



2024:DHC:7118



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 04th September, 2024***+ **W.P.(CRL) 1071/2023**

AVINASH KOTA

.....Petitioner

Through: Mr. Aamir Chaudhary & Ms. Sakshi
Yadav, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yasir Rauf Ansari, ASC, Crl. for
with Mr. Alok Sharma & Mr. Vasu
Agarwal, Advocates for State.
S.I. Amit Kumar, PS IGI Airport,
Delhi.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking to quash the FIR No. 233/2022 registered under Section 25 of the Arms Act, 1959 at Police Station IGI Airport, Delhi.

2. It is submitted in the petition that the petitioner was travelling from U.S.A. to Delhi and from Delhi to Hyderabad by Vistara, Flight Number UK-829 on 11.06.2022. One ammunition i.e., one live cartridge was recovered from his baggage. The one live cartridge was recovered from his baggage on physical search. Accordingly, the FIR No. 233/2022 registered under Section 25 of the Arms Act, 1959 at Police Station IGI Airport, Delhi.

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3. The petitioner has explained that his friend, namely, Pawan Durga Sai Uppuluri, who is also studying in U.S.A. had borrowed the baggage of the petitioner to visit a shooting range in Tennessee, U.S.A. for practice shooting and after completing the practice, he returned the bag to the petitioner without making proper sweeping of it. The petitioner also did not check the baggage and thereafter used the said baggage for the purpose of travelling back to India and stuffed his belongings and arrived at the airport, without knowing the fact that a single live cartridge was still inside his baggage. During the security check, one live cartridge was detected from the petitioner's baggage on personal search.
4. It is submitted that the petitioner was not in conscious possession that one live cartridge is lying in his baggage and came to India, where the said cartridge was recovered from his baggage.
5. Therefore, the petitioner has sought the quashing of the present FIR on the ground that he was not aware of the said one live cartridge and also was not in conscious possession of the same.
6. It is submitted that the petitioner is a law abiding citizen of India and is about 23 years and is pursuing his studies in U.S.A. and commands the good reputation in the society.
7. Therefore, it is submitted that the present FIR has added a stigma on his character, even though he had no intention to commit any crime.
8. Reliance has been placed on behalf of the petitioner on the decisions in Gunwant Lal vs. The State of Madhya Pradesh, (1972) 2 SCC 194, Chan Hong Siak through Arvinder Singh vs. State & Anr., decided vide CRL.M.C. 3576/2011 by the Co-ordinate Bench of this Court, Jerusalem vs. Maharashtra, decided vide Criminal Writ Petition No. 3569/2011 by the



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Bombay High Court, Hasib Ahmed Fazli vs. State of NCT of Delhi, decided vide W.P.(CRL) 2988/2019 by the Co-ordinate Bench of this Court on 23.10.2019, Surender Kumar Singh vs. The State (GNCT of Delhi) & Anr., decided vide W.P.(CRL) 2143/2019 by the Co-ordinate Bench of this Court on 27.09.2019, Gupreet Singh Mangat vs. State of Delhi & Anr., decided vide W.P.(CRL) 337/2020 by the Co-ordinate Bench of this Court on 16.03.2020, Devem Kathuria vs. State of NCT of Delhi & Anr., decided vide W.P.(CRL) 1488/2020 by the Co-ordinate Bench of this Court on 21.09.2020, Michael Joseph Hayden vs. State of NCT of Delhi, decided vide CRL.M.C. 282/2018 by the Co-ordinate Bench of this Court, Jasbir Chahal vs. State of (GNCT Of Delhi), decided vide CRL.M.C. 854/2018 by the Co-ordinate Bench of this Court on 07.05.2018, Gaganjot Singh vs. State (Govt. of NCT of Delhi), 2014 SCC Online Del 6885, Jaswinder Singh Vs. State (Govt of NCT of Delhi), 2015 SCC OnLine Del 10894, Sonam Chaudhary vs. State, 2016 SCC OnLine Del 47 and Mandeep Lambs vs. State (Govt. of NCT of Delhi), 2017 SCC OnLine Del 9885.

9. It is, therefore, submitted that the FIR No. 233/2022 registered under Section 25 of the Arms Act, 1959 at Police Station IGI Airport, Delhi may be quashed.

10. **The Status Report** has been filed on behalf of the State, wherein it is submitted that on screening of the baggage of the petitioner, one live cartridge was detected and on personal search, a bullet from his baggage is recovered.

11. It is also submitted that the FSL Report is awaited.

12. Furthermore, during the investigations, an e-mail was sent by one Pawan Durga Sai Uppuluri who confirmed that the round had been



purchased by him and by mistaken being left in the baggage of the petitioner.

13. **Submissions heard.**

14. Admittedly, while the petitioner was transit from IGI Airport, Delhi to Hyderabad, during the security check of check-in baggage, one round of live ammunition was detected in his check-in baggage for which he does not have the valid documents.

15. The first thing which is required to be ascertained whether one bullet recovered comes within the definition of arms and ammunition.

16. Section 2B of the Arms Act, 1959 is relevant which reads as under: -

“Section 2. Definitions and interpretation.—

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

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

(ii) article 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 of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

17. Section 2(e) of the Arms Act, 1959 defines firearms to mean arms of



any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy and defines various artilleries and accessories which are included in the definition of firearm.

18. *Section 25 of the Arms Act, 1959* further provides that any person who is found in possession of any arm or ammunition in contravention of Sections 5 and 6 of the Act, without a licence, is guilty of the offence with the punishment as defined therein.

19. The first aspect which comes up for adjudication would whether *one single cartridge* comes within the definition of ammunition. As already discussed above, it is covered within the definition of Section 2(b) of the Arms Act, 1959 and is ammunition.

20. Learned counsel for the petitioner has argued that a single cartridge recovered from the possession is not an offence in terms of Section 45(d) of the Arms Act, 1959 which provides that 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, would not come within the scope of this Act.

21. Pertinently, the word “*minor ammunition*” is not defined under the Arms Act, 1959 or in the Arms Rules, 2016. However, Rule 29 of the Arms Rules, 2016 defines “*main firearm component*” which means the barrel, frame or receiver, slide, bolt or breech-block of a firearm. From this definition of main components of a firearm, it can easily be inferred that such small parts like bolts, screws etc. though necessary for making up of arm, can be termed as a minor part. The cartridge is complete ammunition in itself as it contains explosive when fired through the firearm as a



projectile, can be used as explosive. It definitely cannot be termed as minor ammunition.

22. Learned counsel for the petitioner has placed reliance on the decision in Chang Hong Saik Thr. SPA: Arvinder Singh, (supra) to argue that the single ammunition is classified as *minor ammunition* and is, therefore, exempted under Section 45(d) of the Arms Act, 1959.

23. However, the judgment in Chang Hong Saik Thr. SPA: Arvinder Singh, (supra) had been overruled by the Division Bench of this Court in Sh.Gaganjot Singh vs. State, 2014 SCC OnLine Del 6885, wherein it was observed that a *single cartridge* is not a *part* but the *whole ammunition* and cannot be termed as minor ammunition under Section 45(d) of the Arms Act, 1959 and any interpretation to the contrary, is erroneous. *It was therefore, held that single cartridge recovered from the possession of an individual is not a minor part which is exempted from Section 45(d) of the Arms Act, 1959.*

24. Having held that Section 45(d) of the Arms Act, 1959 is not applicable and even a single cartridge recovered from the possession of a person, amounts to recovery of ammunition, the second aspect which comes up for consideration is whether the petitioner can be termed in *conscious possession of the cartridge*.

25. The first *pre-condition* for an offence under Section 25(1)(a) of the Arms Act, 1959 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.

26. In Ritesh Taneja vs. State and Another, 2022 SCC OnLine Del 971, it has been explained by the Co-ordinate Bench of this Court that *conscious possession* of any firearm/ammunition entails *strict liability on the offender*.

27. In Gunwantlal, (supra), the Constitution Bench of the Apex Court 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 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.”

28. In Gaganjot Singh, (supra), the Co-ordinate Bench of this Court observed as under: -

“12. 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



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 a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal case and Sanjay Dutt vs. State.”

29. In Sanjay Dutt, (supra), the Constitution Bench of the Apex Court had reiterated as under: -

“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.”

30. Similar observations have been made consistently by the Co-ordinate Bench of this Court in Narinderjit Kaur Singh vs. State (NCT of Delhi) decided vide W.P.(CRL) 1669/2017 and Nimesh Kumar vs. State of NCT of Delhi, decided vide W.P.(CRL) 3540/2017.

31. The circumstances in which the cartridge was recovered from his



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possession have been explained by the petitioner who has stated that his friend had borrowed the baggage of the petitioner to visit a shooting range in Tennessee, U.S.A. for practice shooting and after completing the practice, he returned the bag to the petitioner without making proper sweeping of it. The petitioner also did not check the baggage and thereafter used the said baggage for the purpose of travelling back to India and stuffed his belongings and arrived at the airport, without knowing the fact that a single live cartridge was still inside his baggage. During the security check, one live cartridge was detected from the petitioner's baggage on personal search resulting in registration of FIR No. 233/2022 registered under Section 25 of the Arms Act, 1959 at PS IGI Airport, Delhi.

32. In the light of the aforesaid judgments, it is evident that the recovery of a solitary cartridge from the toiletry bag of the petitioner about which, he was not conscious as is explained by him, cannot be said to be in his conscious possession and it has to be held that he has not committed an offence punishable under Section 25 of the Arms Act, 1959.

33. Accordingly, FIR bearing No. 233/2022 registered at Police Station IGI Airport, Delhi, for offence punishable under Section 25 of the Arms Act, 1959 and all consequential proceedings emanating therefrom are quashed.

34. The present petition along with pending application is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 4, 2024

S.Sharma