



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

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Date of Decision: 29.01.2024

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CRL.M.C. 272/2023

IN THE MATTER OF:

MS. MAMTA TUSHAR CHAUDHARY

..... Petitioner

Through: Mr. Anshul Syal and Ms. Bhavana
Duhoon, Advocates.

versus

STATE OF DELHI (GOVT. OF NCT)

..... Respondent

Through: Mr. Aashneet Singh, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been instituted under Section 482, Cr.P.C. seeking quashing of FIR No. 243/2022 registered under Section 25 of the Arms Act, 1959 at P.S. IGI Airport, New Delhi and the proceedings emanating therefrom.
2. Petitioner has claimed that she was residing in Meerut, U.P. and that somewhere in the month of June, 2022, she received a job offer from Pune, Maharashtra. The petitioner accepted the offer and decided to shift to Pune alongwith her family. In this regard, the petitioner has placed on record a Leave and Licence Agreement of a flat at Pune which was taken on rent from June, 2022 onwards as well as a receipt of Mahindra Packers Movers for transport of house hold articles to Pune. The petitioner decided to travel by Air India Flight bearing No.AI-851 on 18.06.2022 and at the time of



scanning of her baggage, 8 live rounds and 5 empty cartridges were detected in it, which led to registration of the present FIR.

3. Petitioner claims that she had used one of the empty baggage lying in her matrimonial home and was not aware of the live and empty cartridges lying inside it. The said ammunition, in fact, belonged to her father-in-law, who during his lifetime, was holder of a valid and subsisting licence for NPB Revolver/Pistol No. D1370. The arm licence bearing No. 1075/Lalkurti/Meerut had been issued on 20.03.2002 by the District Magistrate, Meerut. The said licence was valid upto 16.02.2017. The petitioner's father-in-law had expired on 18.04.2017, whereafter petitioner's husband had deposited the said weapon alongwith the ammunition at Vikas Gun House, a licensed dealer in compliance of Section 21 of the Arms Act, 1959. The petitioner's husband also applied for transfer of the said licence in his own name. The said weapon is stated to be lying deposited with said licence dealer even now. The petition is accompanied by the surrender certificate as well as death certificate of petitioner's father-in-law namely *Late Shri Tejveer Singh*.

4. On the strength of the above submissions, the petitioner contends that she was not in conscious possession of the seized ammunitions.

5. During the investigation, the seized live as well as empty cartridges were sent to FSL for examination and expert opinion. As per the FSL Report, the same were found covered under the Arms Act. A Status Report has also been placed on record as per which the arms licence stood issued in favour of the petitioner's father-in-law. The arm licence issued by the District Magistrate, Meerut was verified and found to be valid till 17.02.2017. It was also verified that the gun was deposited with Vikas Gun House on 24.10.2017.



6. To make out an offence under Section 25 of the Arms Act, the possession must be ‘conscious possession’ meaning thereby that offender had the knowledge and was not unaware of it.¹

7. In a similar view, a Constitutional Bench of the Supreme Court in Sanjay Dutt v. State Through CBI, Bombay (II)² elucidated the meaning of possession to be conscious possession and not mere custody, lacking any knowledge or intention to use:-

“xxx

19. 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 unauthorised substance has been understood. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public Prosecutor, Federation of Malaya, (1950) AC 458.

xxx”

8. The petitioner has categorically stated that the baggage belonged to her father-in-law and so did the ammunition lying in it. Concededly, there is no other incriminating material against the petitioner. The petitioner’s version is a plausible one. It is a settled law that the Court while exercising

¹ Gunwantlal v. State of Madhya Pradesh, (1972) 2 SCC 194

² (1994) 5 SCC 410



jurisdiction under Section 482 Cr.P.C. can interfere at any stage to prevent abuse of process of Court with the safeguard that the use of such power should be legitimate.

9. Whether the word ‘possession’ as mentioned in Section 25 of the Arms Act, 1959 would simply mean physical/constructive possession or ‘conscious possession’ has already been the subject matter of many judicial decisions and the law on the subject is no longer *res integra*. This Court deems it profitable to refer to the decision of the Supreme Court in Gunwantlal (Supra), wherein while dealing with the question of what ‘possession’ meant, it was held that there has to be an element of intention, consciousness or knowledge. It was further held:-

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5. ...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 nonetheless 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 some one 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 Jurisprudence 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....

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10. Apart from the aforementioned, there are several decisions of this Court which reiterate that ‘unconscious possession’ would not attract the rigours of the Arms Act [Refer: Sh. Gaganjot Singh v. State³; Sonam Chaudhary v. The State (Govt. of NCT Delhi)⁴; Hari Kishan v. State (NCT of Delhi)⁵; Sh. Surinder Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) and Anr.⁶; Aruna Chaudhary v. State & Ors.⁷; Paramdeep Singh Sran v. The State (NCT of Delhi)⁸; Davinder Singh Dhindsa v. State (NCT of Delhi)⁹; Adhiraj Singh Yadav v. State¹⁰; and Abid Qureshi v. State (Govt. of NCT of Delhi) & Anr.¹¹]

11. From the above discussion, it becomes apparent that even if the factum of physical possession is made out against a person charged under the Arms Act, it remains for the Court to enquire if a mental element was also present. A search for mental element would include discovering

³ 2014 SCC OnLine Del 6885

⁴ 2016 SCC OnLine Del 47

⁵ 2019 SCC OnLine Del 8829

⁶ Order dated 27.09.2019 passed in W.P. (CrL.) 2143/2019

⁷ Order dated 25.09.2019 passed in W.P. (CrL.) 1975/2019

⁸ Order dated 29.08.2019 passed in W.P. (CrL.) 152/2019

⁹ 2019 SCC OnLine Del 7895

¹⁰ 2020 SCC OnLine Del 2110

¹¹ 2021 SCC OnLine Del 4410



whether or not the person accused was vested with an intention, knowledge or consciousness in regard to the ‘ammunition’ recovered from his possession. In the present case, barring the allegation of having been found in possession of 8 live cartridges and 5 empty cartridges in her check-in baggage, and the results contained in the FSL Report, there is no other material on record to show that the petitioner was in ‘conscious possession’ of the said live and empty cartridges.

12. Keeping in view the exposition of law propounded by the Supreme Court extracted hereinabove and which was also followed by the Co-ordinate Benches of this Court, the petitioner in the present case cannot be held to have been in ‘conscious possession’ of the 8 live and 5 empty cartridges. On a holistic reading of the facts and the material placed on record, this Court is of the opinion that the necessary ingredients for the offence under Section 25 of the Arms Act, 1959 are not made out against the petitioner. The continuance of proceedings would in fact, be an exercise in futility and accordingly, for the reasons stated above, the aforesaid FIR and the proceedings emanating therefrom are quashed.

13. The petition is disposed of in the above terms.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 29, 2024

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