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

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Judgment delivered on: 30.07.2018

+ CRL.M.C. 117/2018

BIRENDRA SHUKLA

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Suman Thakur with Mr. Praveen
Raj Singh, Advocates.

For the Respondent : Mr. Panna Lal Sharma, APP for State.
SI Dinesh Kumar, PS IGI Airport.
Mr. Manu Beri, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

30.07.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.M.C. 117/2018 & CrI.M.A.495 /2018(stay)

1. The petitioner seeks quashing of FIR No.250/2014 under Section 30 Arms Act, Police Station IGI Airport as also Order on Charge dated 17.09.2016.

2. The allegations in the FIR are that the petitioner was travelling to Hongkong from New Delhi. During screening one live cartridge of

0.32 bore was found in his Check-in Baggage.

3. The contention of learned counsel for the petitioner is that the petitioner was travelling to Hongkong for the purposes of his business and was not aware that the baggage contained a live cartridge. It is contended that at the time when the petitioner was apprehended, the petitioner immediately informed that he was not aware that the baggage contained live cartridge. He submits that the petitioner is having a valid arms licence of a revolver of 0.32 bore, the bore of which live cartridge was found in his baggage.

4. The arms licence of the petitioner has been submitted to the Investigating Officer and the bore of the live cartridge tallies with the weapon, which is registered in favour of the petitioner.

5. Learned counsel for the petitioner submits that it is not only mere presence of live cartridge, which is to be established, what is necessary to be established is conscious possession. He submits that there is no evidence to show that the petitioner was conscious of the presence of live cartridge in his baggage and, as such, since, there is absence of *mens rea*, the petitioner could not be charged with such offence.

6. Learned counsel for the petitioner submits that further it is apparent that if the petitioner had any *mens rea* or *mala fide* intention, he would not have carried the live cartridge in his baggage without

being concealed.

7. It is a settled proposition of law that possession under Section 25 of the Arms Act refers to not only physical possession but also the requisite mental element i.e. *mens rea* of conscious possession. Mere custody without *mens rea* would not constitute an offence under the Arms Act. Conscious possession of a fire arm/ammunition is a necessary ingredient of the statutory offence entailing strict liability on the offender.

8. Reference may also be had to the decisions of Coordinate Benches of this court in *Gaganjot Singh vs. State (Govt. of NCT of Delhi)*, 2014 SCC Online Del 6885; *Jaswinder Singh Vs. State (Govt of NCT of Delhi)*, 2015 SCC Online Del 10894 ; *Sonam Chaudhary vs. State*: 2016 SCC Online Del 47; *Mandeep Lambs vs. State (Govt. of NCT of Delhi)*: 2017 SCC Online Del 9885 and of the Supreme Court in *Gunwantlal vs. State of Madhya Pradesh*: (1972) 2 SCC 194 and *Abdul Nasir Barich versus State(NCT of Delhi)* , 2017(1) JCC 168.

9. In the absence of the conscious possession of live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act would not be applicable and it would be justified to end all such proceedings to secure the ends of justice.

10. Perusal of the record shows that the subject case is clearly

covered by the decisions referred to above and the principle of law laid down by the Supreme Court. There isn't sufficient evidence or reasonable ground of suspicion to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. There is no material on record to show that the petitioner was conscious of the possession of the live cartridge.

11. From the perusal of the record, it can be safely interpreted that the said possession of the live cartridge does not fall within the ambit of conscious possession, which is a basic ingredient to establish guilt for an offence under Section 25 of the Arms Act.

12. In view of the above, the petition is allowed.

13. FIR No.250/2014 under Section 30 Arms Act, Police Station IGI Airport and the consequent proceedings emanating therefrom are accordingly quashed.

14. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 30, 2018
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