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

Date of decision: 17.08.2022

+ **CRL.M.C. 3783/2022**

RAHUL MAMGAIN

..... Petitioner

Through: Mr Aman Yadav, Mr Aamir Chaudhary and Mr Prashant Solanki, Advs.

versus

STATE NCT OF DELHI AND ANR

..... Respondents

Through: Mr Aashneet Singh, APP for State
SI Naveen Kumar, PS-IGI Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

CRL.M.A. 15829/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 3783/2022

1. This is a petition seeking quashing of FIR No.115/2019 dated 23.03.2019, registered at P.S.- IGI Airport, under section 25 of Arms Act 1959 and all proceedings emanating therefrom.
2. It is stated by Mr Aman Yadav, learned counsel appearing for the petitioner that the petitioner is a resident of Delhi and is a government school teacher. It is further submitted that the petitioner was travelling from Delhi to Ranchi, Jharkhand on 23.03.2019 and subsequently during security



check, a single cartridge was inadvertently found in the bag of the petitioner. Upon being asked to produce valid documents for the ammunition the petitioner was unable to show the same.

3. In pursuance of the above, the present FIR was registered against the petitioner.

4. It is the case of the petitioner that he found the said cartridge on a road when he was studying in a school at Chamoli, Uttarakhand in the year 2008-2009 and it seemed to him that the bullet was not a live one and was of no use, therefore he kept it with him in his almirah. He states that the said cartridge, unintentionally, ended up in his baggage along with his clothes and was later on detected at the airport.

5. The petitioner is present in court and further states that he had no intention to carry the cartridge and the same was in his unconscious possession.

6. Issue notice.

7. Mr Aashneet Singh, learned APP accepts notice on behalf of the State.

8. In normal circumstances, notice would be issued to the State and they would be directed to file a status report, however, the present matter is a simple case wherein the petitioner has admitted that neither he nor any of his family members have a valid Arms license. Thus, there is no requirement for the respondent-State to file a status report.

9. Learned counsel for the petitioner has placed reliance on the judgment of '*Anurag Walia v. NCT of Delhi*' passed by Coordinate Bench of this Court in CRL.M.C. 5272/2019, decided on 16.10.2019.

10. I have heard counsels for the parties.



11. A coordinate bench of this Court in ***Sonam Chaudhary v. The State (Government of NCT of Delhi)*** [CRL.M.C. 471/2015] dated 06.01.2016, held that:

“31. Recently, this Court in the case bearing Crl.M.C.No.4207/2104, titled as ‘Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.’, decided on 11.08.2015, held that since the prosecution has failed to prove that the possession was conscious possession and, therefore, on the basis of mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959. Accordingly, while allowing the petition noted above, this Court quashed the FIR, summoning order and all proceedings emanating therefrom.

32. Thus, the law is well settled that ‘conscious possession’ is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.

33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua the petitioners under the Arms Act, 1959.

*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.

35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed."

12. 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.””

13. Extrapolating from the principles enunciated in above judgements, it is clear that the element of “conscious possession” is a core ingredient for prosecuting the possessor under the Arms Act.

14. It is apparent from the facts of the case that only a single cartridge has been recovered from the Petitioner and no other fire arm has been recovered from him which makes it evident that the petitioner was not having conscious possession of the live cartridge.

15. In view of the fact that there was no animus possidendi and no averment in the FIR, that the Petitioner was aware or conscious and was knowingly in possession of the ammunition in question, I am of the view that this is a fit case for quashing of FIR. It is due to a mere oversight that the live ammunition remained in his bag and he was not carrying the same intentionally.

16. I am also of the view that since the police machinery has been put in motion on account of the acts of commission & omission and could have been saved had the petitioner been more careful and vigilant. Useful time of police has now been consumed, which could have been better utilized for important matters, but has been misdirected towards these petty matters, therefore, the petitioner must do some social good for the society.



17. For the reasons recorded above, the FIR No.115/2019 dated 23.03.2019, registered at P.S.- IGI Airport, under section 25 of Arms Act 1959 is hereby quashed, subject to the petitioner taking extra classes of two hours each working day, for weak students in the school premises which he currently teaches in, for a period of one month.

18. A copy of this order be sent to Directorate of Education (hereinafter referred to as 'DoE') to ensure that weak students in primary classes are identified in the neighbourhood. The principal of the school is also requested to ensure that a class room is available for doing the needful while following all COVID protocols and norms.

19. The IO and the Principal of the school shall verify the said factum and ensure that the above said classes take place.

20. The petitioner will place on record a compliance report within 45 days of passing of this order and the I.O. will verify the factum of the compliance.

21. List for compliance on 16.11.2022.

22. The petition is disposed of in the aforesaid terms.

नित्यमेव जयते

JASMEET SINGH, J

AUGUST 17, 2022

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[Click here to check corrigendum, if any](#)