



2024:DHC:9360



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

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Date of Decision: 26.11.2024

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W.P.(CRL) 1403/2024

VISHAVJEET SINGH SANDHU

.....Petitioner

Through: Mr.G.S. Singh, Ms.Sangeeta Chauhan
and Mr.Rahul, Advocates

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms.Nandita Rao, ASC for State with
Mr.Amit Peswani, Advocate with Insp.Dinesh
Kumar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1 By way of the present petition, the petitioner seeks quashing of FIR No.90/2024 registered under Section 25 of the Arms Act, 1959 at P.S. IGI Airport, Delhi.

2. The present FIR pertains to an incident dated 29.01.2024 wherein during check-in at the IGI Airport, 4 live cartridges were recovered from the petitioner's check-in baggage, who was travelling from Delhi to Vancouver in flight No. AI-185 of Air India. The said cartridges were of .32 bore and were found to be compatible to be fired through a .32 caliber firearm.

3. Learned counsel for the petitioner states that the petitioner was in an '*unconscious possession*' of the live cartridges as he is a student who was



leaving India for his studies and that without checking the baggage, the petitioner had put his belongings in it. It is submitted that the said cartridges belonged to his father and was mistakenly left in the baggage. It is further submitted that the petitioner's father is a holder of valid Arms License and the recovered cartridges belong to him. A copy of the said Arms License has been placed on record. Lastly, it is stated by the learned counsel that the petitioner has no prior involvements of any kind.

4. Learned ASC for the State, on the other hand, has contested the said petition. However, it is conceded that during interrogation, the petitioner produced a copy of Arms License No. DM/TRN/DUP/CHLS/0218/18 issued from the office of District Magistrate, Tarn Taran Punjab, Haryana in respect of the 4 live cartridges recovered of .32 bore. Further, it is submitted that as per the FSL report, it was confirmed that the said cartridges were covered under the definition of '*ammunition*' in the Arms Act. Moreover, it is submitted that the said Arms License has been verified from the concerned authority, i.e., office of District Magistrate, Tarn Taran Punjab, and that the said license was issued in the name of the father of the petitioner for possessing one .32 bore revolver no. A-6981M which is valid till 09.08.2027.

5. Pertinently, whether the word '*possession*' as mentioned in Section 25 of the Arms Act, 1959 would simply mean physical/constructive possession or '*conscious possession*' has already been the subject matter of many judicial decisions and the law on the subject is no longer *res integra*. This Court deems it profitable to refer to the decision of the Supreme Court in Gunwantlal v. State of Madhya Pradesh reported as (1972) 2 SCC 194, wherein while reading into the word '*possession*', the Constitution Bench



has held there has to be an element of intention, consciousness or knowledge. The relevant observations are reproduced hereinunder:-

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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....

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6. Subsequently, in Sanjay Dutt v. State Through CBI, Bombay (II) reported as **(1994) 5 SCC 410**, a Constitution Bench of the Supreme Court elucidated the meaning of possession to be conscious possession and not mere custody, lacking any knowledge or intention to use. It was observed, as hereunder:-

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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. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public Prosecutor, Federation of Malaya, (1950) AC 458.

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7. Apart from the aforementioned, there are several decisions of this Court which reiterate that unconscious possession would not attract the rigours of the Arms Act [Ref: Sh. Gaganjot Singh v. State reported as **2014 SCC OnLine Del 6885**; Sonam Chaudhary v. The State (Govt. of NCT Delhi) reported as **2016 SCC OnLine Del 47**; Hari Kishan v. State (NCT of Delhi) reported as **2019 SCC OnLine Del 8829**; Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) and Anr., W.P. (Crl.) 2143/2019; Aruna Chaudhary v. State & Ors., W.P. (Crl.) 1975/2019;



Paramdeep Singh Sran v. The State (NCT of Delhi), W.P. (Crl.) 152/2019;
Davinder Singh Dhindsa v. State (NCT of Delhi) reported as **2019 SCC**
OnLine Del 7895; Adhiraj Singh Yadav v. State, W.P. (Crl.) 754/2020,
Abid Qureshi v. State(Govt of NCT of Delhi), AIRONLINE 2021 DEL
1688 and Megha Jain v. State Govt. of NCT of Delhi, CRL.M.C.
7985/2024]

8. From the above noted facts, it appears that if the factum of physical possession is made out against the accused under the Arms Act, it is for the Court to assess if the mental element was also present, for which the Court must see whether or not the accused was vested with an intention, knowledge or consciousness in regard to the recovered cartridge from the petitioner. In view of the fact that the authenticity of the Arms License for .32 bore gun stands verified as well as its period of validity, the submissions made by the learned counsel for the petitioner that the petitioner mistakenly took the bag alongwith the said ammunition shows that he was not in '*conscious possession*' of the recovered live cartridges found in the baggage.

9. It can be safely interpreted from the perusal of the record that the said possession of the live cartridges does not fall within the ambit of conscious possession, which is a basic ingredient to establish guilt for an offence under Section 25 of the Arms Act. In light of the said facts, the petitioner cannot be considered to be in possession of the offending articles in terms of Section 25 of the Arms Act.

10. Considering the aforesaid factual and legal position, this Court is of the considered opinion that the continuation of the criminal proceedings against the petitioner would be an abuse of the process of law. Consequently, the petition is allowed and FIR No.90/2024 registered under



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Section 25 of the Arms Act at P.S. IGI Airport, Delhi and the consequent proceedings emanating therefrom are accordingly quashed.

MANOJ KUMAR OHRI, J

NOVEMBER 26, 2024

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