



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

Reserved on : 08.08.2023

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Pronounced on : 04.09.2023

+ **W.P.(CRL) 813/2023**

DINESH

..... Petitioner

Through: Ms. Sakshi Yadav and Mr.
Aamir Chaudhary, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC for
the State with Mr. Alok
Sharma, Advocate with SI
Madan Lal, P.S.IGI Airport.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. by the petitioner for quashing of FIR No. 1/2023 registered under Section 30 Arms Act 1959 registered at Police Station IGI Airport.

2. In brief, the facts of the case are that the petitioner was travelling from Delhi to Kolkata by Air India Airlines, Flight number A1-762 on 31.12.2022 and during the security check, ammunitions like articles were detected in the baggage of the petitioner. While searching his baggage, three (03) ammunition shaped articles were



recovered from the same. As a result, a complaint at Police Station IGI Airport was received on 01.01.2023 by complainant Ms. Dolly, Sr. Associate, DIAL Security and Vigilance, IGI Airport. On the basis of the said complaint, the FIR No. 01/2023 was registered against the petitioner.

3. I have heard the learned counsel for the petitioner as well as learned APP for the State. I have also perused the status report filed by the State.

4. It is submitted by learned counsel for the petitioner that the petitioner was completely unaware about the articles recovered from his baggage. It is further submitted that petitioner was travelling with his wife and it is very hard to believe that the petitioner would take such a huge risk of getting arrested. It is further submitted by the learned for the petitioner that the petitioner was not in '*conscious possession*' of the alleged recoveries, hence, no offence under the Arms Act, 1959 is made out.

5. In support of his contentions, learned counsel for the petitioner has placed reliance on following judgments:-

- ***Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194,***
- ***Gaganjot Singh vs. State (Govt. of NCT of Delhi), 2014 SCC Online Del 6885;***
- ***Jaswinder Singh Vs. State (Govt of NCT of Delhi), 2015 SCC Online Del 10894 ;***
- ***Sonam Chaudhary vs. State: 2016 SCC Online Del 47;***



- ***Jasbir Chahal vs State of (GNCT Of Delhi) CRL.M.C. 854/2018 decided on 07.05.2018;***
- ***Mandeep Lambs vs. State (Govt. of NCT of Delhi):2017 SCC Online Del 9885.***

6. On the contrary, it is submitted by learned APP, while vehemently opposing the present petition, that the petitioner was in fact in “*conscious possession*” of the above mentioned seized ammunitions and while having so, he did not have any valid documents for carrying those ammunition shaped articles, however, during the course of investigation, the petitioner produced a copy of Arms Licence bearing No. 822/X/R issued by District Magistrate Rohtak, Haryana. It is further submitted that the arms licence that the petitioner was holding was sent for verification and upon verification, it was found that the said licence was valid only in Haryana till the year 2026. It is further submitted that the said ammunitions were sent to FSL and the FSL report revealed that the Exhibits are live ammunitions as defined in the Arms Act 1959.

7. In the instant case, the question which is to be considered is that whether the petitioner was in ‘*conscious possession*’ of the ammunitions allegedly recovered from him or not. A perusal of Section 25 of the Arms Act 1959 shows that the term ‘*possession*’ refers to possession backed with the requisite mental element, i.e. conscious possession, therefore, mere custody, without the awareness of such possession, does not constitute an offence under the Arms Act 1959.



8. The question of the term ‘conscious possession’ has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of ***Gunwantlal Vs. State of Madhya Pradesh***, reported in (1972) 2 SCC 194, wherein it was observed as under:

“the possession of a firearm under the Arms Act 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 besides physical possession being in someone else. The first pre- condition 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. In the case of ***Gaganjot Singh vs. State*** reported in 2014 (3) JCC 2020 the Delhi High Court had observed the following:

*“12. As noticed previously, a solitary cartridge - which on examination by expert has been confirmed to be a live one –was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be cartridge and consequently it is "ammunition", by itself that is insufficient to point to suspicion - much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in ***Gunwantlal (supra)*** and ***Sanjay Dutt (supra)***.”*

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“16. In Chan Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge "cannot be used for the purpose without fire arms" and then proceeded to state: "though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act."

10. In the case of **Sanjay Dutt Vs. State reported in 1994 (5) SCC410** the Supreme Court inter alia observed that:

“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.

11. Therefore, ‘conscious possession’ of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender. The question involved in this case, is fully covered by the principles laid down by the Supreme Court in the above said decisions. In the instant case, there is not sufficient evidence or reasonable grounds to justify that there was ‘conscious possession’ of the live cartridges recovered from the petitioner. The petitioner was in possession of the said cartridges, however, he



expressed his lack of awareness in respect of the said cartridges. He also holds a valid arms licence. The said licence has been duly verified from the concerned DM Office and the licence was issued in the name of the petitioner, the same was valid till the year 2026. It is pertinent to mention here that there is no other material on record to show that the petitioner was conscious of his possession of the live cartridges in his baggage. Hence, it can be inferred that the said possession by the petitioner does not fall within the ambit of '*conscious possession*' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959.

12. Therefore, keeping in view the law laid down in above mentioned judgements, the fact that the petitioner was not aware of the live cartridges in his hand baggage, till the same were detected during screening of the petitioner's baggage, and that there is nothing on record to show that the petitioner is involved in any other offence except the mere recoveries made from the hand baggage of the petitioner, I find that continuance of the proceedings would be a futile exercise as the necessary ingredients to constitute the offence in question is missing. Consequentially, this petition is allowed, subject to costs of ₹20,000/- to be deposited by the petitioner with the Delhi High Court Legal Services Committee within two weeks from today. Upon placing on record the proof of deposit of costs within two weeks thereafter and handing over its copy to the Investigating Officer, FIR bearing No 01/2023 under Section 30 Arms Act, and the proceedings emanating therefrom are hereby quashed.



13. The petition stands disposed of accordingly. Pending applications, if any, are also disposed of accordingly.

RAJNISH BHATNAGAR, J

SEPTEMBER 4, 2023/_p

