



\$~1

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

Date of decision: 20.07.2022

+ **W.P.(CRL) 1633/2021**

SHYAMAREE PAUL

..... Petitioner

Through: Mr. Varun Malik, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Yasir R. Ansari, Ld. ASC with

Mr. Kamil Khan, Advocates

SI Yogender, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J (ORAL)

1. This is a petition filed seeking quashing of the FIR No. 06/2020 dated 02.01.2020 registered at PS IGI Airport, New Delhi under Section 25 of the Arms Act and all proceedings emanating therefrom.
2. The petitioner is present in Court and has been identified by Mr. Varun Malik, learned counsel for the petitioner.
3. The counsel submits that the Petitioner is an Indian National and a housewife, who belongs to Kerala.
 - 3.1 The Petitioner came to Delhi to catch her flight to Kolkata to attend her brother's funeral, by flight no. 6E-0215 seat no. 18D, from Delhi to Kolkata.
 - 3.2 On 02.01.2020, when the petitioner was waiting for her flight no. 6E-0215 seat no. 18D, from Delhi to Kolkata, the Petitioner was detained, a 1 live ammunition (bullet) and 1 empty case was detected from her hand baggage. Therefore, the Petitioner was detained as 1 live ammunition was detected from her hand



baggage.

- 3.3 On the complaint of Mr. Shiv Pujan Kumar, Rank SI/EXE, CISF No. 103211978, COY H-2 I.G.I. Airport, IGI Airport, New Delhi, the FIR in the present case was registered wherein he mentioned that on 02.01.2020 at 0548 hrs, the petitioner along with her hand baggage appeared at 06 X-BIS and the same was referred for physical check by the complainant on suspicion of presence of Ammunition/s. During pre-embarkation security checks of checked in luggage, the complainant detected 1 live ammunition and 1 empty case.
- 3.4 Thereafter, during physical search of checked in luggage by the complainant, in presence of petitioner (Mr. Shyamasree Paul), 1 live ammunition and 1 empty case was recovered.
- 3.5 The petitioner was subsequently brought to the police station and the evidence was marked and handed over to the SHO of IGI Airport Police Station and subsequently the FIR bearing No. 06/2020 was registered.
4. After enquiry, it was found that the petitioner had no knowledge about the bullet which was recovered from her checked in luggage.
5. The counsel for the petitioner submits that the 1 live bullet discovered doesn't belong to the Petitioner, who was going to attend her brother's funeral and had no knowledge about the bullet which was in her hand baggage.
6. The counsel further states that the Petitioner was surprised and shocked when the 1 live ammunition was discovered from her hand baggage and therefore, the possession of the live ammunition was not a 'conscious



possession’. In support, the counsel has relied upon the Supreme Court judgment of ***Gunwantlal v. State of Madhya Pradesh***, [AIR 1972 SC 1756] and a judgment of this court in ***Sonam Chaudhary and Ors. v. The State***, [Crl. M.C. 471/2015 dated 06.01.2016] wherein it has been held that possession requires a ‘mental element’ and therefore, it should be a ‘conscious possession’.

7. In the status report, it is recorded that the during investigation the petition submitted that the live ammunition belongs to her brother but the same has not been verified.
8. In ***Adhiraj Singh Yadav Vs. State***, decided on 31.12.2020 in W.P.(CRL) 754/2020, this Court held that:

“12. In view of the above, it is well settled that an offence under Section 25 of the Arms Act would not be made out in cases where the suspect was not conscious that he was in possession of live ammunition.

14. This Court has in several cases held that unconscious possession would not attract the rigours of the said Act. [See: Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) &Anr.: W.P. (Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State &Ors.: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.: (Crl) 152/2019 decided on 29.08.2019)].”

9. While deciding a similar matter titled ‘***Mitali Singh v. NCT of Delhi & Anr.***’, decided 15.12.2020, W.P.(CRL) No. 2095/2020, this court made the following observation:

“8. The courts have in a number of decisions held that the conscious possession of an ammunition is sine qua non to prosecute the possessor under the Arms Act, 1959.

*9. In ***Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194***, the Constitution Bench of the Supreme Court has 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. In *Sanjay Dutt v. State through CBI Bombay (II)*, *Crimes 1994 (3) 344 (SC)* the Supreme Court has observed 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 unauthorized substance has been understood.”

10. The above judgments require conscious possession or knowledge of the possession. The Petitioner has been able to make out a case that she was not conscious about the possession of the live ammunition. She has also stated on record that the cartridge did not belong to her. Furthermore, the petitioner was travelling for her brother's funeral and was in a disturbed state of mind and therefore, the possession of the live ammunition was inadvertent and not deliberate.
11. For the reasons stated above, FIR No. 06/2020 dated 02.01.2020 registered at PS IGI Airport, New Delhi under Section 25 of the Arms Act and all consequential proceedings emanating therefrom are hereby quashed subject to payment of Rs.25,000/- to DHCLSC within a period of 4 weeks.
12. The petition is disposed off in the aforesaid terms.

JASMEET SINGH, J
JULY 20, 2022 / (MS) [Click here to check corrigendum, if any](#)