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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 3936/2024**
AVANI KUSHWAHA

.....Petitioner

Through: Mr. Deepak Swami, Adv.

versus

STATE OF NCT OF DELHI THROUGH SHO, PS IGI AIRPORT

.....Respondent

Through: SI Pratima, PS IGI Airport
Mr. Sanjay Lao, SC with Mr. Abhinav Kr. Arya,
Ms. Priyam Agarwal, Mr. Aryan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

17.12.2024

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1. The present petition is filed under Article 226 of the Constitution of India read with Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of FIR No. 893/2024 dated 17.11.2024 under Section 25 of the Arms Act, 1959 registered at P.S. IGI Airport Delhi, including all proceedings arising therefrom.
2. On 17.11.2024, at about 7:30 Hrs., while traveling from New Delhi to Hyderabad by Indigo Flight Number 6E5198, during the scanning of the baggage at IGI Airport, 02 live cartridges were recovered from the petitioner's bag.
3. It is stated that the petitioner was shocked and surprised upon the recovery from her baggage, as she had no prior knowledge of its presence. Petitioner later realized that the live cartridges belonged to her maternal grandfather, who held a valid arms license bearing UIN



Number 335760003667242014, issued and valid until 09.02.2025 in the State of Uttar Pradesh.

4. It is stated that this is a case of inadvertence. The petitioner had borrowed the bag from her maternal grandfather and while cleaning the bag, her grandfather inadvertently left the cartridges inside without noticing. Due to the rush to board the flight, the petitioner could not thoroughly inspect the bag and was not aware about the inclusion of the two live cartridges.
5. Petitioner claims that the presence of 02 live cartridges in the bag was not within the knowledge of the petitioner and that the petitioner did not have requisite *mens rea* for committing the said offence.
6. The Hon'ble Supreme Court in ***Gunwantlal v. State of M.P., (1972) 2 SCC 194*** held that mere possession would not constitute offence and conscious possession would be required. Relevant para is extracted below:-

“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. 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. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm.....

(Emphasis added)

7. This Hon’ble Court in catena of judgments including ***Namanpreet S. Dhillon v. State, 2022 SCC OnLine Del 2255*** has quashed the FIR



under Section 25 of Arms Act, 1959. Relevant paragraphs are extracted below:-

“17. It is apparent from the facts of the case that only a single cartridge has been recovered from the Petitioners and no other fire arm has been recovered from him which makes it clear that the petitioner was not having conscious possession of the live cartridge. This is a testament to the fact that there was no animus possidendi.

18. In light of the mentioned judgments, where the facts are para materia to the facts of the instant case and taking into account the fact that the Petitioner was indeed not in conscious possession the FIR No. 0308/2021 dated 15.11.2021 under Section 25 of the Arms Act, at P.S. IGI Airport against the petitioner is hereby quashed and thus the proceedings emanating there from against the petitioner are also quashed.”

8. It is apparent from the facts of the case as noted above that the petitioner was not in conscious possession of 02 live cartridges, as it was inadvertently left in the baggage by the maternal grandfather of the petitioner. The maternal grandfather of the petitioner was in a position to keep the live cartridges as he has a valid arms license which has been annexed with the present petition as Annexure P-2. Hence, I am of the view that the possession of 02 live cartridges was an act of negligence and inadvertent omission on the part of the petitioner and she was not in conscious possession of 02 live cartridges.



9. For the said reasons, the ingredients of Section 25 of the Arms Act, 1959 are not made out.
10. However, valuable time of the police as well as judicial time has been wasted on account of carelessness of the petitioner. Hence, subject to the petitioner depositing a sum of Rs. 10,000/- as costs with the DHCLSC within 4 weeks from today, the FIR No. 893/2024 dated 17.11.2024 under Section 25 of the Arms Act, 1959 alongwith the consequential proceedings arising therefrom are quashed.
11. The proof of payment be filed with the Registry within 5 weeks, failing which the matter shall be listed before the Court.
12. The petition is disposed of.

JASMEET SINGH, J

DECEMBER 17, 2024 / (MS)

Click here to check corrigendum, if any