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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13th January, 2020

Date of Decision: 23rd January, 2020

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CRL.M.C. 2950/2018 & CrI.M.A.10436/2018

MEGAN THERESA SHINABERY Petitioner

Through: Mr.Vipin Gogia and
Mr.Jaspreet Gogia, Advocates

versus

STATE

..... Respondent

Through : Mr. Amit Chadha, APP with SI
Vijay Singh, PS IGI Airport

WITH

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CRL.M.C. 688/2019

VIBHA SHARMA Petitioner

Through: Mr.Rohit Nagpal, Mr.Jaspreet
Singh Rai and Mr.Rohit
Sharma, Advocates with the
petitioner in person

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP with SI
Sunil Kumar, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. This judgement shall govern the disposal of the aforesaid petitions, wherein similar question of law has been raised, though the facts stated in these petitions are different; thus, the same are being

noted separately in the foregoing paras.

CRL.M.C.2950/2018

2. The brief factual matrix, as per the status report, is as follows:

“An FIR No. 445/2017 dated 08.11.2017 was registered U/s 25/54/59 Arms Act at PS IGI Airport on the complaint of Sh. Balwan Sharma, Senior Associate (ILBIS), Security and Vigilance T-3 IGI Airport, New Delhi against accused Ms. Megan Theresa Shinabery, a US national residing in H.No.N-10, Club Manor, Maumelle, Arkansas – 72113, USA. It has been alleged that on 08-11-2017, the accused was travelling to Rome(Italy) from New Delhi by Alitalia Flight No. AZ-769. During screening of her baggage at level 4, International Departure T-3 IGI Airport, one live round having caliber 0.45 bore was detected. Upon enquiry, the accused submitted that she did not possess any valid license for carrying the round that was recovered from her baggage. During the investigation, the recovered cartridge was taken into police possession through seizure memo. Accused Ms. Megan Theresa Shinaberry was interrogated, she disclosed that this bullet belongs to her husband who has a valid license to carry a concealed handgun issued by the State Police, Arkansas. She further disclosed that this single cartridge was carried along with her unknowingly and inadvertently. The accused submitted a copy of the Arms license issued in the name of Anthony Tyler Shinaberry, after which the arrest of the accused Ms. Megan Theresa Shinaberry was deferred. The cartridge was sent to FSL lab Rohini wherein the expert opinion was obtained confirming that the cartridge was 0.45 bore and could

be fired through 0.45 bore caliber firearm.”

3. Learned Counsel for the petitioner submitted that the husband of the petitioner Mr. Anthony Tyler Shinaberry holds a valid license to carry any legal handgun issued by the State of Arkansas, USA. The husband of the petitioner owns a handgun and further submitted that often the petitioner accompanies her husband on hunting trips and had accompanied him on a duck hunting trip in November 2017. She immediately travelled to India after this trip and in the process carried the same handbag which she had taken along with her for this trip. Therefore, inadvertently she carried one bullet which was meant for the purpose of hunting belonging to her husband and the same was recovered from her at T-3 IGI Airport, New Delhi as it had been carried by her unnoticed in her luggage.

4. Learned Counsel for the petitioner further submitted that a letter was sent to the US Embassy to verify the validity of the handgun license of her husband after which a verification report by the Secretary of State of Arkansas, USA, duly notarized was received confirming the validity of the license in the name of Mr. Anthony Tyler Shinaberry.

CRL.M.C.688/2019

5. The brief facts of the case, as stated in the petition as well as in the written synopsis, are as follows:

“The petitioner is a citizen of India. On
5.4.2015 the petitioner was travelling

from Delhi to Canada via Bahrain, upon screening of the baggage one live bullet was detected in the handbag of the petitioner and the same was reported by the DIAL Baggage security unit. The petitioner was not having a valid license for possessing the ammunition in her handbag and was accordingly detained and escorted to the police station along with her passport. After this an FIR was registered bearing no. 134/2015 under section 25/54/59 at police station IGI Airport and the same has now culminated into charge sheet under section 25 of the arms act.”

6. The learned counsel for the petitioner submitted that the petitioner has been unnecessarily entangled into the criminal litigation without the presence of any criminal intent.

7. The Learned counsel for the petitioner further submitted that the bullet found in the luggage of the applicant was a result of inadvertent error and innocent mistake. The applicant found the bullet in question at Army Cantt, Hyderabad where her father was posted in Indian Army. The petitioner had out of curiosity and intrigue, picked up the bullet and put it in her bag to hand over to her father. However, she had forgotten to do so and the same bullet remained in her luggage leading to the incident question.

8. Both the abovementioned petitions have been filed by the petitioners to quash the FIRs registered against them separately, as noted hereinabove, and the proceedings emanating therefrom.

9. Learned counsel for the petitioners submitted that there is no allegation in any of the above FIRs that the petitioners were in the conscious possession of the cartridges. In support of their submissions, the learned counsel for the petitioners have relied upon the judgments, such as, *Davinder Singh Dhindsa v. State (NCT of Delhi)*, 2019 SCC Online Del 7895; *Baljit Singh Chahal v. State of NCT of Delhi* in CrI.M.C.3149/2019; *Hari Kishan v. State (NCT of Delhi)* in CrI.M.C.3865/2016 and *Sonam Chaudhary v. The State (Government of NCT of Delhi)*, 2016 SCC Online Del 47. Learned counsel for the petitioners also submitted that each of the petitioner is ready and willing to contribute a sum of Rs.25,000/- for some social beneficial cause in any trust or association.

10. Learned APP, on the query of the Court, admitted that in the similar matters, the Co-ordinate Benches of this Court as well as this court has passed the orders for quashing of the FIRs on the ground that the petitioners were not in conscious possession of the cartridges and the State has also not challenged those orders before the Supreme Court.

11. Learned APP, on instructions, also submitted that the petitioners are not having any criminal antecedents. The Investigating Officer ('IO'), who is present in Court, has identified the petitioner in CrI.M.C.688/2019 and the SPA holder in CrI.M.C. 2958/2018 as well as verified the SPA.

12. One of the Co-ordinate Bench of this Court in the matter of *Davinder Singh Dhindsa v. State (NCT of Delhi)* (supra) has dealt with the issue of 'conscious possession' in detail. Relevant portion of

the judgment is reproduced as under:

“11. Further, the question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of *Gunwantlal v. 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 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.....”

12. In the case of *Gaganjot Singh v. 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.”

13. The same view has been reiterated by another coordinate bench of this court in *Sonam Chaudhary v. State* reported in 2016 SCC OnLine Del 47 which reads as:

“34. Therefore, applying the said principles of law, as discussed above, and considering the fact that the petitioners had left behind the live cartridge/cartridges in their luggage by mistake and/or inadvertent oversight, when they started their respective journeys and that the petitioners were not aware of the presence of the live cartridge/cartridges in their handbags till the same were detected by the security personnel during screening of the baggages at the concerned places, it can be safely inferred that the said possession does not fall within the ambit of ‘conscious possession’. Admittedly, no firearm or weapon has been recovered from any of the petitioner and they have not extended any threat to any person or police official, hence, no offence under Section 25 of the Act is made out against any of the petitioner. Therefore, allowing continuance of the criminal proceedings against them would be an abuse of the process of Court.”

13. While quashing the FIR, another Co-ordinate Bench of this Court in the matter of *Davinder Singh Dhindsa v. State (NCT of Delhi)* (supra) has held as under:

“The issue involved in the present case, is covered by the principles laid down in above said decision of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, as there is no sufficient evidence or reasonable ground of suspicion to justify ‘conscious possession’ of the live cartridge recovered from the baggage of the petitioner. The petitioner was in possession of the said cartridge; however, he expressed his lack of awareness in respect of the said cartridge. He also holds a valid arms license bearing No-DM/SNG/ARM/AMAR/0218/17. 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. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridge. The FSL report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven 'conscious possession'. 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 cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice."

14. This Court, vide order dated 26.11.2019, in CrI.M.C. 994/2018 & other connected matters, dealt with a similar issue arising from similar factual matrix and quashed the FIRs in question.

15. In view of the aforesaid submissions of the learned counsel for the parties as well as the law laid down and discussed hereinabove, the facts which have emerged on the record are that neither the petitioners were aware nor were they having knowledge about the possession of the live cartridge in their respective baggage till the same were detected by the security staff of the Airport during the screening of the baggage.

16. What is required and *sine qua non* under the law to proceed in such matters is that the person should be in the conscious possession of the cartridges and if we barely peruse the FIRs and the documents filed on the record, the necessary ingredient of 'conscious possession' in all these matters is missing. It is also, admittedly, a fact on the

record that no firearm or weapon was recovered from the possession of the petitioners and the petitioners also have not been found to have extended any threat to any person or any police official. Thus, the core ingredient and indispensable condition and element in these matters to establish the guilt of the petitioners for the offences punishable under Sections 25/54/59 of the Arms Act, 1959, i.e. conscious possession, is missing. Therefore, this Court is of the firm view that no offence under Sections 25/54/59 of the Arms Act, 1959 is made out against the petitioners.

17. In view of the aforesaid discussions, this Court is of the view that no fruitful purpose would be served in continuing with the criminal proceedings rather that would be an abuse of the process of the Court. Accordingly, in the interest of justice, FIR No.0445/2017 under Sections 25/54/59 of the Arms Act, 1959 (in short 'the Act') against the petitioner Megan Theresa Shinabery, registered at P.S.: IGI Airport, Delhi and FIR No.134/2015 under Section 25 of the Act against the petitioner Vibha Sharma, registered at P.S.: IGI Airport, Delhi and the proceedings emanating therefrom, are quashed, subject to deposit of a sum of Rs.25,000/- by each petitioner within 14 days, as stated hereinabove out of which Rs.10,000/- be deposited with the Middle Income Group Legal Aid Society A/C No.15530110135488, UCO Bank, Delhi High Court, Rs.5,000/- in the Delhi High Court Advocates' Welfare Trust, Rs.5,000/- with the Delhi Police Martyrs' Fund, Account No.18200110036907, UCO Bank, IFSC Code: UCBA0001820 and Rs.5,000/- in the Delhi High Court Staff Welfare Fund SB A/c No.15530110074442 UCO Bank, Delhi High Court and

receipts of the deposits be filed in the Registry within 21 days. Copies of the receipts shall also be handed over to the APP through the I.O. within one week thereafter. In case the petitioners fail to deposit the said sum, the prosecution shall be entitled to move an application for passing appropriate orders.

18. Petitions are disposed of in above terms. Pending application is also disposed of.

CHANDER SHEKHAR, J

JAUNARY 23, 2020

