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

+ **W.P.(CRL) 3539/2024 & CRL.M.A. 33822/2024**

ANKIT SHARMA

.....Petitioner

Through: Mr. Rana Kunal, Mr. Sanjeev Malik,
Ms. Shivani Mehta, Mr. Anubhav
Mehrotra and Mr. Manoj Kumar
Rana, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC for
the State.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **12.11.2024**

Crl.M.A. 33823/2024 (Exemption).

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 3539/2024 & CRL.M.A. 33822/2024 (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. 409/2024 dated 16th June, 2024, registered at Police Station - I.G.I. Airport, for the offence punishable under Section 25 of the Arms Act, 1959 ("Arms Act" hereinafter).
2. Briefly stated, while travelling from Delhi to Almaty, Kazakshtan, via Flight no. 6E1801, one live cartridge was recovered from the hang baggage of the petitioner without any arms license, on the basis of which, the aforesaid FIR under Section 25 of the Arms Act was lodged.



3. Learned counsel appearing for the petitioner submitted that the petitioner was unaware of the presence of live cartridge 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 further submitted that the late father of the petitioner held a valid arms license which was valid till 1st May, 2019 and in pursuance of the same, he deposited his Arms, i.e., one .32 Bore Pistol No. 621393 Dy Czech on 14th February, 2020. It is submitted that after the death of his father on 23rd December, 2020, the petitioner used the said hang luggage bag for his travel purpose, and on the date of the incident, he packed his luggage without properly checking the same.

5. It is submitted that in view of the same, it is submitted that the petitioner was unaware of the recovered cartridge as the same does not belong to him. It is also submitted that no chargesheet has been filed in the aforesaid FIR till date.

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 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.

7. Therefore, in view of the foregoing submissions, it is prayed that the reliefs be granted as prayed.

8. *Per Contra*, learned ASC appearing on behalf of the State vehemently



opposed the instant petition and submitted that the same may be dismissed being bereft of any merits.

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

10. 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.

11. 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.

12. 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.

13. 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. 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....”

14. 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.

15. 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.

16. In the present case, while travelling to Kazakshtan, one live cartridge was found in the bag of the petitioner and it is contended that he was unaware of the said possession. 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.

17. 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 single live cartridge without firearm.

18. 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.

19. Accordingly, FIR bearing No. 409/2024 dated 16th June, 2024, registered at Police Station - I.G.I. Airport, for offence punishable under Section 25 of the Arms Act, 1959 and all consequential proceedings emanating therefrom are quashed.

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

CHANDRA DHARI SINGH, J

NOVEMBER 12, 2024
rk/sm

Click here to check corrigendum, if any