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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 761/2019

JATINDER SANDHU

..... Petitioner

Through: Varun Malik, Ajay P. Tushir, Satya Ranjen Swain, Advocate.

versus

THE STATE (N.C.T OF DELHI) & ORS.

..... Respondents

Through: Mr. R. S. Kundu, ASC for State with Bhagat Singh, Advocate. IO is present.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

25.03.2019

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1. The present writ petition under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of FIR No. 080/2019, under Section 25 of the Arms Act, 1959 registered at Police Station – IGI Airport, New Delhi.
2. The brief facts of the case are that on 04.04.2018 the petitioner was travelling from Delhi to Canada, by Swiss Airlines flight No. LX-147 and during the course of screening, 03 ammunitions were detected inside his checked in baggage by the security personnel at IGI Airport, New Delhi. In pursuant to the same, FIR No. 080/2019, under Section

25 of the Arms Act, 1959 was registered at Police Station – IGI Airport, New Delhi.

3. Learned counsel for the petitioner contended that the petitioner had borrowed the bag from his uncle Kanwaljeet Singh s/o Sardar Milkha Singh and the bullets were in the bag by mistake. The 03 live bullets found belonged to the uncle of the petitioner, who has a valid arms license No- DM/TRN/DUP/HRIK/1215/7 issued from Punjab. The counsel further submitted that as the petitioner was unaware of the presence of said cartridge in the bag, he did not declare the same at security check and was informed about the same by the Security Staff only.
4. It was further submitted by the Learned counsel for the petitioner that the petitioner was not in the conscious possession of the alleged live cartridge and even no weapon or arms were recovered from the petitioner during the physical check-up. Learned counsel for the petitioner also argued that though the ammunition seized and subsequently tested in this case are live cartridge and therefore constitutes “ammunition”, nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence under the Arms Act. Therefore, as the possession in the present case was neither “conscious” nor “intended”, offence under the Arms Act, 1959 could not be made out.

5. Per contra, Mr. R. S. Kundu, ASC for State, opposed the present petition on the ground that prima facie it appears that he was in conscious possession of the seized ammunition.
6. The State has filed the Status Report wherein it is stated that during the course of investigation the arms license of the uncle of the petitioner bearing No. DM/TRN/DGP/HRIL/1215/7 was verified from District Magistrate and the same was found to be genuine and valid upto 19.09.2021. Further it was also verified from R.S Gun House, Patti Road Tarn Taran that on 08.02.2019, 20 live catridges of .32 Bore revolver have been sold to Kawaljeet Singh s/o Milkha Singh, holding Arms License No. DM/TRN/DGP/HRIL/1215/7 vide bill No.887.
7. I have heard the submissions of the learned counsel for the parties and perused the material available on record.
8. At the outset, it is observed that with respect to the issue of 'conscious possession', it is settled law that the expression 'possession' under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, conscious possession. Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.
9. In the case of **Sanjay Dutt Vs. State** reported in **1994(5) SCC410** the Supreme Court *inter alia* observed that:

“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 unauthorised substance has been understood.

Therefore 'conscious possession' of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

10. Further, the question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of ***Gunwantlal Vs. State of Madhya Pradesh***, reported in (1972) 2 SCC 194, wherein it was observed as under:

“ the possession of a firearm under the Arms Act 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 nonetheless a power or control over that weapon so that his possession thereon continues besides physical possession being in someone else. The first pre-condition for an offence under Section 25(1) (a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that

possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control.....”

11. In the case of **Gaganjot Singh vs. State** reported in **2014 (3) JCC 2020** the Delhi High Court had observed the following:

“ 12. As noticed previously, a solitary cartridge - which on examination by expert has been confirmed to be a live one -was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be cartridge and consequently it is "ammunition", by itself, that is insufficient to point to suspicion - much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal (supra) and Sanjay Dutt (supra).

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"16. In Chan Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge " cannot be used for the purpose without fire arms" and then proceeded to state:

"though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act."

12. The issues involved in the present case, are covered by the principles laid down in above said decision of the Supreme Court, as there is no sufficient evidence or reasonable ground of suspicion to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. The petitioner was in possession of the said cartridges; however, he expressed his lack of awareness in respect of the said cartridge. He further contends that the said bullets were purchased on the license of his Uncle who holds a valid arms license

No- DM/TRN/DGP/HRIL/1215/7. The said license has been duly verified from the concerned DM Office and found that the license was issued in the name of the petitioner's uncle. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridges. Hence, it can be safely inferred that the said possession by the petitioner does not fall within the ambit of 'conscious possession' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959. Therefore, on the basis of mere possession of the live cartridges the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

13. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridges in the bag till the same were detected by the security staff during the screening of the baggage, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking.
14. Before quashing the FIR, I deem it appropriate to impose costs of Rs. 20,000/- on the petitioner to be deposited in the Prime Minister's Relief Fund as a pre-condition for the quashing of the aforesaid FIR as due to the casual attitude of the petitioner, the entire state machinery was set into motion. Consequently, FIR No.080/2019, under Section 25 of the Arms Act, 1959 registered at Police Station –

IGI Airport, New Delhi and proceedings emanating therefrom are hereby quashed. Costs be deposited within one week from the date of passing of this order.

15. Registry is directed to list the matter before court in case the receipt of costs to be paid by the petitioner is not filed within the stipulated time.
16. Accordingly, the present petition stands disposed of.

MARCH 25, 2019
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SANGITA DHINGRA SEHGAL, J

