



2024:DHC:7119



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

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Date of decision: 04th September, 2024

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CRL.M.C. 2533/2024**JEYANTH KISHORE RAMASAMY**

.....Petitioner

Through: Mr. Selvaraj Mahendran, Advocate

versus

STATE OF NCT OF DELHI & ANR.

.....Respondent

Through: Mr. Hemant Mehla, APP for the State
with SI Amit Kumar PS IGI Airport**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR 119/2024 dated 09.02.2024 registered under Section 25 of the Arms Act, 1959 at PS IGI Airport.
2. The petitioner states that on 31.01.2024, he visited Seattle to spend some time with his friends, where they visited the Raincity Shooting Center, Kent WA, USA for one-hour activity. Thereafter, the petitioner and his friends were permitted to take *one live gaming ammunition* as a memoir. The Petitioner inadvertently placed that gaming ammunition in his toiletry bag and returned to Canada where he resumed his routine without remembering the presence of the gaming ammunition in his toiletry bag. While travelling to Bangalore, India through Delhi on 09.02.2024, he packed his belongings and inadvertently included the toiletry bag containing



the gaming ammunition, in his travel luggage. In Delhi, on checking of his baggage, the gaming ammunition was recovered and the FIR 119/2024 dated 09.02.2024 was registered under Section 25 of the Arms Act, 1959 at PS IGI Airport.

3. The petitioner has submitted that a solitary cartridge was found in his possession without any firearm which does not prove that the petitioner had *animus possidendi*. No offence is committed by him as the petitioner was *not in conscious possession of the ammunition* and had no intention to carry the same.

4. The Apex Court in Gunwantlal vs. The State of Madhya Pradesh, AIR 1972 SC 1756 and Sanjay Dutt vs. State through CBI, Bombay (II), 1994 (5) SCC 410 had held that the prosecution has to prove that the accused had the knowledge or consciousness of possession. Possession for the purpose of prosecution must mean possession with the *requisite mental element i.e., conscious possession and mere custody without awareness, is not an offence*.

5. It is submitted that there was no firearm recovered from the petitioner nor was there any threat to anyone at the IGI Airport. He is a permanent resident of Canada and, therefore, subjecting him to the rigors of the trial would adversely affect him.

6. Learned counsel for the petitioner, in his support, has placed reliance on the decisions in Chang Hong Saik Thr. SPA: Arvinder Singh vs. State, 2012 SCC OnLine Del 3320, Namanpreet S. Dhillon vs. State, 2022 SCC OnLine De 2255, Koteshwari Organti vs. State of NCT of Delhi, 2022 SCC OnLine Del 4917, Rahul Mamgain vs. State of NCT of Delhi, 2022 SCC OnLine Del 4917 and Mohd. Nazmi vs. State, 2023 LiveLaw (Del) 779.



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7. Hence, the petitioner has sought quashing of FIR 119/2024 dated 09.02.2024 registered under Section 25 of the Arms Act, 1959 at PS IGI Airport.

8. **The Status Report** has been filed on behalf of the State, wherein it is submitted that the petitioner was found in possession of one ammunition which was recovered from his baggage. During the investigations, the Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973, travel documents of the petitioner were also obtained.

9. The petitioner was interrogated and the statement of the petitioner was recorded wherein he gave the same explanation of having taken one live ammunition from shooting range as a memoir and inadvertently carried it in his toiletry bag in his baggage which was recovered from his baggage on checking at IGI Airport, Delhi during the security check, for which he does not have the valid documents. It is also submitted that the FSL Report in the present case is still awaited. Therefore, the petitioner has not committed the offence punishable under Section 25 of the Arms Act, 1959 and is entitled to be discharged.

Submissions heard.

10. Admittedly, while the petitioner was transit from IGI Airport, Delhi to Bangalore, 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.

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

12. 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.”*

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.*

20. 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*.

21. 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.

22. 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*.

23. 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.”

24. 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.”

25. 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."

26. 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.

27. The circumstances in which the cartridge was recovered from his possession have been explained by the petitioner who has stated that during his visit on 31.01.2024, to the Raincity Shooting Center, Kent WA, USA for one-hour activity, he and his friends were permitted to take one live gaming ammunition as a memoir. The petitioner inadvertently placed that gaming ammunition in his toiletry bag which he inadvertently included in his travel bag which he carried to Delhi on 09.02.2024, which was recovered on checking at IGI Airport resulting in registration of FIR 119/2024 dated 09.02.2024 under Section 25 of the Arms Act, 1959 at PS IGI Airport.

28. 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.

29. Accordingly, FIR bearing No. 119/2024 registered at Police Station IGI Airport, Delhi, for offence punishable under Section 25 of the Arms Act,



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1959 and all consequential proceedings emanating therefrom are quashed.

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

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 4, 2024/PT

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 17/09/2024
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