

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

+ CRL.M.C. 4339/2019& CRL.M.A.No. 34776/2019

Judgment reserved on :23.01.2020

Date of decision :27.01.2020

RASLEEN KAUR @ RASLEEN GULATI Petitioner

Through: Mr. V.K. Goswami, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the quashing of the FIR No.357/2015, PS IGI Airport registered under Section 25 of the Arms Act, 1959 submitting to the effect that though the petitioner was found in possession of three bullets in one of her bags under Tag No.0098858904 at level-4 of T-3 at the IGI Airport where she was present under Boarding No.28 travelling A1-834/A1 016 on 16/8/15 on sector Bhopal/Delhi/Amritsar without any license for the said ammunition, she was not in conscious possession of the same and thus, the proceedings qua the FIR have necessarily to be quashed.

2. The petitioner has submitted that she was accompanied by her husband in the said travel who had a valid arms license and a written submission was also made to the SHO, IGI Airport by her husband. The petitioner has further submitted that she is a resident of Bhopal and was married to Mr. Sabjit Bhatia who is a resident of Jalandhar, (Punjab) and she had gone to her parental home in Bhopal to stay with them for a short period in the month of August, 2015 and her husband had come to pick her up from Jalandhar and had boarded a flight on 14.08.2015 from Amritsar to Bhopal with a Transit Flight from Delhi to Bhopal with Jet Airways and the petitioner submitted the copy of the air ticket of the Jet Airways to that effect. The petitioner further submits that on 16.8.2015, the husband of the petitioner had also booked a ticket along with the petitioner in Economic Class with Air India from Bhopal to Amritsar via transit flight from Delhi to Amritsar with baggage allowance and the petitioner has annexed the copy of the said ticket as well.

3. *Inter alia* the petitioner submitted that both her husband and father-in-law have valid Arms Licenses of Punjab and that her husband also held a valid arm license bearing No.CP/ARM/D2/0512/005 which was registered at their residential address valid upto 17.5.2018 and submitted the copy of the said arm license. The petitioner has further submitted that her father-in-law and husband used to go for their shooting session in the shooting club and that the petitioner had nothing to do with the weapon and the cartridges. The petitioner has further submitted that on 14.08.2015, when her husband had come to pick her up from her parental house,

by mistake the cartridges were carried by him in his pant, when he boarded the flight from Amritsar to Bhopal via Delhi and none of the checking staff in both the places had questioned him but that on 16.08.2015 when the petitioner was returning from Bhopal to Amritsar with her husband at the time of boarding the transit flight, Mr. Prakash Chauhan of GMR Security at Level-4 of T-3 at 18:29 hours checked her baggage and in one bag under Tag No.0098858904, three (3) cartridges were detected by him, of which the petitioner had no knowledge and she apprised Mr. Prakash Chauhan of the same as well as of the valid arms license possessed by her husband. The petitioner has further submitted that she is innocent and thus, seeks redressal by the quashing of the FIR.

4. The petitioner has further submitted that even her husband did not have the conscious possession of the cartridges which were inadvertently carried by him to Bhopal.

5. Notice of the petition was issued to the State and was accepted by the learned APP on behalf of the State.

6. The status report dated 15.01.2020 under the signatures of the SHO, PS IGI Airport affirms the factum of the arms license having been issued to the husband of the petitioner i.e. Mr. Sabjit Singh Bhatia s/o Ranbir Singh which was issued on 19.05.2012 and was valid upto 18.05.2015 which arms license was renewed from 18.05.2015 to 17.05.2018 with a warning with it having been revalidated four months after its expiry and it has been submitted further that the offence was committed on 16.08.2015. The copy of the

charge sheet was also submitted by the State which reiterates the averments made in the FIR.

7. The charge sheet *inter alia* states to the effect:-

“After registration of FIR, investigation was taken up. During the course of investigation live cartridges as well as boarding pass and others were taken into the police possession through the seizure memo. During the course of investigation statement of the witnesses were recorded. In the further course of investigation, accused Ms. Rasleen Kaur was interrogated and stated that she intended to go Bhopal to Amritsar Via Delhi by Air India Flight no.016 and during the screening of her registered baggage, Three live cartridges were recovered. She further stated that said ammunition belongs to her husband/ father in law who are having the licence. She could not produce the valid documents for carry the ammunition. Accused arrest was deferred.

In the further course of investigation live cartridges were sent to the FSL Rohini, Delhi for the ballistic opinion and same was received and examiner of opined that (1) The .22” cartridges marked exhibit ‘A1’ to ‘A3’ are live ones (2) The exhibit .22” cartridges marked exhibit ‘A1’ and ‘A2’ were successfully test fired under laboratory condition (3) The exhibit ‘A1’, ‘A2’ and ‘A3’ are ammunition as defined the Arms Act. In the further course of investigation, sanction of 39 Arms Act was obtained from the concerned authority.

There is sufficient evidence on record against Pax/ Accused Ms. Rasleen Kaur. Hence relying upon the witnesses and evidence on file, charge sheet against Ms. Rasleen Kaur has been prepared U/S 25 Arms Act.”

8. On behalf of the petitioner, it has been submitted that it is settled law as laid down in a catena of verdicts of this Court that in the

absence of there being any averment in the FIR or in the charge sheet that the petitioner was aware of being in alleged conscious and knowledgeable possession of the ammunition in question, she cannot be held culpable even remotely qua the alleged commission of the offence punishable under Section 25 of the Arms Act, 1959.

9. Learned Additional Public Prosecutor for the State fairly submitted that the aspect of knowledge and conscious possession being attributed to the petitioner had not been stipulated through the FIR nor the charge sheet.

10. The observations of the Hon'ble Supreme Court in ***“Gunwantlal Vs. State of Madhya Pradesh” 1972 2 SCC 194*** whereby it has been held that for possession of a fire arm under the Arms Act, 1959 must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over the weapon with it being observed to the effect:-

" 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 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. In any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or not in possession of the thing in question. In this view it is difficult to postulate as to what the evidence will be. If the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver",

make it apparent that where the petitioner was not aware of the presence of the three live cartridges in her baggage and had no knowledge of the same till it was detected by the security personnel during the screening of the baggage at the security check, it can be safely inferred that the said possession does not fall within the ambit of conscious possession.

11. In the instant case admittedly no fire arm or weapon was recovered from the petitioner nor had she extended any threat to any person of police official and it is apparent that in the circumstances of the case, no useful purpose would be served by the continuation of the proceedings qua the FIR in question as the averments in the FIR and

the charge sheet itself do not spell out the petitioner being in conscious possession of the live ammunition. Thus, in as much as, it cannot be held that there is any reasonable suspicion of sufficient material against the petitioner of having committed an offence punishable under Section 25 of the Arms Act, 1959, in as much as, the possession of the petitioner of the live cartridges in her baggage, cannot be held to be a conscious possession in the facts and circumstances of the instant case especially as the petitioner's husband with whom she was travelling also had a arms license which stood revalidated,- though on a payment of penalty.

12. The verdict of this Court in ***“Hari Kishan Vs. State (NCT of Delhi)” 2019 LawSuit (Del) 1800*** is on facts *pari materia* to the instant case and thus, in the facts and circumstances where there is not a whisper of an averment in the FIR as averred in the charge sheet that the petitioner was aware of being in alleged conscious and knowledgeable possession of the ammunition in question, the FIR No.357/2015, PS IGI Airport against the petitioner is hereby quashed and thus the proceedings emanating therefrom against the petitioner are also quashed .

ANU MALHOTRA, J.

JANUARY 27th, 2020

‘Neha Chopra’