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

+ **CRL.M.C. 3/2022**

SHUBHANGI SINGH

..... Petitioner

Through: Mr. Shreeyash V. Lalit, Mr. Krishnagopal Abham, Ms. Runjhun Garg and Mr. Abhinav Aggarwal, Advs.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Raghuvinder Verma, APP for the State with SI S. Mann (D-3215), PS Domestic Airport.

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Date of Decision: 9th February, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 Cr. P.C. seeking quashing of (i) FIR No. 62/2019 registered at PS IGI Airport, Delhi under Section 25 of Arms Act, 1959 (ii) Charge-sheet dated 02.03.2021 filed by the Police Agency and (iii) order on charge dated 09.11.2021 passed by Ld. MM, South-west District, Dwarka Courts and all the proceedings emanating therefrom.

2. Briefly stated facts of the case are that on 01.06.2019 the petitioner was travelling to Goa from Delhi. While the petitioner was checking in at the Indira Gandhi International Airport, it was found that she was in possession of two live cartridges of the calibre (7.62*63) with description 30-06 FC SPRG which were discovered from her baggage. The cartridges were then handed over to the police and the FIR No. 62/2019 dated 01.06.2019 was registered. Charge-sheet was filed on 02.03.2021 under section 25 of Arms Act 1959 and on 09.11.2021 the charges were framed U/s 25(1B)(a) of the Arms Act, 1959.

3. The statement of the Petitioner was recorded under section 161 wherein she stated that the bullets recovered from her baggage belonged to her mother who is a holder of a valid fire-arms license bearing no.4860. The true copy of the said Firearms license of the Petitioner's mother is on record.

4. It is submitted that this is a case of inadvertence. The baggage carried by the petitioner belonged to her mother and she carried it to the airport in an hurry without having any idea that the said cartridges were present inside the bag.

5. Status report has been filed wherein it is submitted that during the course of investigation the recovered 02 ammunition were taken into police possession and were sent to FSL Rohini, Delhi for expert opinion, the report was received with the following –

*"(1) The 30-06 (7.62*63 mm) cartridges marked exhibits "A1" to "A2" are live ones and can be fired through the 30-06 (7.62*63 mm) caliber firearm.*

*(2) The 30-06 (7.62*63 mm) cartridges marked exhibits A1 wastest fired in the laboratory.”*

It is also submitted in the status report that the accused/petitioner has filed a copy of a license no 4860 issued in the name of Madhu Yadav has also been verified from District Magistrate (Arms) Shahjahapur Uttar Pradesh and it is mentioned in verification report that said license is registered on the name of Madhu Yadav D/o Durgpai Yadav and license valid till 12/07/2025. A NP bore rifle serial no 2745/86 30.06 bore has issued on the said license and the said license is valid only in Uttar Pradesh.

6. The court while exercising the power under Section 482 Cr. P.C. does not function as a court of appeal or revision. The powers under Section 482 Cr. P.C., are of wide plenitude but have to be exercised sparingly with caution. The object behind the exercise of such power should be to do real and substantial justice for the administration of which the courts exist.

7. The question which arises here is that what is meant by “*possession*”? The Hon’ble Supreme Court in Various judgements has discussed the meaning of the term “*possession*” wherein it held that 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. Therefore, there is a mental element in the concept of possession.

8. Thus, the element of consciousness or knowledge of that possession with which the person is charged under such offence is necessary to entail prosecution under the Arms Act. Reliance can be placed on *Narinderjit Kaur Singh v. State (NCT of Delhi) &Anr.*, W.P.(CRL).1669/2017 ; *Nimesh Kumar v. State NCT of Delhi &Anr.*, W.P.(CRL) 3540/2017). In these cases, a single live cartridge was found in possession of the accused and this Court formed an opinion that there was reasonable material to indicate that the person carrying one live cartridge might not have been in conscious possession of the same. Furthermore, in all these cases, the accused or his near family members possessed a valid arms licence in India.

9. In view of the above this court considers it apposite to allow the present petition as this court is of the view that the same would meet the ends of justice.

10. Accordingly, (i) FIR No. 62/2019 registered at PS Domestic Airport, Delhi under Section 25 of Arms Act, 1959 (ii) Charge-sheet dated 02.03.2021 filed by the Police Agency and (iii) order on charge dated 09.11.2021 passed by Ld. MM, South-west District, Dwarka Courts and all the proceedings emanating therefrom and all other proceedings emanating therefrom are quashed.

11. The present petition is disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 9, 2023/Pallavi