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

+ **W.P.(CRL) 651/2023**

PUNEET SHARMA

..... Petitioner

Through: Mr. Aamir Chaudhary, Ms. Sakshi Yadav, Mr. Aman Yadav, Mr. Mandeep Yadav, Ms. Akriti Chaudhary, Advocates with petitioner in-person.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Rahul Tyagi, ASC for the State with Ms. Mansi Gosain, Mr. Mukesh Dagar, Mr. Naresh Dagar, Mr. Vivek Sharma, Ms. Soumya and Mr. Rohan Sharma, Advocates with SI Rahul, P.S: IGI Airport.
SI Vipin, P.S.: IGI Airport.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

20.05.2024

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1. The present writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of the petitioner seeking quashing of the case arising out of FIR bearing No. 355/2022, registered at Police Station IGI Airport, Delhi, for offences punishable under Section 25 of the Arms Act, 1959.

2. The Brief facts, as per the prosecution are, that a case *vide* FIR No.



355/2022, dated 30.08.2022 was registered on the complaint of Mr Anil Kumar Barwar, (CISF no 102700387 Security, IGI Airport, Delhi). It is stated that on 30.08.2022, the complainant Mr Anil Kumar Barwar was detailed at X-BIS Machine no 06 Domestic SHA Terminal-3 for screening. During the screening, one bag of passenger Mr. Puneet Sharma was found suspicious and a physical check was made in the luggage bag. During the physical check, 22 live rounds were detected in the bag. It is further stated that on the written complaint of CISF Security, the above mentioned case was registered. During course of investigation, the accused Mr. Puneet Sharma was thoroughly interrogated wherein he had revealed that the bag in which the live rounds were found as well as the live round belonged to Mr. Udaivir Singh Khokar, who had a valid Arms license. Mr Udaivir Singh Khokar (retired ACP from UP Police) had also come to the airport to drop the accused Puneet Sharma. It is further stated that as per the SOP and the directions of senior officers, the arrest of the Petitioner was deferred. During course of investigation the recovered ammunition was sent to FSL for expert opinion for which the result is awaited. Hence, the aforesaid FIR was registered against the petitioner.

3. Feeling aggrieved by the aforesaid FIR, the petitioner preferred the present petition for quashing of FIR no. 355/2022.

4. While praying for quashing of FIR and the criminal proceedings emanating there from, Ld. Counsel for the petitioner has pleaded that petitioner had no knowledge regarding the presence of the aforesaid ammunitions/cartridges in his bag and he was only informed by the security officials of the IGI Airport. It is further submitted that petitioner had no intention to carry live ammunitions/ cartridges and the recovered live



cartridge cannot be used for any threat purpose without fire arms and it does not attract any offence in the absence of any knowledge of conscious possession.

5. Learned APP for the State has opposed the quashing petition of the petitioner. It is also submitted that the recovered ammunition was sent to FSL, for expert opinion. A copy of the arms license of the petitioner also stands verified. It is lastly submitted that the IGI Airport is a sensitive area from the threat perception and the petitioner was in the conscious possession of the said cartridge and, therefore, it is not a fit case for quashing of FIR under Section 482 Cr.P.C.

6. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

7. The Constitutional Bench of the Hon'ble Supreme Court in the case of ***Gunwantlal v. The State of Madhya Pradesh (1972) 2 SCC 194*** has explained the meaning of possession in the context of Section 25 of the Arms Act, 1959 and 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."

8. The above proposition of law was reiterated by the Hon'ble Apex Court in Sanjay ***Dutt v. State Through CBI Bombay (II) Crimes 1994 (3) 344 (SC)*** and held 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 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."

9. In the present case, there is nothing on record to suggest that petitioner was in conscious possession of the cartridge and he was aware of the said fact. Mere recovery of cartridge itself is not sufficient to prove the



offence in the absence of any intention. Petitioner was unaware of the said cartridge in his bag and entered the airport. It is also a matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridge for committing any offence.

10. In view of the above discussion, this Court is of the opinion that no offence is made out against the petitioner under Section 25 of the Arms Act. This Court is further of the view that allowing continuation of criminal proceedings against the petitioner will be an abuse of process of law. The writ petition is, therefore, allowed and proceedings emanating from FIR bearing no. 355/2022, under Section 25 of the Arms Act, registered with PS IGI Airport, Delhi are hereby quashed. The petition stands disposed of accordingly.

11. The order be uploaded on the website forthwith.

MAY 20, 2024/at

SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any