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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.03.2023

+ **W.P.(CRL) 1461/2021**

MANJIT KAUR

..... Petitioner

Through: Mr. Vikas Nain, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Abhinav Kumar, Ms. Priyam
Aggarwal, Advs. for Mr. Sanjay Lao, St. Counsel
SI Mukesh, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is a petition filed seeking quashing of FIR no. 181/2021 dated 26.06.2021 registered at PS IGI Airport under Section 25 of the Arms Act, 1959, and all proceedings emanating therefrom.
2. The brief facts of the case are as follows:
3. The petitioner was traveling from Delhi to Frankfurt by Air India flight no. AI-121 at T-3 of Indira Gandhi Airport, New Delhi. During the security check, one cartridge of .32MM caliber was found in the bag of the petitioner.
4. Thereafter, the petitioner was handed over to IGI Airport Police station for further investigation or legal action.
5. Pursuant to the same, an FIR under Section 25 of the Arms Act was registered against the petitioner. The petitioner submits that she was not

aware that the cartridge was present in her handbag. It was only when the cartridge was noticed by the security personnel, that the petitioner was informed about the same and the petitioner was shocked and surprised too.

6. The status report also states that the recovered cartridge belongs to the petitioner's husband and he has availed arms license which is valid upto 27.10.2023.
7. The Learned Counsel for the petitioner has submitted case laws stating that mere recovery of live ammunition does not amount to commission of offence under Section 25 of Arms Act and the presence of a single bullet falls within the ambit of Section 45(d) of Arms Act and is considered minor part of ammunition. Section 45(d) is extracted hereunder:

“45.Act not to apply in certain cases.

Nothing in this Act shall apply to

...(d) the acquisition, possession or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person.”

8. The Learned Counsel for the petitioner further submits that there is no evidence or reasonable ground of suspicion to justify the conscious possession of the said cartridge. The Petitioner has also fully cooperated with the police.
9. While deciding a similar matter in ***Chang Hong Saik Through SPA Arvinder Singh v. State &Anr.***, (2012) 130 DRJ 504, this Hon'ble

court was pleased to quash the FIR against the Petitioner therein observing in Para 43 which is extracted hereafter:

“43. Single live cartridge cannot be used for any threat purpose without firearms. Value of the same in the market is also not attractive. It cannot be used for any third purpose. If the intention of the petitioner was not for either of the purpose mentioned above, then he cannot be held guilty and punished for the charge framed against him.”

10. The Hon'ble Supreme Court in ***Sanjay Dutt v. State***, (1994) 5 SCC 410 has observed in para 19 that:

“19. The meaning of the first ingredient of "possession" of any 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. In ***Adhiraj Singh Yadav v. State***, 2020 SCC OnLine Del 2110, 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) : W.P.(Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State : 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)].”

12. While deciding a similar matter, this court in ***Bakshi Mohemmed Riyazuddin v. State (NCT of Delhi)***, 2022 SCC OnLine Del 2251, made the following observations:

“10. 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, it was held that:

“.....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.....”

12. After a careful reading of the above judgments, it is clear that the element of “conscious possession” is a core ingredient for prosecuting the possessor under the Arms Act.

13. In view of the fact that there is no averment in the FIR that the Petitioner was aware or conscious and knowingly in possession of the ammunition in question and also that the petitioner has been able to make out a case that he was not in conscious possession of the recovered live ammunitions, I am of the view that this is a fit case for quashing. It is due a mishap that the live ammunitions remained in his bag and could not be detected earlier. It is pertinent to mention that the petitioner holds a valid arms license, as indicated in the Status Report dated 28.07.2022.”

13. In view of these judgments, it seems clear that conscious possession or knowledge of the possession is required for commission of an offence under section 25 of the Arms Act. In the present case, the petitioner had no knowledge of the ammunition in her bag. It was only on enquiring with her family that she realized that the ammunition belonged to the husband of the petitioner Mr. Jagtar Singh, whose Gun Licence was pending for renewal in the office of Licence Authority (M.V.), Pehowa with Registration Number 3096/NP/DMK and the same was duly

verified from the Licence Authority (M.V.), Pehowa. Therefore, the Petitioner has been able to make out a case that she was not in conscious possession of the live ammunition.

14. Since, the petitioner had no clue about the presence of cartridge in the said bag and she had no intention to carry the same in the bag, I am of the view that the FIR 181/2021 dated 26.06.2021 registered at PS IGI Airport under Section 25 Arms Act and all consequential proceedings emanating therefrom can be quashed, subject to the petitioner paying costs of Rs. 10,000/- with Delhi State Legal Service Authority (DSLISA).
15. Proof of payment of the costs be filed within 6 weeks from today, failing which, the file will be put up before the Court.

MARCH 14, 2023 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any