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

+ **W.P.(CRL) 1252/2024**

DHARMENDRA KUMAR

.....Petitioner

Through: Mr. Vikas Nain, Mr. Yashbir Singh
and Mr. Mohit Nain, Advs.

versus

**STATE OF NCT OF DELHI THROUGH SHO IGI AIRPORT
POLICE STATION**

.....Respondent

Through: Mr. Rahul Tyagi, ASC with Ms. Priya
Rai, Mr. Mathew M Philip, Mr. Aniket, Advs.
SI Manoj Kumar, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

02.12.2024

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1. This is a petition filed under Article 226 of Constitution of India read with Section 482 CrPC, 1973 seeking quashing of the FIR No. 247/2024 registered at PS IGI Airport under Sections 30 of the Arms Act.
2. In the present case, the FIR is predicated on the fact that there was 1 live cartridge found in possession of the petitioner.
3. The petitioner is present and has been identified by Mr. Vikas Nain, learned counsel.
4. The respondent No. 2 is also present and is identified by SI Manoj Kumar, PS IGI Airport.
5. The case of the petitioner is that he had inadvertently left the cartridge inside the bag without cleaning it and that he holds a valid arms license issued in the state of Uttar Pradesh.
6. It is further stated due to the rush to board the flight, the petitioner



couldn't thoroughly inspect the bag, leading to inadvertent inclusion of 1 live cartridge.

7. Petitioner claims that he was not in 'conscious possession' of the ammunition. In ***Sanjay Dutt v. State through CBI Bombay (II), Crimes 1994 (3) 344 (SC)*** the Supreme Court has 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 unauthorized substance has been understood.”

8. In ***Ram Prakash Mishra W.P. (Crl.) 674/2020***, decided on 11.03.2020, this Court has quashed the FIR registered under Section 30 of Arms Act on the ground that Petitioner claimed that he was not in conscious possession and the live cartridges had remained in his hand bag, which position was not refuted by the State. Relevant paragraphs of the order are as follows:-

*“7. It is now well settled that no offence under the Arms Act, 1959 would be made out if the person in possession of the ammunition was not aware of its existence. (See: *Surender Kumar @ Surender 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).

8. In the present case, the petitioner claims that he was not conscious of the fact that the said live cartridges had remained in his hand bag. This Court finds no reason to disbelieve the aforesaid statement. The learned counsel appearing for the respondent also states, on instructions, that the FIR in question may be quashed.

9. In view of the above, the present petition is allowed and the FIR in question is quashed.”

9. In the view of the judgement of the Hon'ble Supreme Court in ***Gunwantlal v. State of M.P., (1972) 2 SCC 194*** mere possession would not constitute offence and conscious possession would be required. The operative reads as under:-

“ 5. What is meant by possession in the context of this section ? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of The Arms Act of 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Section 14 and 15 of that Act. The word 'control' under Section 25(1)(a) has been omitted. Does this deletion amount to the legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises



the power to obtain possession thereof when he so intends? If the meaning to be given to the word "possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on 17-9-1966 when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. 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. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de-facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on 17-9-1966 does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words 'on or before' were intended to bring home to the accused that he was not only in constructive possession of it on 17-9-1966 but that he was in actual physical possession of it prior to that date when he gave it to Miron. It is submitted, however that the word 'on or before' might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the (sic) actually intends to allege. From a reference of Form XXVIII of Schedule 5 of the CrPC, the mode of charging a person is that he 'on or about'...did the act complained of. In



view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read on or about' instead of 'on or before' which we accordingly order.”

10. From the facts stated above, I am of the view that the petitioner was not in conscious possession of the cartridges. The petitioner has a valid arms license which has been duly verified. It could very well be that the petitioner due to oversight and inadvertence carried cartridges in his bag.
11. For the said reason, the ingredients of Section 30 of the Arms Act, 1930 are not made out.
12. However, I am of the view that valuable time of the police as well as judicial time has been consumed which could have been and should have been better utilised, subject to the petitioner depositing costs of Rs. 10,000/- with the DHCLSC within a period of 4 weeks from today, the FIR No. 247/2024 registered at PS IGI Airport under Sections 30 of the Arms Act and all consequential proceedings emanating therefrom are hereby quashed.
13. The proof of payment shall be filed within 6 weeks with the Registry, Delhi High Court, failing which the file will be put up before the Court.
14. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

DECEMBER 2, 2024 / (MS)

Click here to check corrigendum, if any