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

+ CRL.M.C. 3162/2023, CRL.M.A. 11832/2023 & CRL.M.A. 11833/2023

ABHISHEK BENIWAL

.....Petitioner

Through: Mr. Luv Manan, Advocate (Through VC)

versus

STATE OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State with SI Suresh Chand Meena

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

16.10.2024

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1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") has been filed on behalf of the petitioner seeking quashing of FIR bearing No. 401/2019 dated 31st August, 2019, registered at Police Station - I.G.I. Airport, for offence punishable under Section 25 of the Arms Act, 1959 ("Arms Act" hereinafter).

2. Briefly stated, the aforesaid FIR under Section 25 of the Arms Act was lodged on 31st August, 2019 by a complainant namely, Sh. Ajay Singh, Associate, Security and Vigilance, when one live cartridge was found in the bag of the petitioner while he was travelling from India to Canada on flight



No. ET-689. On the basis of the said FIR, a chargesheet was filed on 28th December, 2020.

3. Learned counsel appearing for the petitioner submitted that there was no criminal intent to carry one single live cartridge in view of the fact that no firearm was found in his possession.

4. It is submitted that the petitioner was not in the conscious possession of the said cartridge, i.e., 9 mm ammunition as the same is prohibited and not manufactured in India and is only provided to the security personnel, therefore, it is evident that the petitioner is himself the victim of the said circumstance as he took the Army Combat Shirt from his friend and the said cartridge was mistakenly left in its pocket.

5. It is further submitted that a Coordinate Bench of this Court in ***Chan Hong Saik Thr. Spa: Arvinder Singh v. State, 2012 SCC OnLine Del 3320***, held that the recovery of a single cartridge without any firearm is ‘minor ammunition’ which would be protected under clause (d) of Section 45 of the Arms Act.

6. Learned counsel for the petitioner also placed reliance upon the judgement passed by a Coordinate Bench of this Court in ***Namanpreet S. Dhillon v. State, 2022 SCC OnLine Del 2255***, wherein it was held that the necessary ingredient of conscious possession has to be fulfilled for constitution of an offence under Section 25 of the Arms Act.

7. Therefore, in view of the foregoing submissions, it is submitted that the present case has been registered and tried in a mechanical manner and thus, it is prayed that the reliefs be granted as prayed.

8. *Per Contra*, learned APP appearing on behalf of the State submitted to the extent that pursuant to the recovery of the live cartridge of 9 mm



ammunition from the bag of the petitioner, the captioned FIR under Section 25 of the Arms Act was registered, on the basis of which, the charge sheet was prepared and filed before the Court concerned.

9. It is submitted that during the course of investigation, the recovered ammunition was sent to the FSL for ballistic examination and opinion, and *vide* report dated 29th October, 2020, it was stated that the 9 mm cartridge marked as A1 is live one and can be fired through the 9 mm calibre firearm.

10. It is further submitted that the petitioner has failed to provide any corroborative documents in support of the possession of the said ammunition, however, he has not disputed to the fact that there was no recovery of the 9 mm calibre firearm.

11. Heard the learned counsel for the parties and perused the material placed on record.

12. The petitioner has contested that the instant FIR may be quashed on the basis of two grounds, i.e., *firstly*, the petitioner was unaware about the possession of the recovered ammunition and thus, offence under Section 25 of the Arms Act is not made out and against him, and *secondly*, the ammunition recovered is one live cartridge which falls under the ambit of Section 45(d) of the Arms Act.

13. At this juncture, this Court deems it apposite to discuss the law *qua* the meaning of *conscious possession* in the context of Section 25 of the Arms Act.

14. It is pertinent to state that the ingredient of *possession* under Section 25 of the Arms Act includes the factor of a mental element and the same is a pre-requisite to establish a case under the aforesaid provision as mere custody without awareness of the said possession does not constitute an



offence under Section 25 of the Arms Act.

15. It is relevant to state that the Hon'ble Supreme Court in various cases has categorically observed the aforesaid principle. In ***Gunwantlal v. State of M.P., (1972) 2 SCC 194***, the Constitutional Bench of the Hon'ble Supreme Court has observed as follows:

“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....”

16. Furthermore, the above stated principle was also reiterated by a Coordinate Bench of this Court in ***Sonam Chaudhary v. State (Govt. of NCT of Delhi)***, 2016 SCC OnLine Del 47, wherein the FIR pertaining to the offence under Section 25 of the Arms Act was quashed and it was held that live cartridge recovered was an inadvertent oversight and the petitioners therein were unaware of the said possession, therefore, it does not fall within the purview of conscious possession.

17. Therefore, the aforesaid judicial *dictum* reflects that the law with respect to *conscious possession* is well settled as the same is a pre-requisite and an essential ingredient to be established upon recovery of ammunition to constitute an offence under Section 25 of the Arms Act.

18. Admittedly, one of the grounds sought by the petitioner for quashing of the aforementioned FIR is that a single live cartridge is a *minor ammunition* and thus, falls within the ambit of Section 45(d) of the Arms Act.

19. Section 45 of the Arms Act prescribes certain exceptions/cases where the provisions of Arms Act do not apply. At this stage, this Court finds it necessary to reproduce clause (d) of Section 45 of the Arms Act which states that the provisions of the act shall not apply in cases of possession or carrying of minor parts of arms or ammunition. The relevant portion of the same is as follows:

“14. Nothing in this Act shall apply to:-

(d) the 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.”

20. Therefore, it can be construed that the aforesaid provision stipulates that protection be granted in cases where the accused is apprehended for being in possession of minor parts of arms or ammunitions.

21. To further strengthen his arguments, learned counsel for the petitioner relied upon the judgment of ***Chan Hong Saik Thr. Spa: Arvinder Singh v. State (Supra)***, wherein three live cartridges of 9 mm were recovered from the possession of the petitioner therein and it was urged that the petitioner was not in the conscious possession of the same as they were mistakenly carried by him in his jacket. In view of the aforesaid, the Coordinate Bench of this Court in the aforementioned judgment, proceeded to quash the FIR and found that the petitioner was not in conscious possession of the recovered ammunition and the FIR was quashed as it was held that the single cartridge without firearm is a *minor ammunition* and is protected under Section 45(d) of the Arms Act.

22. It is pertinent to note here that the aforesaid judgment was overruled by the Division Bench of this Court in ***Sh. Gaganjot Singh v. State, 2014 SCC OnLine Del 6885***, and it was opined that a single cartridge was a whole ammunition and therefore, it cannot be treated as a minor ammunition falling under Section 45(d) of the Arms Act.

23. In the present case, while travelling to Canada, one live cartridge was found in the bag of the petitioner and it is contended that he was unaware of the said possession. In view of the aforesaid facts and circumstances as well as the law discussed above, this Court is of the view that the recovery of the ammunition in question was without the knowledge of the petitioner and



therefore, the essential ingredient for constituting an offence under Section 25 of the Arms Act is not established.

24. Therefore, this Court is of the considered view that the no fruitful purpose will be served by punishing the petitioner for being in an unconscious possession of a single live cartridge without firearm.

25. In view of the above stated facts and circumstances, as well as the above discussion of law, this Court finds sufficient reasons to allow the present petition and quash the FIR registered under Section 25 of the Arms Act.

26. Accordingly, FIR bearing No. 401/2019 registered at Police Station - I.G.I. Airport, under Section 25 of the Arms Act, 1959 and all consequential proceedings emanating therefrom are quashed.

27. The petition alongwith pending applications, if any, stand disposed of.

CHANDRA DHARI SINGH, J

OCTOBER 16, 2024
gs/sm

[Click here to check corrigendum, if any](#)