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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1122/2024 & CRL.M.A. 10845/2024

GIAN KAUR MALHI

.....Petitioner

Through: Mr. Amarveer Singh
Bhullar, Mr. Sunil
Sehrawat & Mr. Naresh
Yadav, Advs.

versus

THE STATE (GOVT OF NCT DELHI)Respondent

Through: Mr. Sanjeev Bhandari,
ASC for the State with Ms.
Charu Sharma, Mr. Arjit
Sharma, Mr. Vaibhav Vats
& Mr. Nikunj Bindal,
Advs.
SI Rajesh Kumar, PS- IGI
Airport

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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18.09.2024

1. The present petition is filed seeking quashing of FIR No. 169/2024 dated 01.03.2024, for offence under Section 25 of the Arms Act, 1959, registered at Police Station I.G.I. Airport.
2. It is averred that on 01.03.2024, when the petitioner was travelling from Delhi to Dubai by Emirates flight number EK-513, one live cartridge was seen during the screening of the baggage of the petitioner. The same was subsequently recovered during physical check. The present FIR was registered against the petitioner as she failed to produce valid documents for carrying the seized ammunition.
3. The learned counsel for the petitioner submits that the petitioner is an old lady and is a citizen of the USA holding a valid USA passport. He submits that the petitioner was completely unaware and unconscious of the presence of the live cartridge in her handbag.

W.P.(CRL) 1122/2024

Page 1 of 6



4. He submits that the petitioner had no criminal intention to carry the cartridge which was seized.

5. He submits that the offence under Section 25 of the Arms Act, 1959 is not made out when the suspect is not conscious of the possession of live ammunition. In support of his contention, the learned counsel for the petitioner has placed reliance on the judgment passed by this Court in the case of ***Dipa Rani v. State (NCT of Delhi) Through Standing Counsel (Criminal): WCRL.M.C. 1469/2022***.

6. The question that falls for consideration of this Court is whether the petitioner was in ‘conscious possession’ of the ammunition allegedly recovered from her or not.

7. A perusal of Section 25 of the Arms Act, 1959 shows that the term ‘possession’ refers to the possession backed by the requisite mental element, that is conscious possession. Therefore, mere custody, without being aware of such possession does not constitute an offence under the Arms Act.

8. The term ‘conscious possession’ has been elaborately dealt with by the Constitution Bench of the Hon’ble Apex Court in the case of ***Gunwantlal v. State of M.P. : (1972) 2 SCC 194***. The relevant paragraph of the said judgment reads as under:

“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."

9. In the case of **Sanjay Dutt v. State through CBI, Bombay (II) : (1994) 5 SCC 410**, the Constitution Bench of the Hon'ble Apex Court, while discussing what entails conscious possession, observed as under:

"19. 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."

10. It is the case of the petitioner that she was not conscious of



the fact that the bag carried by her contained one live cartridge. It is to be kept in mind that the arms which are alleged to be carried by the petitioner is not a gun but only one cartridge.

11. The version of the petitioner is a plausible one. It is settled law that the Court, while exercising jurisdiction under Section 482 of the CrPC, can interfere at any stage to prevent abuse of the process of Court, with the safeguard that the use of such power should be legitimate.

12. The State has not alleged that the possession was conscious or there was some *mens rea* behind carrying the cartridge. The present case seems to be a case where the petitioner inadvertently carried the cartridge in her bag.

13. In similar circumstances, a Coordinate Bench of this Court in **Adhiraj Singh Yadav Vs. State : W.P.(CRL) 754/2020**, held as under:

“12. In view of the above, it is well settled that an offence under Section 25 of the Arms Act would not be made out in cases where the suspect was not conscious that he was in possession of live ammunition.

14. This Court has in several cases held that unconscious possession would not attract the rigours of the said Act. [See: Surrender Kumar @ Surrender Kumar Singh v. The State (GNCT of Delhi) &Anr.: W.P. (Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State &Ors.: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.: (Crl) 152/2019 decided on 29.08.2019)].”

14. In **Sonam Chaudhary v. The State (Government of NCT of Delhi) : CRL.M.C. 471/2015**, it was held as under:

“31. Recently, this Court in the case bearing Crl.M.C.No.4207/2104, titled as „Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.’, 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."

(emphasis supplied)

15. It is also worth noting that Section 45(d) of the Arms Act, 1959 does not make the acquisition/possession or carrying of minor parts of arms or ammunition which are not intended to be



used along with complementary parts an offence under the Arms Act. In the present case, barring the allegation of the petitioner having been found in possession of one live cartridge in her baggage, there is no other material on record to show that the petitioner was in possession of any complimentary part for its use.

16. On a holistic reading of the facts and the material placed on record, this Court is of the opinion that the necessary ingredients for the offence under Section 25 of the Arms Act, 1959 are not made out against the petitioner.

17. This Court finds that continuance of the proceedings would be a futile exercise and accordingly, for the reasons stated above, this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

18. In view of the above, FIR No. 169/2024 and all consequential proceedings arising therefrom are quashed, subject to the payment of cost of ₹10,000/- by the petitioner, to be deposited with Delhi Police Welfare Society, within a period of two weeks from the date.

19. Let the proof of deposit be submitted to the concerned SHO.

20. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 18, 2024