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

+ **CRL.M.C. 7867/2023**

MR. SANDEEP GUPTA

.....Petitioner

Through: Mr. Kunwar Karan Singh along with
Mr. Shekhar Mann, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **11.12.2024**

CRL.M.C. 7867/2023 & CRL.M.A. 29355/2023 (Stay).

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS"), [earlier Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.")] has been filed on behalf of the petitioner seeking quashing of FIR bearing No. 120/2020 registered at Police Station - I.G.I. Airport, for the offence punishable under Section 30 of the Arms Act, 1959 ("Arms Act" hereinafter).

2. The brief facts of the case are that went to the IGI Airport to board their flight from Delhi to Colombo. At the said airport, five live ammunition/cartridges were recovered from the baggage of the petitioner, on the basis of which the aforesaid FIR under Section 30 of the Arms Act was lodged.

3. Learned counsel appearing for the petitioner submitted that the



petitioner was unaware of the presence of five live cartridges in his bag until the same was detected by the security personnel during his security check at the airport. Thus, it is submitted that his case duly falls under the ambit of “unconscious possession”.

4. It is submitted that the petitioner had packed his baggage in haste and did not thoroughly check his baggage, and therefore, inadvertently the said ammunitions were left in the inside pocket of his medicine pouch which was earlier used by the petitioner to store the ammunition. It is further submitted that the Petitioner repeatedly asserted that it was a genuine mistake and that the Petitioner was not conscious or aware that the said ammunition is present in his baggage.

5. It is submitted that the petitioner holds a valid Indian Arms License which has been duly granted to the petitioner by the District Magistrate, Solan, Himachal Pradesh.

6. Learned counsel for the petitioner also placed reliance upon the judgement passed by the Hon’ble Supreme Court in *Gunwantlal v. State of M.P.*, (1972) 2 SCC 194, and *GolapSaikia v. State (NCT) of Delhi*, (2017) 2 JCC 1107 and submitted to the effect that the necessary ingredient of conscious possession has to be fulfilled for commission of an offence under Section 30 of the Arms Act, and thus, the petitioner has not committed any offence as alleged in the instant FIR.

7. Therefore, in view of the foregoing submissions, it is prayed that the reliefs as prayed for be granted as there was no intention of the commission of the criminal offence by the petitioner and the said ammunitions recovered by the authorities at the IGI Airport was a genuine mistake on the part of the petitioner that he did not thoroughly check his baggage and the ammunitions



were left in the check-in-baggage. In view of the above facts and circumstances, it is prayed that the FIR and all subsequent proceedings *qua* the FIR may be quashed.

8. *Per contra*, learned APP appearing on behalf of the State vehemently opposed the instant petition but did not contradict the petitioner's submissions regarding the verification of the license of the petitioner. Learned APP for the State during the course of arguments placed the Status report before this and the same is taken on record.

9. It is submitted that the Arms license of the petitioner has already been verified from the Office of the District Magistrate Solan, Himachal Pradesh and the same has been found to be genuine. The verification report has been appended along with the Status report filed by the learned APP for the State.

10. Heard learned counsel for the parties and perused the material placed on record.

11. The petitioner has claimed that the instant FIR may be quashed on the ground that the petitioner was unaware about the possession of the recovered ammunition and thus, offence under Section 30 of the Arms Act is not made out against him.

12. At this juncture, this Court deems it apposite to discuss the law *qua* the meaning of conscious possession in the context of Section 30 of the Arms Act.

13. It is pertinent to state that the ingredient of possession under Section 30 of the Arms Act includes the factor of mental element and the same is a pre-requisite to establish a case under the aforesaid provision as mere custody without awareness of the said possession does not constitute an offence under Section 30 of the Arms Act.



14. It is relevant to state that the Hon'ble Supreme Court in various cases has categorically observed the aforesaid principle. In ***Gunwantlal v. State of M.P., (Supra)***, the Constitutional Bench of the Hon'ble Supreme Court has observed as follows:

“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. Similary, 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....”



15. Furthermore, the above stated principle was also reiterated by a Coordinate Bench of this Court in *Sonam Chaudhary v. State (Govt. of NCT of Delhi)*, 2016 SCC OnLine Del 47, wherein the FIR pertaining to the offence under Section 25 of the Arms Act was quashed and it was held that live cartridge recovered was an inadvertent oversight and the petitioners therein were unaware of the said possession, therefore, it does not fall within the purview of conscious possession.

16. Therefore, the aforesaid judicial dictum establishes that the law with respect to conscious possession is well settled and that the same is a pre-requisite and an essential ingredient to be established upon recovery of ammunition to constitute an offence under Section 30 of the Arms Act.

17. In the present case, five live cartridges were found in the baggage of the petitioner and it is contended that he was unaware of the said possession. The petitioner also holds an Indian arms license which was found to be genuine.

18. In view of the aforesaid facts and circumstances and well as the law discussed above, this Court is of the view that the recovery of the ammunition in question was without the knowledge of the petitioner and therefore, the essential ingredient of conscious possession for constituting an offence under Section 30 of the Arms Act is not established.

19. Therefore, this Court is of the considered view that the no fruitful purpose will be served by punishing the petitioner for being in an unconscious possession of the said live cartridges without firearm.

20. In view of the above stated facts and circumstances, as well as the above discussion of law, this Court finds sufficient reasons to allow the present petition and quash the FIR registered under Section 30 of the Arms



Act.

21. Accordingly, FIR bearing No. 120/2020 registered at Police Station - I.G.I. Airport, for the offence punishable under Section 30 and all consequential proceedings emanating therefrom are quashed.

22. The petition alongwith pending application(s), if any, stand disposed of.

CHANDRA DHARI SINGH, J

DECEMBER 11, 2024

Rk/st

[Click here to check corrigendum, if any](#)