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

+ **W.P.(CRL) 1266/2024**

KUSHNEET KUMAR VIJRAY

.....Petitioner

Through: Mr Ajayinder Sangwan, Mr
Summinder Paswan, Mr Pradeep
Kumar Sharma, Mr Siddharth Gill,
Mr Smit Singh Kuru, Mr Achyut
Dwivedi and Mr H.S. Sangwan,
Advts.

versus

STATE GOVT NCT OF DELHI

.....Respondent

Through: Mr Amol Sinha, ASC for State with
Mr Kshitiz Garg, Mr Ashvini Kumar
and Ms Chavi Lazarus, Advts.
SI Suresh Chand Meena, PS-IGI
Airport, New Delhi.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

18.11.2024

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1. The present writ petition is filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure' 1973 seeking issuance of a writ of certiorari or any other appropriate writ for quashing of FIR No. 239/2024 dated 29.03.2024 ,under Section 30 of the Arms Act, 1959 (hereinafter referred to as the Act) registered at Police Station - IGI Airport, including all proceedings arising therefrom.



2. It is stated that on 29.03.2024, at about 10:30 hrs., while traveling from New Delhi to Goa, during security screening process, 07 rounds of live cartridges were recovered from the bag of the petitioner.
3. As per petitioner it is a case of inadvertence. The baggage carried by the petitioner belonged to him and he carried it to the airport in hurry without having any idea that the said cartridges and magazine were present inside the bag without his prior knowledge.
4. It is stated that the petitioner had a license along with the receipt for 100 cartridges.
5. Status Report has been filed.
6. As per the status report it is stated that during investigation the Arms License No. NWMT/11/2017/1, valid up to 24.01.2025, issued from Delhi Police in the name of Petitioner got verified from the office of Joint Commissioner of Police, Licensing, Delhi.
7. Petitioner claims that he was not in 'conscious possession' of the cartridges and mere custody without awareness of the nature of such possession does not amount to any offence under the Act. 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. It is urged that case of the Petitioner is squarely covered by several judgments of this Court and relies on the decision of this Court in ***Dr. Rupinder Sidhu v. State & Anr.*** W.P. (Crl.) 452/2020.

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 above stated facts, I am of the view that the petitioner was not in conscious possession of the cartridges. The petitioner has a valid arms



licence which has duly been verified. It could very well be that the petitioner due to oversight and inadvertence carried cartridges in his bag.

11. For the said reasons, the ingredients of Section 30 of the Arms Act, 1959 are not made out.

12. However, valuable time of the police as well as judicial time has been wasted on account of carelessness of the petitioner. Hence, he must pay cost of Rs. 25,000/-.

13. In the view of the above-mentioned decisions, there is no reason to carry forward the proceedings. Hence, the present FIR deserves to be quashed, subject to Petitioner depositing a sum of Rs. 25,000 as costs with the DHCLSC within 4 weeks from today. FIR No. 239/2024 dated 29/03/2024 under Section 30 of the Arms Act, 1959 and any proceedings arising therefrom stand quashed.

14. The proof of payment be filed with the Registry within 5 weeks, failing which the matter shall be listed before the Court.

15. The petition alongwith pending application stands disposed of in the aforesaid terms.

JASMEET SINGH, J

NOVEMBER 18, 2024

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Click here to check corrigendum, if any