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

+ **W.P.(CRL) 1091/2023**

SRINIWAS SINGH NAGAR

..... Petitioner

Through: Mr. Azad Bansala with Mr. Gaurav Chaudhary, Advocates with petitioner in person.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC for State with SI Ashok, P.S. IGI Airport.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER
08.02.2024

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1. The instant 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 petitioner seeking quashing of FIR bearing no.228/2020, registered at Police Station IGI Airport, Delhi for the offences punishable under Section 25 of Arms Act, 1959 and all consequential proceedings emanating therefrom.

1. Petitioner is present before this Court and has been identified by his counsel Mr. Azad Bansala and Investigating Officer (IO) SI Ashok from Police Station IGI Airport, Delhi.

2. The brief facts of the present case are that during screening, one bag of the petitioner was found suspicious, so physical check was made in the



luggage bag. During the physical check one live round in the bag of the petitioner was detected. On the written complaint of DAIL Security the above mentioned case was registered. During the course of investigation the petitioner was thoroughly interrogated and revealed that he was travelling from Delhi to Patna by flight no.AI-407 and the petitioner had no explanation as to how the round came in his bag.

3. I have heard the submissions and perused the material on record.

4. 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."

5. 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."

6. In *Chan hong Saik Thr. Spa: Arvinder* (supra), following observations were made by a Co-ordinate bench of this Court:

"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.

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.

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..."

14. It is admitted that the applicant/petitioner is a teacher by profession and is not well-versed with Hindi or English. It is also not disputed that no weapon except for one ammunition as mentioned in the FIR was recovered from the present applicant. There is nothing on record to suggest that petitioner was in conscious possession of the cartridge and she was aware of the said fact. Mere recovery of cartridge itself is not sufficient to prove the offence in the absence of any intention. It is also a matter of record that no weapon was recovered from the petitioner to connect her with the intention to use the recovered cartridge for committing any offence.

15. 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 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 present petition is, therefore, allowed and proceedings emanating from FIR bearing no. 0227/2022 under Section 25 Arms Act, 1959 registered at PS IGI Airport, New Delhi are hereby quashed.



16. The petition stands disposed of accordingly. Pending application CRL.M.A. 18238/2022 also stands disposed of.

7. Accordingly, FIR bearing no.228/2020, registered at Police Station IGI Airport, Delhi for the offences punishable under Section 25 of Arms Act, 1959 and all consequential proceedings emanating therefrom are quashed.

8. In view of the above, the present petition stands disposed of.

9. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 8, 2024/hs

Click here to check corrigendum, if any