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

+ CRL.M.C. 3643/2017 & CRL. M. A. 14822/2017

COL AJAY KUMAR Petitioner

Through : Mr. Vivek Lamba, Adv. with
Mr. Naveen Dalal,
Mr. MaheshBhardwaj, Advs.

versus

STATE GOVT OF NCT OF DELHI & ANR Respondents

Through : Ms. Meenakshi Dahiya, APP for State
SI Mahesh, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **24.01.2018**

By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of FIR No.37/2015 under Section 25 of the Arms Act, 1959 ('the Act', for short) registered at police station IGI Airport, New Delhi and the consequent proceedings emanating therefrom.

Petitioner was travelling from Delhi to Bagdogra by Air India flight No. AI 879 on 25.01.2015. In the check-in baggage of the petitioner 14 live cartridges and one empty cartridge of .32 bore were detected by Senior Assistant working with DIAL. Consequently, aforesaid FIR was registered on the complaint of Shri Sushil Kumar. During the investigation petitioner stated before the Investigating Officer that his mother-in-law had given the bag containing eatables

to him. Petitioner was not aware about the presence of live cartridges in the bag. During the investigation it was revealed that the live cartridges belonged to the brother-in-law of the petitioner who was having an arms licence issued by the Delhi Police. Brother-in-law of the petitioner, namely, Virender Singh was also contacted who confirmed that the live cartridges belonged to him and remained lying in the bag inadvertently, in which his mother had kept the eatables and handed over the same to petitioner, who was going to Bagdogra.

Learned counsel for the petitioner submits that petitioner is a Colonel in Indian Army. He was posted in Kalingpong. Petitioner had come to Delhi to attend a family function. He along with his wife and child was returning to Kalingpong and was to board a flight from IGI Airport to Bagdogra Airport. Bag was handed over to him by his mother-in-law. Petitioner's mother-in-law told him that she had brought some eatables for him which he should carry with him. Petitioner was not aware that 14 live cartridges and one empty cartridge was there in the bag. Even mother-in-law of petitioner was not aware as she did not check the bag before keeping the eatables therein. Petitioner was not in 'conscious possession' of live cartridges, therefore, ingredients of offence under Section 25 of the Arms Act were not attracted. Reliance has been placed on *Jaswinder Singh vs. State Government of NCT of Delhi and Another*: 2015(4) JCC 2339.

In *Jaswinder Singh* (supra), learned Single Judge of this Court has held that for attracting the ingredients of offence under Section 25 of the Arms Act, 'conscious possession' of live cartridges by the

accused is imperative. Learned single Judge has relied on the judgments in *Nurit Toker vs. State of Maharashtra*: 2012 Bom CR (Cri) 154, *William Michael Hurtubise vs. State of Odisha*: (2014) 117 CLT 303, *Gunwantlal vs. The State of Madhya Pradesh*: (1972) 2 SCC 194, *State of Karnataka vs. L. Muniswamy and Others*: AIR 1977 SC 1489 and *State of Haryana vs. Bhajan Lal*: 1992, Suppl(1) SCC 335, for arriving this view.

During the investigation, Investigating Officer has failed to collect any material to indicate that petitioner was in 'conscious possession' of the live cartridges.

For the foregoing reasons, the aforesaid FIR 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

JANUARY 24, 2018

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