



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1593/2019 & CRL.M.A. 6364/2019(Stay)**

Date of Decision: 20.12.2021

IN THE MATTER OF:

SHUPINDER KAUR SIDHU Petitioner
Through: Mr.Vishal Raj Sehijpal, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) & ANR..... Respondents
Through: Mr.Ashok Kumar Garg, APP for
State with SI Dharmendra Kumar,
PS I.G.I. Airport, New Delhi.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner has sought quashing of FIR No.13/2016 registered under Sections 25/54/59 of the Arms Act at Police Station Indira Gandhi International (I.G.I.) Airport, New Delhi and the consequent proceedings emanating therefrom.

2. Learned counsel for the petitioner has submitted that as per the prosecution case, the incident in question took place on 07.01.2016 at the I.G.I. Airport, New Delhi, when a security personnel detected 05 live cartridges from the check in baggage of the petitioner, who was in the process of departure from New Delhi to Sydney, Australia via Flight No. CZ3028 (DEL-CAN-SYD) of China Southern Airlines from the said Airport. He contended that in fact, the suitcase/check in baggage was



borrowed by the petitioner from her husband ~~Sh. Avtar Singh~~ for the purpose of travel, and she had not checked the contents of the same before using. Learned counsel also submitted that a duly sworn affidavit of *Sh. Avtar Singh* has been placed on record, wherein he has acknowledged that both, the bag used by the petitioner, as well as the 05 live cartridges, belonged to him. It is further stated in the affidavit that the petitioner used the bag of *Sh. Avtar Singh* for travel purposes on 07.01.2016 and the live cartridges, belonging to him, were inadvertently lying in the said bag.

In support of his contentions, learned counsel for the petitioner has placed reliance on the Arms License bearing No. DM/BAR/DUP/SBAR/0318/82 duly issued by the Government of Punjab in favour of the petitioner's husband. He has also laid emphasis on document bearing Sr. No. 5117211 dated 10.03.2018 issued by the Office of the District Magistrate, Barnala, Government of Punjab, whereby the aforesaid Arms Licenses too were renewed from 04.02.2017 to 03.02.2020 with respect to Non-Prohibited Weapon against .32 Bore for Revolver as well as 30.06 Bore for Rifle. Lastly, it is submitted that as the petitioner had no knowledge about the 05 live cartridges lying in her check in baggage, she was not in '*conscious possession*' of the same.

3. Learned APP for the State, on the other hand, has opposed the relief prayed for. He has submitted that on measurement of the 05 live cartridges, the length of each was found to be 3.2 cms and the diameter of base of each cartridge was found to be 9mm. He further submitted that '3.2 S&WL' was found engraved on the base of each cartridge. The same were sent for examination to FSL, Rohini, where it was opined that "*...all the cartridges were live before they were test fired. They come under the definition of ammunitions as defined in Arms Act.*" A Status Report has been placed on record to this effect.



Learned APP has also submitted that the charge sheet has already been filed and cognizance has been taken by the concerned Court. Lastly, he submitted that the petitioner is a resident of *Village & Post Pharwahi, District Barnala, Punjab*, who had arrived at the I.G.I. Airport, New Delhi from her native place and was travelling to Australia via aforesaid flight No. CZ3028.

4. An additional Status Report in respect of verification of the Arms License of *Sh. Avtar Singh* has also been filed, which is taken on record. It is stated in the Report that Arms License bearing No.DM/BAR/DUP/SBAR/0318/82 was verified from the Office of Deputy Commissioner, District Barnala, Punjab and the same has been found to be genuine. The said license was issued in the name of *Sh.Avtar Singh*(husband of the petitioner), a resident of *Village Pharwahi, District Barnala, Punjab*, and was valid till 03.02.2020. As per the Arms License, stated to be issued on 05.02.2008, the license bearer was authorized to carry .32 bore arms and ammunitions for the State of Punjab only.

5. I have heard learned counsels for the parties and have also perused the material placed on record.

6. As per the allegations in the FIR, 05 live cartridges were recovered from the check in baggage of the petitioner while she was travelling from New Delhi to Sydney, Australia. It is an admitted case that no fire arm was recovered. The petitioner's case is that she had no knowledge that 05 live cartridges were lying in the suitcase/check in baggage, as the same belonged to her husband *Sh.Avtar Singh*, from whom she had borrowed it for travel purposes without checking the contents of the same. The recovered live cartridges were of .32 bore and it has been averred that the petitioner's husband held a valid Arms License at the time for the aforesaid



bores. A duly sworn affidavit of the petitioner's husband confirming the same has been placed on record. An additional Status Report verifying the genuineness of the Arms License issued by the concerned authority in favour of the petitioner's husband has also been placed on record.

7. Whether the word '*possession*', as mentioned in Section 25 of the Arms Act, 1959, would simply mean physical/constructive possession or '*conscious possession*' has already been the subject matter of many judicial decisions and the law on the subject is no longer *res integra*. This Court deems it profitable to refer to the decision of the Supreme Court in Gunwantlal v. State of Madhya Pradesh reported as (1972) 2SCC 194, wherein while reading into the word '*possession*', the Constitution Bench has held there has to be an element of intention, consciousness or knowledge. It was further held:-

"5. ...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 nonetheless 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 some one 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 Jurisprudence 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~~ ^{conscious 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. Subsequently, in Sanjay Dutt v. State through C.B.I., Bombay (II) reported as **(1994) 5 SCC 410**, the Supreme Court observed as under:-

“19. 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. (See Warner v. Metropolitan Police Commissioner and Sambasivam v. Public Prosecutor, Federation of Malaya.)”

9. Apart from the aforementioned, there are several decisions of this Court which reiterate that unconscious possession would not attract the rigours of the Arms Act [Refer: Sh. Gaganjot Singh v. State reported as **2014 SCC OnLine Del 6885**; Sonam Chaudhary v. The State (Govt. of NCT Delhi) reported as **2016 SCC OnLine Del 47**; Hari Kishan v. State (NCT of Delhi) reported as **2019 SCC OnLine Del 8829**; Sh. Surinder Kumar @ Surinder Kumar Singh v. The State (G.N.C.T. of Delhi) and Anr., W.P. (CRL) 2143/2019; Aruna Chaudhary v. State & Ors., W.P. (CRL)



1975/2019; Parmdeep Singh Sranv. The State (NCT of Delhi), W.P. (CRL) **152/2019**; Davinder Singh Dhindsa v.State (NCT of Delhi) reported as **2019 SCC OnLine Del 7895** and Adhiraj Singh Yadav v. State, W.P. (CRL) **754/2020**.]

10. Recently, this Court in Abid Qureshi v. State (Govt. of N.C.T. of Delhi) and Another reported as **2021 SCC OnLine Del 4410** also concurred with the view taken in the aforesaid decisions.

11. On a combined reading, it becomes apparent that if the factum of physical possession is made out against a person charged under the Arms Act, it remains for the Court to enquire if a mental element was also present. A search for mental element would include discovering whether or not the person accused was vested with an intention, knowledge or consciousness in regard to the ‘ammunition’ recovered from his possession. In the present case, barring the allegation of being found in possession of 05 live cartridges in the suitcase carried by the petitioner, and the results contained in the FSL Report, there is no other material on record to show that the petitioner was in ‘conscious possession’ of the recovered cartridges.

12. Keeping in view the exposition of law propounded by the Supreme Court extracted hereinabove and followed by the Co-ordinate Benches of this Court, the petitioner in the present case cannot be held to have been in ‘conscious possession’ of the 05 live cartridges. On a holistic reading of the facts and the material placed on record, this Court is of the opinion that the necessary ingredients for the offence under Section 25 of the Arms Act are not made out against the petitioner. The continuance of proceedings would, in fact, be an exercise in futility.



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13. Accordingly, for the reasons stated above, the aforesaid FIR and the proceedings emanating therefrom are quashed.

14. The petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 20, 2021

v