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

+ **W.P.(CRL) 792/2024**

BALJINDER SINGH SIDHU

..... Petitioner

Through: Mr. Indresh Upadhyay, Mr. Saurabh Kumar, Mohd. Faraz, Mr. Amit Negi, Mr. Sachin Khatter and Mr. Himanshu Sharma, Advocates

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC (Crl.) for State with Mr. Abhijeet Kumar and Mr. Sagar Mehlawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.05.2024

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1. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.167/2024 dated 01.03.2024 under Section 25 of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act') registered at P.S.: I.G.I. Airport, including all proceedings emanating therefrom.
2. Status Report has been filed on behalf of the State, in which it is stated that on 29.02.2024, complainant Vishvajeet Pratap Singh, Senior Associate, DIAL, Security and Vigilance, IGI Airport, Terminal-3, New Delhi, gave a hand-written complaint alleging detection of undeclared 09 ammunitions from a baggage under tag No. UK-0228488286 at level-2 and the same was referred for physical check. During physical check at 2050 hrs. of the check-in baggage, which belonged to the Petitioner, who was



travelling from Delhi to Mumbai by Vistara flight No. UK-999 on 29.02.2024, 09 undeclared ammunitions were recovered in presence of the Petitioner and Airlines staff. Petitioner was asked to produce valid documents for carrying the ammunitions, but he was unable to do so. Hence, the 09 live cartridges were handed over for appropriate action in consonance with the provisions of BCAS Circular No. 08/2017 dated 04.07.2017. Thereafter, present FIR was registered on 29.02.2024 under Section 25 of the Arms Act. During the course of investigation, 'Khaka' of the live ammunition was made and the hand baggage was taken into possession through a seizure memo.

3. It is further stated that on interrogation, Petitioner disclosed that he was having an Arms License and had unknowingly carried the live cartridges in the check-in baggage, thereby denying conscious possession. His arrest was deferred and statements of witnesses were recorded and exhibits were sent for forensic examination to FSL, Rohini. During further investigation, Arms License No. DM/MOG/DUP/NISW/1016/788 was sent for verification to DM, Moga, Punjab and as per the verification report, the said License was issued in the name of the Petitioner and is valid upto 17.09.2027 *albeit* for the State of Punjab. In reply to a query raised, Rahul Gun House has confirmed that 25 cartridges of 0.32 bore revolver were sold to the Petitioner under the said License. Copy of the bill has been annexed to the Status Report.

4. Learned counsel for the Petitioner submits that Petitioner is a Permanent Resident of Canada with Indian passport bearing No. R4371307. On 14.01.2024, Petitioner came to India to attend the marriage ceremony of his brother-in-law Kuljeet Singh. After attending the marriage, Petitioner



was travelling on Vistara Flight bearing No. UK-999 from Delhi to Mumbai on 29.02.2024, whereafter he was to travel back to Toronto, Canada by Air Canada via London and had checked-in 3 luggage. From one excess luggage under tag No. UK-0228488286, 09 dead/misfired cartridges were recovered but Petitioner was not in their conscious possession. Learned counsel urges that the expression 'possession' in Section 25 of the Arms Act means conscious possession involving *mens rea* and mere custody does not amount to an offence. Bare perusal of the FIR shows that there is no allegation that Petitioner was in conscious position of the 09 cartridges allegedly recovered from his luggage and his case is covered by several judicial precedents. Reliance is placed on an order of a Co-ordinate Bench of this Court in ***Mandeep Lamba v. State (Govt. of NCT) & Anr., CRL.M.C. 1633/2017***, dated on 18.08.2017, wherein the Court has relied on the judgment of the Constitution Bench of the Supreme Court in ***Gunwantlal v. State of Madhya Pradesh, (1972) 2 SCC 194***, and passed the following order:-

“8. At the outset, it is observed hereby that with respect to the issue of 'conscious possession', it is settled law that the expression 'possession' under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, conscious possession. Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act. Therefore 'conscious possession' of any fire arm/ ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

9. Further, the question of 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 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.....”

Therefore, in light of the view taken by the Apex Court in the aforesaid judgement, two pre conditions must be satisfied to hold a person guilty for an offence under Section 25(1) (a) of the Arms Act, 1959. First is the existence of the mental element i.e. the knowledge or consciousness of the possession and second is the existence of power or control over the weapon in question either by virtue of actual physical possession or by constructive possession.

10. *Returning to the issues involved in the present case, the same are covered by the principles laid down in above said decision of the Supreme Court, as there is no sufficient evidence or reasonable ground of suspicion to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. The petitioner was in possession of the cartridges, however, he expressed his lack of awareness of that article and also that the bag from which it was recovered belonged to his brother in law. There is no material on record to show that the petitioner was conscious of his possession of the live cartridges. Though the ballistic report confirms it to be a cartridge falling within the meaning of 'ammunition', the report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. Hence, it can be safely 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. Therefore on the basis of mere possession of the live cartridges the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.*

11. *Applying the dictum of the Apex Court in **Gunwantlal** (supra) to the facts of the instant case, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking. Consequentially FIR no.178/2016 under Section 25 of the Arms Act,1959 and proceedings emanating therefrom are hereby quashed.”*

5. Heard learned counsel for the Petitioner and learned APP for the State, who has argued on the lines of the Status Report.



6. It is the petitioner's case that he was not conscious of the fact that his excess luggage contained the 09 live ammunitions and this is uncontroverted in the status report. It is no longer *res integra* that the expression 'possession' in Section 25 of Arms Act means and connotes 'conscious possession'. Co-ordinate Benches of this Court have quashed FIRs in similar facts and circumstances, where the prosecution was unable to establish that the accused were in conscious possession of the ammunitions recovered. I may allude to few passages from the decision in ***Hari Kishan v. State (NCT of Delhi)*, 2019 SCC OnLine Del 8829**, as under:-

"5. As per the FIR, the live cartridge had a length of 7.8.cm, with width of 1.1 cm and with the width of the painda being 1.5 cm. The certified copy of the charge sheet on the record filed in the instant case indicates that the requisite sanction under Section 39 of the Arms Act, 1959 was also obtained before the institution of the charge sheet. It has been submitted on behalf of the petitioner that there is not an iota of an evidence in the final report filed by the investigating officer which can suggest conscious possession of the live cartridge recovered from the side pocket of the bag of the petitioner.

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8. Reliance is placed on behalf of the petitioner on the verdict of *Sonam Chaudhary v. The State (Government of NCT of Delhi)*; *Nitin Verma v. State (Government of NCT of Delhi)*; *Dharmendra Singh v. The State (Government of NCT of Delhi)*; *Ronald Albert v. State (Government of NCT of Delhi)*, disposed of vide common judgment dated 6.1.2016 reported in 2016 1 JCC 307. The facts in each of the aforementioned cases are in circumstances *pari materia* to the instant case and it has been observed vide paragraph 31 to 36 thereof as under:

"31. Recently, this Court in the case bearing Crl.M.C. No. 4207/2104, titled as 'Jaswinder Singh v. State Govt. of NCT of Delhi', decided on 11.08.2015, held that since the prosecution has failed to prove that the possession was conscious possession and, therefore, on the basis of mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959. Accordingly, while allowing the petition noted above, this Court quashed the FIR, summoning order and all proceedings emanating therefrom.



32. Thus, the law is well settled that ‘conscious possession’ is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.

33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua the petitioners under the Arms Act, 1959.

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.

35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed.

36. Keeping in view the law discussed above, the facts and circumstances of each case and in the light of the aforementioned observations, the FIRs noted above alongwith subsequent proceedings are hereby quashed against the petitioners.”

9. Reliance was also placed on behalf of the petitioner on the verdict of this Court in *Jaswinder Singh v. State (Government of NCT of Delhi)*, 2015 (4) JCC 2339, to contend to similar effect. The observations of this Court in this case are to the effect:

“16. Even the Division Bench of this Court in the case of *Gaganjot Singh v. State*, W.P. (Crl) No. 1169/2014 decided on 1st December, 2014, relied on the judgement of Constitution Bench of *Sanjay Dutt (supra)* as well as *Gunwant Lal (supra)* and quashed the FIR and subsequent proceedings in the case while holding in Para 12 as under:

“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 a 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 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).”

17. Following the dictum of earlier cases, Single Bench of this Court in the case of Juan Manuel Sanchez Rosas v. State (Through NCT Delhi), Crl. M.C. No. 2642/2014, decided on 29th April, 2015 wherein it was held that petitioner, a Lt. Col. in the Armed Forces of Columbia was returning back to his country after participating in the 6th International Defence Exhibition held in New Delhi and on checking of his baggage at the Airport, two live bullets of 9 mm were found. A case under Sections 25/54/59 of the Arms Act, 1959, was registered and charge sheet was filed along with the copy of FSL report. This Court relied on Gunwant Lal (supra) and Sanjay Dutt (supra) as well as Manuel R. Encarnacion v. State Through NCT of Delhi, Crl M.C. No. 1455/2014 decided on 22nd May, 2014. The FIR, charge sheet and all subsequent proceeding was quashed and it was held that it could not be proved that the petitioner was in conscious possession and there was no reason to discard his stand. The case of the petitioner is squarely covered with the above said judgment and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed.

18. It is the settled rule of construction of penal provisions that if there is reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction and if there are two reasonable construction we must give the more lenient one and if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempt the subject from penalty rather than the one which imposes penalty.

19. The trial Court in the present case did not verify the genuineness of the case of the prosecution which has caused immense hardship and prejudice to the petitioner who has been put to trial. The ACMM has passed the order by taking the cognizance in a mechanical



manner as per the case of the prosecution. Even the prosecution has not investigated the friend of the petitioner, i.e. Inderjeet Singh who allegedly held a valid Arm Licence of .32 Calibre and from him the petitioner had borrowed the bag which contained the alleged live cartridge. Nothing contrary is placed to show that the petitioner had knowledge or had conscious possession of the alleged cartridge even if the story of the prosecution is believed. It is settled law that in the absence of the conscious possession of a live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act shall be applicable and it would be justified to end all such proceedings to secure the ends of justice.

20.

20.1 The Supreme Court in *State of Karnataka v. L. Muniswamy*; (1977) 2 SCC 699 : AIR 1977 SC 1489, observed as under:

“In the, exercise of this whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

20.2 In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, the Supreme Court has observed in Para 102 as under:

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Article 482 of the Code which have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or



otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) XXX

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) XXX

(5) XXX

(6) XXX

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

21. For the aforesaid reasons and circumstances in the present case and in the light of the observations, the FIR along with the subsequent proceedings in the present case is to be quashed.”

10. *Reliance was also placed on behalf of the petitioner on the verdict of this Court in Chan Hong Saik Thr SPA : Arvinder Singh v. State; 2012 (3) JCC 1858, likewise to contend to similar effect wherein it was observed to the effect:*

“37. Be that as it may, I find force in the submission of the ld. Counsel for the petitioner that he has a protection envisaged under section 45(d) of the Arms Act, 1959 in which the acquisition or possession of minor parts of arms or ammunition have been stipulated.

38. In the present case, single live cartridge which is found without any fire arm and specially at the stage when he was to leave this country to his native country.

39. The case of the prosecution is not that he extended any threat to any of the authority or the fire arms or ammunition was found with any of this group persons including his own son who was travelling with him.



40. It is pertinent to mention here that when this Court called the ballistic expert, he also could not explain what is the minor ammunition. He only stated that live cartridge is ammunition.

41. It is also pertinent to mention here that ld. APP has argued that live cartridge is one single piece and there cannot be any minor part of the same. In that eventuality, for my satisfaction, I directed him to produce the seized ammunition in the Court. On production, I found that only cartridge container was produced and same was without powder and cap.

42. Therefore, whether the cartridge with ammunition i.e. live cartridge comes under the minor ammunition and; whether without powder can it be said that the container is a minor ammunition?

43. Single live cartridge cannot be used for any threat purpose without fire arms. 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 of either of the purpose mentioned above, then he cannot be held guilty and punished for the charge framed against him.

44. He is a renowned shooter. He won medal even in India. He is member of Rifle Club of Malaysia. Though he claimed trial, but that live cartridge may have left in his bag while practice over there. He travelled through different places in India. It could not be detected on any other Airports. Therefore, it was not so alarming without firearms. Particularly, in such situation, he cannot be punished.

45. Though, the petitioner has not admitted recovery of the cartridge and claimed trial, however, even if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without fire arm is a minor ammunition which is protected under clause (d) of section 45 of the Arms Act.

46. In view of the above discussion, the aforesaid FIR No. 126/2011 registered at PS IGI Airport, charges framed against the petitioner vide order dated 18.08.2011 and all criminal proceedings emanating therefrom are hereby quashed."

11. Reliance was also placed on behalf of the petitioner on the verdict of this Court in *Siddhartha Kapur v. State (Government of NCT of Delhi)* : Crl.M.C. No. 4810/2016 to contend to similar effect in which case there were two live cartridges recovered from the baggage of the accused while at the checking of his Check-in baggage whilst travelling from Delhi to Guwahati in flight 6E-221(PNR Z74NPP).

12. It was observed in this case to the effect:



“6. Law in relation to conscious possession has been settled by Supreme Court in number of judgments. The Supreme Court in the case of Gunwantlal v. State of Madhya Pradesh, reported in (1972) 2 SCC 194, wherein the Supreme Court has held that possession of a fire arm under the Arms Act must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over the weapon.

Relevant portion of the same is recapitulated 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. In any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or not in possession of the thing in question. In this view it is difficult to postulate as to what the evidence will be. If the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver”

7. It is a trite law that the power of the High Court under Section 482 Cr. P.C. is required to be exercised ex debito justitiae to prevent abuse of process of the Court but should not be exercised to stifle legitimate prosecution and the High Court cannot assume the role of a Trial Court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. However, if on the face of the charge-sheet the ingredients of the offences are not disclosed, the High Court would be within its power to quash frivolous proceedings.



8. Similar view was expressed in the case of *Shri Gaganjot Singh v. State* in W.P. (CRL.) 1169/2014; *Juan Manuel Sanchez Rosas v. State through NCT Delhi* in Crl.M.C.2642/2014; *Chan Hong Saik Thr. SPA : Arvinder Singh v. State* in Crl.M.C. 3576/2011; *Jaswinder Singh v. State Govt. of NCT of Delhi* in Crl.M.C. 4207/2014 and *Sonam Chaudhary v. The State (Govt. of NCT Delhi)* in Crl.M.C.471/2015.

9. Therefore, applying the said principles of law, and considering the fact that the petitioner was not aware of the presence of live cartridge in his bag and had absolutely no knowledge of the same till it was detected by the security personnel during screening of the baggage at the security check, 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 the petitioner and he has not extended any threat to any person or police official, hence no offence under section 25 of the Act is made out against the petitioner and the present FIR and proceeding emanating there from are quashed.

10. Accordingly, the present petition stands disposed of. Crl.M.A. 19996/2016 (Stay) In view of the order passed in the main petition, the present application is rendered infructuous."

13. Likewise, the reliance was also placed on behalf of the petitioner on the verdict of this Court in *Ankit Mehrotra v. State (Government of NCT of Delhi)* : Crl.M.C. 704/2017, a verdict dated 18.8.2017 reported to contend to similar effect wherein, it was observed vide para 9 to the effect:

"9. In the instant case, the petitioner was in possession of the cartridge however he expressed his lack of awareness of that article. There is no material to show that the petitioner was conscious of his possession of the live cartridge. Though, the ballistic report confirms it to be a cartridge falling within the meaning of 'ammunition', the report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven conscious possession. It can also be safely inferred that the petitioner's possession of the cartridge 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. As the prosecution has failed to prove that the possession was 'conscious' and therefore, on the basis of mere possession of the live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice."

14. Reliance was also placed on behalf of the petitioner on the verdict of this Court in *Golap Saikia v. State (NCT of Delhi)*; 2017 (2) JCC 1107



likewise, to contend to similar effect in which case it was observed vide para 15 to 18 thereof to the effect:

“15. The present case is covered by the above said decisions of the Hon'ble Supreme Court as the prosecution has failed to prove that the possession was conscious possession and therefore, on the basis of mere possession of a single live cartridge without having any criminal intention, the proceedings cannot continue qua the petitioner under the Arms Act, 1959.

16. In the instant case, it is apparent on the face of the record that a single live cartridge was recovered from the check-in-baggage of the petitioner without there being any firearm. Absence of firearm itself shows that the petitioner was not having conscious possession of the live cartridge. The recovery of single cartridge ipso facto does not prove that the petitioner had animus possidendi.

17. In view of the aforesaid reasons and circumstances in the present case and in the light of the abovementioned case laws, the FIR No. 352/2013 under Sections 25/54/59 of the Arms Act, 1959 registered at P.S. IGI Airport, Delhi and all the proceedings emanating therefrom pending before the Court of learned ACMM, Patiala House Courts, New Delhi are hereby quashed.

18. Consequently, the present petition is allowed and disposed of in the above terms.”

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16. And further, reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Sanjay Dutt v. State Through CBI Bombay (II)*, (1994) 3 Crimes 344 (SC) with specific reference to observations therein to the effect:

“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. (See *Warner v. Metropolitan Police Commissioner*, [1969] 2 A.C. 256 and *Sambasivam v. Public Prosecutor, Federation of Malaya*.....)



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19. However, it is essential to observe that the facts of the case in *Gaganjot Singh v. State (Supra)* were apparently in *pari materia* with the facts of the instant case in as much as the petitioner therein had sought the quashing of the FIR No. 158/2014 dated 12.05.2014 registered at Police Station Indira Gandhi International (IGI) Airport, under Section 25/54/59 of the Arms Act, 1959 on account of the petitioner therein having conceded possession of an 8 mm KF live cartridge when the petitioner therein tried to board China Eastern Airlines, flight No. MU-564. The petitioner therein was a US citizen and held the passport No. 470434993 and at the time of examination of his baggage it was found that it contained a live cartridge wherein the petitioner therein had contended that he was unaware of the live cartridge in his baggage and contended that the bag in fact belonged to his uncle who had lent for the journey.

20. In the facts of the said case, the Hon'ble Division Bench had overruled the interpretation of this Court in *Chan Hong Saik Thr. SPA : Arvinder Singh v. State; (Supra)* and held that a whole live cartridge is clearly a whole and an entire ammunition in view of the inclusive nature of the definition under Section 2(b) of the Arms Act, 1959 and the Arms Act, 1959, defines ammunition as being:

Copy definition

“2. Definitions and interpretation - (1) In this Act, unless the context otherwise requires, -

(a)

(b) “ammunition” means ammunition for any firearm, and includes-

(i) rockets, bombs, grenades, shells 2[and other missiles],

(ii) articles designed for torpedo service and submarine mining,

(iii) other articles containing, or designed or adapted to contain explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not,

(iv) charges for firearms and accessories for such charges,

(v) fuses and friction tubes,

(vi) parts of, and machinery for manufacturing ammunition, and

(vii) such ingredients or ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf;

.....

.....”



21. And it was held by the Hon'ble Division Bench of this Court in *Gaganjot Singh v. State* (supra) that a whole live cartridge cannot be termed a minor ammunition falling within Section 45(d) of the Arms Act, 1959 and it was laid down vide paragraph 16 of the said verdict to the effect:

"16.A single whole cartridge is not a part of an ammunition; it is a whole ammunition, nor can it be called a "minor ammunition". Having regard to the facts of Chang Hong Saik (supra), the Court is of the opinion that the interpretation placed upon the expression "ammunition", i.e. that the whole live cartridge is a minor ammunition falling within Section 45(d), is plainly contrary to the Act and erroneous. The said view is accordingly overruled....."

22. However, it was further observed in para 16 of the said verdict to the effect:

".....The conclusion, however, in the facts of that case appears to have been warranted, since the police could not disclose any intention on the part of the alleged offender in that case. The reference made to the Division Bench is answered accordingly."

23. And thus it was observed vide para 17 of the said judgment to the effect:

*"17. The above discussion would ordinarily have resulted in this Court relegating the matter after answering the questions referred to - in the manner indicated above. However, having regard to the circumstances, all that remains to be seen is whether the petitioner's claim for quashing is merited. Having regard to the earlier conclusion recorded, as far as the facts of this case go, an on an application of the law declared by Supreme Court in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39 : AIR 1977 SC 2018 and *State of Andhra Pradesh v. Golconda Linga Swamy* (2004) 6 SCC 522 : AIR 2004 SC 3967 that the charges can be framed only when there is "reasonable suspicion" or sufficient material of the alleged offender having committed the offence - which is entirely absent in the circumstances of the present case - the impugned FIR (FIR No. 158/2014) and all proceeding emanating from it deserve to be and is, accordingly, quashed."*

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28. In view of the verdict of the Hon'ble Division Bench of this Court in *Gaganjot Singh* (supra) and the catena of verdicts relied upon on behalf of the petitioner which are in facts *pari materia* to the instant case which cases have been adjudicated by the learned Co-ordinate Benches of this Court, and taking into account that there is not a whisper of an averment in the FIR as averred in the charge sheet that the petitioner was aware of



being in alleged conscious and knowledgeable possession of the ammunition in question, the FIR against the petitioner is hereby quashed and thus the proceedings emanating therefrom against the petitioner are also quashed.”

7. In view of aforementioned judgements and in light of the stand taken by the Petitioner that he was not in conscious possession of the 09 live ammunitions as well as taking into account that there is not a whisper in the in the FIR that Petitioner was aware of being in conscious and knowledgeable possession of the ammunition in question, the petition deserves to be allowed.
8. Accordingly, FIR No.167/2024 dated 01.03.2024 under Section 25 of the Arms Act registered at P.S.: I.G.I. Airport is hereby quashed, including all proceedings emanating therefrom.
9. Petition is allowed and disposed of.

JYOTI SINGH, J

MAY 28, 2024/kks