

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

+ **CRL.M.C. 1391/2021 and CRL.M.A. 8712/2021**

Date of Decision 15.09.2021

IN THE MATTER OF:

ABID QURESHI

..... Petitioner

Through: Mr. Nitin Jain, Advocate with
petitioner in person.

versus

STATE (GOVT. OF N.C.T. OF DELHI) & ANR. Respondents

Through: Ms. Meenakshi Dahiya, APP for
State with SI Rajiv Gulati, PS IGI
Airport.

Mr. Vishal Chauhan, Mr. K.P.
Singh and Mr. Rajesh Kumar,
Advocates for Respondent No.2.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of FIR No. 04/2016 registered under Sections 25/54/59 of the Arms Act at Police Station IGI Airport, Delhi.

2. As per the allegations levelled in the FIR, the present incident occurred on 03.01.2016 when the petitioner was in the process of departure from Delhi to Dubai via Flight No. 9W546 of Jet Airways from the Indira Gandhi International Airport, New Delhi. It is alleged that during the luggage checking, two live cartridges were found in a jacket which was kept in the applicant's luggage bag.

3. Mr. Nitin Jain, learned counsel for the petitioner, has contended that the petitioner is not the owner of the aforesaid jacket and had borrowed it from his friend namely *Rav Gayyur @ Gayub* i.e., respondent No. 2, as he was going aboard. It is submitted that the applicant had kept the jacket in his luggage bag without checking it. It is further submitted that at the time of handing over the jacket to the petitioner, even respondent No. 2 was not aware about the same containing live cartridges. Along with the petition, an affidavit of respondent No. 2 has also been placed on record as per which, the petitioner's version stands corroborated. It is stated in this affidavit that the bag and the jacket containing cartridges, seized from the petitioner, belonged to respondent No. 2. It is further stated that respondent No. 2 possessed a valid License to possess arms and cartridges at the time of alleged discovery from the petitioner.

4. The Status Report has been forwarded through e-mail, which is taken on record.

5. At the outset, Ms. Meenakshi Dahiya, learned APP for the State, submitted that the verification of the Arms Licence of respondent No. 2 has been carried out. During investigation, it has been found that an Arms Licence dated 07.12.2014 had been issued to respondent No. 2

which remained valid till 07.09.2017. She submits that, inadvertently, the year '2017' instead of '2014' has been incorrectly mentioned in the Status Report. It is further submitted that during the investigation, the aforesaid two live cartridges were sent to the FSL and as per the FSL Report, the same have been opined to be 'ammunition' as defined in Section 2(b) of the Arms Act, 1959. She lastly submits that the charge sheet in the present case has already been filed.

6. I have heard the learned counsels for the parties and the learned APP for the State as well as perused the materials placed on record.

7. As per the allegations in the FIR, two live cartridges were found in a jacket kept in the petitioner's luggage bag, however, no fire arm was recovered. The petitioner's case is that he had no knowledge of the two live cartridges being present in the jacket as the same belonged to respondent No. 2, from whom it was borrowed for travelling purposes without checking. Upon discovery effected from the petitioner, the present case came to be registered on 03.01.2016, on which date the aforesaid Arms Licence in the name of respondent No. 2 was valid and subsisting. The affidavit of respondent No. 2, confirming the same, has been placed on record.

8. 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) 2 SCC 194, wherein while reading into the word 'possession', the

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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 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....”

9. 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 Commissioner² and Sambasivam v. Public Prosecutor, Federation of Malaya⁸.)”

10. 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**; Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) and

Anr., **W.P. (Crl.) 2143/2019**; Aruna Chaudhary v. State & Ors., **W.P. (Crl.) 1975/2019**; Paramdeep Singh Sran v. 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**.

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 two live cartridges in a jacket which was in his luggage bag, 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 two live 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 two 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, 1959 are not made out against the petitioner. The continuance of proceedings would in fact, be an exercise in futility and accordingly, for the reasons stated above, the aforesaid FIR and the proceedings emanating therefrom are quashed.

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

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 15, 2021

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