



2024:DHC:9361



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

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Date of Decision: 21.11.2024

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W.P.(CRL) 3760/2023

AJAY KUMAR BANA

.....Petitioner

Through: Mr. R.S. Kundu and Mr. Prakhar
Kumar Londhe, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Rahul Tyagi, ASC (Crl.) for the
State with SI Amit Kumar PS IGI
Airport, New Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1 By way of the present petition, the petitioner seeks quashing of FIR No.388/2023 registered under Section 25 of the Arms Act at P.S. IGI Airport, Delhi.

2. The present FIR pertains to an incident dated 04.07.2023 wherein at 12.05 A.M., 19 live cartridges were detected during the physical search of the petitioner's hand baggage, who was travelling from New Delhi to Bengaluru by Air India Flight No. AI-502, Seat No. 11F, at Terminal 3, IGI Airport, Delhi. During physical check of the said baggage, 19 live ammunition Mark K.F. .32 S & WL were detected and upon questioning, the petitioner was unable to produce any valid documents for carrying the same. On measurement of the said cartridges, the length of the ammunitions were found to be 3.2 cm, diameter 1 cm and on their base, 'K.F. 32S & W.L.' was



found to be engraved. On further inspection of the said cartridge, cylinder of the cartridge was made up of brass like metal and the bullet portion of the cartridge was made up of copper like metal. The said ammunitions were kept in a transparent plastic box by making Pulinda sand sealed with the seal of 'IGIA 11' and taken into police possession through seizure memo and deposited at Malkhana, P.S. IGI Airport, Delhi.

3. Learned counsel for the petitioner states that the petitioner was in an '*unconscious possession*' of the live cartridges as it was left inside the baggage unintentionally and without his knowledge. It is further submitted that the petitioner has a valid Arms License issued by the Govt. of India, and that the subject cartridges were also issued to the petitioner against this valid license. A copy of the said Arms License has also been placed on record. Lastly, it is stated that the petitioner has no prior involvements of any kind.

4. Learned ASC (Crl.) for the State, on the other hand has contested the present petition. It is submitted that when the said cartridges were recovered from the petitioner's baggage and he was questioned about the same, he could neither satisfactorily explain the possession nor could produce any valid documents for carrying the same. Learned ASC also submits that the petitioner has violated the guidelines of AVSEC Circular No. 08/2017 dated 04.07.2017 inasmuch as he carried the said ammunition to IGI Airport, Delhi, and accordingly, the present FIR came to be registered. He, however, confirms that during inquiry, the petitioner produced a copy of the said Arms License issued on his name which is valid throughout Uttar Pradesh and it is further informed that the same has been verified from concerned District Magistrate. It is also stated that the recovered ammunition was sent to FSL Rohini, as per the report of which, the seized 19 ammunitions were



opined to be defined as ‘ammunition’ under the Arms Act, 1959. Lastly, it is also conceded that the petitioner is not involved in any other case.

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 Constitutional 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, 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.



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9. From the perusal of the record, it can be safely interpreted 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.388/2023 registered under Section 25 of the Arms Act at P.S. IGI Airport, Delhi and the consequent proceedings arising therefrom are hereby quashed.

11. The petition is disposed of in above terms.

MANOJ KUMAR OHRI, J

NOVEMBER 21, 2024/rd