

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

**% Judgment Reserved On: 27.09.2019
Judgment Pronounced On: 04.02.2020**

+ W.P.(CRL) 1838/2019 & CRL M.A. 13319/2019

VANINATH UPPALAPATI

..... Petitioner

Through Mr. Mandeep Kumar Sharma,
Mr. Deepak Gupta, Mr. Nalin
Bhardwaj, Advocates

versus

STATE

..... Respondent

Through Ms. Nandita Rao, ASC
(CRL.) for the State with SI
Devendra Kumar, P.S.: IGI
Airport

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 of the Constitution of India r/w Section 482 Cr.P.C. filed by the petitioner for quashing of FIR No.0233/2017, u/s 25/54/59 Arms Act, registered with PS IGI Airport, Delhi.

2. While praying for quashing of FIR and the criminal proceedings emanating there from, the petitioner has pleaded that on

20.03.2017 at about 03:29 hours, the complainant ASI/Exe Md. S.Ansari of S-3 Coy, was performing his “C” shift duty from 21:00 hrs to 05:00 hrs at X-BIS-08/DOM SHA. One passenger namely Mr. Uppalapati Vani (Nationality-USA) who intended to travel by Air India, Flight No. A1-560 from Delhi to Hyderabad, seat No. 31-A, reported at X-BIS Machine No.08 in DOM/SHA, T-3 (IGI Airport), New Delhi for per-embarkation security check. After scanning, his hand bag was searched and opened by the complainant in presence of the said passenger and one live ammunition (Mark 21,84) was recovered from the said bag. The passenger was asked to produce any legal documents/licence for the said recovered round but he failed to do the same. As per BCAS circular no. 31/2005, the above mentioned passenger Mr. Uppalapati Vani along with recovered live ammunition was handed over to the concerned police. Thereafter, 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. 0233/2017.

4. It is submitted that petitioner is resident of United State of America and was unaware that he was in possession of the cartridge

lying in his handbag and he was not in conscious possession of the live cartridge. It is further submitted that no other incriminating material was found or recovered from the petitioner besides the alleged cartridge. Therefore, mere possession without any consciousness of such possession would not constitute an offence.

5. It is submitted that petitioner's friend namely Mr. Boris Vodopyanov had inadvertently left the bullet in Zip-lock bag with pens which was being carried by the petitioner until it was found by the immigration authorities in Delhi. Mr. Boris Vodopyanov is an avid hunter with a license to hunt and owns a hunting rifle and has a license bearing no. is 211278A issued by Oakland country, Michigan, USA on 04.03.2018.

6. Ld. APP for the State has opposed the quashing petition of the petitioner and submitted that during the course of investigation, petitioner was interrogated but he has neither produced any valid document of recovered ammunition nor gave satisfied explanation. The recovery of ammunition was affected from the hand baggage of petitioner. Seized cartridge was also sent to FSL, Rohini, New

Delhi for expert opinion. It is submitted that FSL result/report has been received which runs as under:-

- “(1) The 7.62x54mmR cartridge marked exhibit ‘A1’ is live one and can be fired through 7.62mm calibre firearm.
- (2) The 7.62mmR cartridge marked exhibit ‘A1’ was test fired in the laboratory conditions.
- (3) The exhibit ‘A1’ is ammunition as defined in the Arms Act, 1959.”

7. It is further submitted by Ld. APP for the State that after receiving the FSL result, necessary sanction under Section 39 Arms Act has been obtained from concerned official. Chargesheet in this case has been prepared and submitted before the concerned court for taking cognizance and commencing trial. 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.

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

9. 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."

10. 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.

11. 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 that petitioner's friend namely Mr. Boris Vodopyanov had inadvertently left the bullet in Ziploc bag with pens which was being carried by the petitioner until it was found by the immigration authorities in Delhi. 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.

12. In view of the above discussion, this court is of the opinion that no offence is made out against the petitioner under Section 25/54/59 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. 0233/2017, u/s. 25/54/59 Arms Act, registered with PS IGI Airport, Delhi are hereby quashed.

13. Writ petition along with other application stand disposed of accordingly.

BRIJESH SETHI, J

FEBRUARY 4, 2020

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