



2024:DHC:8675



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

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Date of Decision: 28.10.2024

+ **CRL.M.C. 7985/2024 and CRL.M.A. 30489/2024**

MEGHA JAIN

.....Petitioner

Through: Ms.Swati Singh and Mr.Rohan Kumar,
Advocates with petitioner in person

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr.Shoaib Haider, APP for State with
SI Madan Lal

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1 By way of the present petition, the petitioner seeks quashing of FIR No.766/2024 registered under Sections 25 of the Arms Act at P.S. IGI Airport, Delhi.

2. The present FIR pertains to an incident dated 03.10.2024 where, the petitioner, being a U.K. citizen, along with her mother-in-law, namely, *Maya Jain* was scheduled to travel to United Kingdom from Delhi, however, during security check, a suspicious article was detected and the bag which belonged to the mother-in-law of the petitioner was referred for physical search on suspicion. That on search, one live cartridge was recovered from her baggage.

3. Learned counsel for the petitioner states that the petitioner was in an “unconscious possession” of the one live cartridge as it was left inside the baggage without the knowledge of the petitioner. It is further contended that the father-in-law namely *Late Shashi Kumar Jain* and her elder brother-in-



law namely *Sh. Vikas Kumar Jain* possess valid arms license and that the live cartridge found in the baggage of the petitioner, also belongs to the said licensed weapon only. It is further stated the said cartridge came rolling in with the clothes by mistake and were left in the bag unintentionally. Lastly, it is stated by the learned counsel of the petitioner that the petitioner has no prior involvements of any kind.

4. Learned APP for the State, on the other hand has contested the said petition, however, confirms that the arms license issued to petitioner's father-in-law as well as brother-in-law have been verified. The license issued to petitioner's brother-in-law is also valid and subsisting.

5. 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 fit 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. It was further held that:-

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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:-

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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** and Adhiraj Singh Yadav v. State, W.P. (Crl.) 754/2020

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. The fact that the authenticity of the arms license for .12 bore gun stands verified, hence, the submissions made by the learned counsel for the petitioner that she took the bag without checking the same shows that she



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was '*not in conscious possession*' of the recovered live cartridge found in the baggage.

9. From the perusal of the record, it can be safely interpreted that the said possession of the live cartridge 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(1-B)(a) 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.766/2024 registered under Sections 25 of the Arms Act at P.S. IGI Airport, Delhi and the consequent proceedings emanating therefrom are accordingly quashed.

11. With the above directions, the petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 28, 2024

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