

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

% Judgment Reserved On: 04.03.2020
Judgment Pronounced On: 16.03.2020

+ W.P.(CRL) 337/2020

GURPREET SINGH MANGAT Petitioner

Through **Mr. Rajender Yadav & Mr.**
Aamir Choudhary, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through **Mr. Kamna Vohra, Ld. ASC**
for the State.

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. This is a writ petition under Article 226 and 227 of the Constitution of India r/w Section 482 Cr.P.C. filed by the petitioner for quashing of FIR No.56/2020, u/S. 25 Arms Act, registered with PS IGI Airport, Delhi.

2. The brief facts of the prosecution case are that on 28.01.2020, a case FIR bearing no. 56/2020, u/S 25 Arms Act was registered at PS IGI Airport on the complaint of SI/Exe Ajay Pal, CISF, IGI Airport, New Delhi against the petitioner alleging that on

27.01.2020, one passenger namely Gurpeet Singh Mangat was travelling from New Delhi to Toronto by flight no. AC-043 dated 27.01.2020. On security check, one cartridge was detected from the jacket worn by him. Hence, the aforesaid FIR was registered against the petitioner.

3. Feeling aggrieved by the aforesaid FIR, the petitioner preferred the present petition for quashing of FIR no. 56/2020 u/S. 25 Arms Act.

4. While praying for quashing of FIR and the criminal proceedings emanating there from, Ld. Counsel for the petitioner has pleaded that petitioner is innocent and he was completely unaware that there was a live cartridge in the jacket which belonged to the petitioner's brother Sh. Jagtehal Singh who owns a valid arms license issued by the competent authority of State of Punjab. It is further submitted that petitioner had no intention to carry live cartridge and the recovered live cartridge cannot be used for any threat purpose without fire arms and it does not attract any offence in the absence of any knowledge of conscious possession.

5. Ld. APP for the State has opposed the quashing petition of the petitioner. It was submitted that during the course of investigation, petitioner had produced the license of the recovered arms licence. The same has been sent to the office of District Magistrate, Ludhiana for verification but the report is still awaited. It is further submitted that seized cartridge was also sent to FSL, Rohini, New Delhi for expert opinion and FSL result/report is also still awaited. It is lastly submitted that the IGI Airport is a sensitive area from the threat perception and the petitioner was in the conscious possession of the said cartridge and, therefore, it is not a fit case for quashing of FIR under Section 482 Cr.P.C.

6. I have considered the rival submissions and also gone through the record.

7. The Constitutional Bench of the Hon'ble Supreme Court in the case of Gunwantlal v. The State of Madhya Pradesh, (1972) 2 SCC 194 has explained the meaning of possession in the context of Section 25 of the Arms Act, 1959 and 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."

8. The above proposition of law was reiterated by the Hon'ble Apex Court in Sanjay Dutt v. State Through CBI Bombay (II), Crimes 1994 (3) 344 (SC) and held 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 unauthorised substance has been understood.

9. In the present case, there is nothing on record to suggest that petitioner was in conscious possession of the cartridge and he was aware of the said fact. Mere recovery of cartridge itself is not

sufficient to prove the offence in the absence of any intention. It is contended by Ld. Counsel for the petitioner that by mistake brother-in-law of the petitioner kept his jacket between the trolley bags of the petitioner. Petitioner was unaware of the said jacket and entered the airport with the said jacket. It is also a matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridge for committing any offence.

10. In view of the above discussion, this court is of the opinion that no offence is made out against the petitioner under Section 25 Arms Act. This court is further of the view that allowing continuation of criminal proceedings against the petitioner will be an abuse of process of law. The writ petition is, therefore, allowed and proceedings emanating from FIR bearing no. 56/2020, u/s. 25 Arms Act, registered with PS IGI Airport, Delhi are hereby quashed. The petition stands disposed of accordingly.

BRIJESH SETHI, J

MARCH 16, 2020

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