public Prosecutor, Federation of Malaya. 1950 AC 458.)"

4. This Court too held similarly in many cases, for instance:
- (i) CRL.M.C. 3576/2011 & CrI.M.A.No.12699/2011 titled as **Chan Hong Saik Thr. SPA: Arvinder Singh vs. State & Anr;**
 - (ii) W.P.CRL. 1169/2014 titled as **Sh. Gaganjot Singh vs. State;** CRL.M.C.1455/2014;
 - (iii) CRL.M.C. 471/2015 titled as **Sonam Chaudhary vs. The State (Govt of NCT Delhi);**
 - (iv) W.P. (CrI) 3341/2016 and CRL. M.A. No. 18131/2016 titled as **Alka Raj vs. State, NCT of Delhi & Anr;**
 - (v) W.P. (CrI) 1669/2017 titled as **Narinderjit Kaur Singh vs. State of NCT of Delhi & Anr.;**

5. In the present case, the petitioner was carrying a suitcase which contained two live cartridges inside it. He has claimed that unknowingly the cartridges could be kept in his suitcase and that he has a valid firearm licence, the latter fact having been confirmed by the police. The petitioner's claim of ignorance of the presence of these cartridges in the suitcase removes the element of "conscious or knowing possession", as there is no reason why a rational person would carry live firearm cartridges in his suitcase on a flight, unless it was carried inadvertently. Apart from the cartridge being present in the suitcase, there is no incriminating material against the petitioner. *Ex facie* there is insufficient material to frame charges against the petitioner and to subject him to the rigours of a criminal trial.

6. Charges can be framed only when there is a reasonable suspicion or sufficient material to indicate that the alleged offender had committed the offence. A perusal of the records show that the elements satisfying the

requirement of “reasonable suspicion” are absent in the present case. The case would have to be based and proven on “conscious possession”. However, since there is no such material, apart from the mere recovery of a live cartridge from the bag of the petitioner, the offence cannot be proved even after a trial.

7. In view of the above, insofar as the petitioner was not in conscious possession of the live cartridges, the prosecution would not be able to prove its case. Therefore, the FIR No. 101/2018 registered at Police Station IGI Airport, New Delhi, for the offences punishable under section 25 of the Arms Act, 1959 and all proceedings emanating therefrom is hereby quashed.

8. The petition is disposed-off in the above terms.

NAJMI WAZIRI, J

OCTOBER 31, 2018/acm