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

% *Date of Judgment: 15th December, 2020*

+ **W.P.(CRL) 2095/2020&CRL.M.A. 17387/2020**

MITALI SINGH

..... Petitioner

Through: Counsel for the petitioner
(appearance not given).

versus

NCT OF DELHI & ANR.

..... Respondents

Through: Ms Meenakshi Dahiya, APP for
State for Ms Kamna Vohra,
ASC with IO Ajay Kumar
Mishra, IGI Airport.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying that FIR bearing no.003/2020, under Section 25 of the Arms Act, 1959, registered with PS IGI Airport, be quashed.
2. The said FIR was lodged as a live cartridge was recovered from the check-in baggage of the petitioner, while she was waiting to board a flight from Delhi to Pune (Vistara UK-971) on 01.01.2020.
3. The petitioner is aged about 39 years and she is employed as a teacher at St. Thomas School, Dwarka. She was travelling from Delhi

to Pune to visit her brother, who resides in that city.

4. It is the petitioner's case that she had purchased the luggage bag from a street vendor sometime in December, 2019 and she had thereafter, packed her belongings in the said luggage bag to travel to Pune. At that time, she did not discover that the bag contained live ammunition. The same had been discovered from her bag, while screening.

5. The petitioner claims that she had no clue as to how the said cartridge (7.6 cms in length and 1.5 cm in diameter engraved of 8MM KF on the bottom) found its way in her baggage. According to her, the only possibility is that the said cartridge was already in the luggage, when she had purchased it from the street vendor.

6. Inquiries in this regard have been conducted and this Court is informed that there are no circumstances, which would cause any doubt, as to the explanation provided by the petitioner.

7. The learned counsel appearing for the State further submits that the respondent has no objection if the FIR in question, is quashed.

8. The courts have in a number of decisions held that the conscious possession of an ammunition is *sine qua non* to prosecute the possessor under the Arms Act, 1959.

9. In ***Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194***, the Constitution Bench of the Supreme Court has held as under:-

“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. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again, if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of, it will be that of the owner. The concept of possession is not easy to comprehend as writers of (sic) have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does, not solve the problem. As we said earlier, the first precondition 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.”

10. In *Sanjay Dutt v. State through CBI Bombay (II)*, *Crimes 1994 (3) 344 (SC)* the Supreme Court has observed as under:-

“20. 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.”

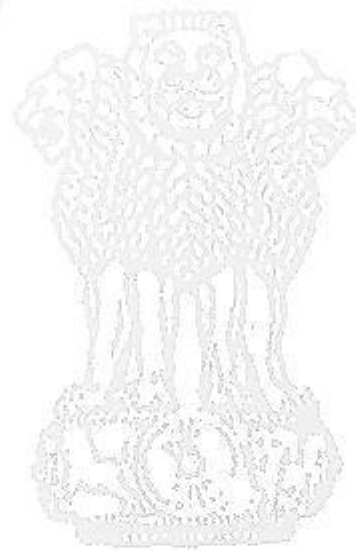
11. This Court has also held in several cases that unconscious possession would not attract the rigours of the said Act. [See: *Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) &Anr.: W.P. (Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State &Ors.: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.: (Crl) 152/2019 decided on 29.08.2019)].*

12. In the present case, there is no material to believe that the petitioner was in conscious possession of the said ammunition.

13. In view of the above, the present petition is allowed and the FIR bearing no.003/2020, under Section 25 of the Arms Act, 1959, registered with PS IGI Airport and all proceedings emanating therefrom, are quashed.

VIBHU BAKHRU, J

DECEMBER 15, 2020
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