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

+ **W.P.(CRL) 2729/2024 & CRL. M.A. 26765/2024**

VEDPRAKASH SINGH

.....Petitioner

Through: Mr. Sanjeev Malik and Mr. Anubhav
Mehrotra, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
with the Investigating Officer, PS-IGI
Airport.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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23.12.2024

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.”)] read with Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of FIR bearing No. 0530/2024, registered at Police Station - I.G.I. Airport, Delhi for the offence punishable under Section 25 of the Arms Act, 1959 (hereinafter “Arms Act”).

2. The brief facts of the case, as per the petitioner, are that the petitioner along with his friend Mr. Vivek Singh were scheduled to travel from Delhi to Jammu via Air India Flight bearing no. AI821 for a wedding, which is to be held on 23rd July, 2024. The petitioner and his friend were carrying a joint luggage and the petitioner was carrying a bag which belong to his friend’s mother i.e., Mrs. Kamlesh Singh, who holds a valid Arms License.



It is stated that the petitioner used the said luggage for travel purpose without checking the bag and upon reaching the Airport, the petitioner came to know that the bag contained 04 live cartridges due to the physical verification of the baggage. Based on the same, the aforesaid FIR was registered against the petitioner under Section 25 of the Arms Act.

3. Learned counsel appearing for the petitioner submitted that the petitioner was unaware of the presence of live cartridges in the aforesaid luggage 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*”. It is also submitted that he was not carrying any weapon or fire arm and that the said live cartridges belong to the mother of petitioner’s friend. It is further submitted that mother of petitioner’s friend held a valid arms license which was valid till 4th February, 2026.

4. 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 constitution of an offence under Section 25 of the Arms Act, and thus, the petitioner has not committed any offence as alleged in the instant FIR.

5. Therefore, in view of the foregoing submissions, it is prayed that the instant FIR may be quashed.

6. *Per Contra*, learned APP appearing on behalf of the State vehemently opposed the instant petition and submitted that the same may be dismissed being bereft of any merits. However, he has not contradicted the fact that the



Arms License is genuine and is in the name of Ms. Kamlesh Singh.

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

8. The petitioner has contested 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 25 of the Arms Act is not made out and against him.

9. At this juncture, this Court deems it apposite to discuss the law *qua* the meaning of *conscious possession* in the context of Section 25 of the Arms Act.

10. It is pertinent to state that the ingredient of *possession* under Section 25 of the Arms Act includes the factor of a 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 25 of the Arms Act.

11. It is relevant to state that the Hon'ble Supreme Court in various cases has categorically observed the aforesaid principle. In ***Gunwantal 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. 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....”

12. 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.

13. Therefore, the aforesaid judicial *dictum* reflects that the law with respect to *conscious possession* is well settled as the same is a pre-requisite and an essential ingredient to be established upon recovery of ammunition



to constitute an offence under Section 25 of the Arms Act.

14. In view of the aforesaid facts and circumstances as 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 for constituting an offence under Section 25 of the Arms Act is not established.

15. 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 a four live cartridges without firearm.

16. 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 25 of the Arms Act.

17. Accordingly, FIR bearing No. 0530/2024, registered at Police Station I.G.I. Airport, for the offence punishable under Section 25 of the Arms Act and all consequential proceedings emanating therefrom are quashed.

18. The petition alongwith pending applications, if any, stand disposed of.

CHANDRA DHARI SINGH, J

DECEMBER 23, 2024
NA/mk

Click here to check corrigendum, if any