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

Date of decision: 10.05.2022

+ W.P.(CRL) 2600/2021
SUNITA MAKKAR

..... Petitioner

Through: Mr. Vishal Kalra, Mr. Ajay Mehrotra,
Advocates

versus

GOVT. OF N.C.T. OF DELHI AND ORS. Respondent

Through: Mr. Piyush Singhal, Mr. Ashish
Aggarwal, Advocate
SI Sumit Kataria, PS Domestic Airport

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is a petition filed seeking quashing of the FIR No. 22/2019 dated 01.03.2019 registered at PS Domestic 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. Vishal Kalra, learned counsel for the petitioner.
3. As per the Petitioner, the petitioner along with her family members including her husband, daughter and son were travelling to 'Patna Sahib Gurudwara' at Patna in Bihar.
4. The Petitioner was travelling through the Indigo Flight, whereby she was stopped by the Respondent No. 2 who was detailed as scanner officer at security hold area at IGI Airport, Delhi on detection of 1 number of "0.32" caliber live ammunition from the hand-in baggage of



the Petitioner during the pre-embarkation security check, which was later on physically searched and 1 live ammunition of “0.32” caliber which has words “K.F. 32 S&WL” engraved on its base was recovered from the hand-in baggage of the Petitioner of which she had no knowledge at all.

5. The Petitioner states that she was carrying a hand bag which she had borrowed from the wife of her nephew namely Shri Jiten Kumar for travelling purposes in which a live cartridge was left inadvertently without her knowledge and she had brought the same hand bag with her while arriving at the IGI Airport after packing her belongings in the same.
6. Petitioner told the authorities that she had no knowledge of the cartridge and that she took the hand-in baggage without knowing that any bullet would be there inside the hand-in baggage and in a hurry without checking the bag properly. Therefore, she was unaware about presence of any such cartridge/ammunition in the said hand bag and arrived at IGI Airport.
7. The Petitioner also stated that her nephew is a licensed gun owner, holding a valid Arms & Ammunition since 2015. She also states that there are no averments in the chargesheet of the Petitioner being in alleged conscious and knowledgeable possession of the ammunition in question. The petitioner, feeling aggrieved, has filed this present petition for quashing.
8. The status report records the following finding:

“Further after last date of hearing the Arms License of Sh. Jiten Kumar who is nephew (Bhanja) of the present petitioner was sent



for verification and License no. 962-X-DM-HSR/2018 was verified from District Magistrate Hisar office and found registered on the name of Jiten Kumar S/o Sh Prem Kumar R/o Village Moth Karnail, Tehsil Narnaud, District Hisar for N.P.B. .32 Bore revolver No. T-6154 and N.P.B .22 Bore S.B.B.L rifle No. 572 valid up to 08/10/22.”

9. Furthermore, Jiten Kumar, nephew of the Petitioner, has filed an Affidavit confirming the averments of the Petitioner.
10. 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)].”

11. 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



clement, 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.””

12. 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 and the status report has verified the factum of her averments. Furthermore, the petitioner's nephew has affirmed her averments through an affidavit on record.
13. For the reasons stated above, the FIR No. 22/2019 dated 01.03.2019 registered at PS Domestic Airport, New Delhi under Section 25 of the Arms Act and all consequential proceedings emanating therefrom are hereby quashed subject to payment of Rs.15,000/- to DSLSA.

JASMEET SINGH, J

MAY 10, 2022 / (MS)

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