



2024 : DHC : 3601



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

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Date of Decision: 01st May, 2024

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CRL.M.C. 5732/2019 & CRL. M.A. 40024/2019

PRITPAL SINGH

..... Petitioner

Through: Mr. B.P. Singh, Mr. Nakul
Nirwan & Ms. Ravina
Kumari, Advocates.

Versus

STATE

.... Respondents

Through: Ms. Shubhi Gupta, APP
for the State with SI
Ashish Kumar (P.S.
Chanakyapuri).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') for quashing of FIR No. 26/2019 dated 25.02.2019, registered at Police Station Chanakya Puri, for offence under Section 25 of the Arms Act, 1959.
2. The said FIR was registered as the petitioner was apprehended by the police with 14 live cartridges at the entrance of the US Embassy where he was entering with the purpose of his visa interview.
3. On enquiry, the license of the arms and ammunition was



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produced by the petitioner, however, it was valid only upto 31.12.2017 and at that time, had already expired.

4. During the investigation, the seized live cartridges were sent to FSL Rohini for analysis. The investigation further revealed that the petitioner was a valid license holder bearing No. 539/PS (Govind Nagar), issued by District Magistrate Kanpur (Nagar), Uttar Pradesh with Permission to carry the .32 caliber NPT bore weapon in the entirety of India.

5. The chargesheet in the present case has been filed and the petitioner has already been enlarged on bail.

6. The learned counsel for the petitioner submits that the petitioner is a reputed businessman and has never been found to have misused the weapon in accordance with the terms of the license. The petitioner had no intention to carry such cartridges which were seized by the police and the same was an unconscious possession.

7. He submits that the petitioner was completely unaware about the articles recovered from his baggage. He states that unconsciously, the petitioner used the same bag for the visa interview in which he used to carry the weapon.

8. He submits that the petitioner has a valid license of .32 bore NPT issued by the Arms Licensing Authority of Kanpur and that he was authorised to carry the weapon in the entirety of India.

9. In support of his contentions, the learned counsel for the



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petitioner has placed reliance on the following judgments:

- a. ***Adhiraj Singh Yadav v. State* : MANU/DE/2410/2020**
- b. ***Sanjay Dutt v. State through C.B.I., Bombay* :
MANU/SC/0554/1994**
- c. ***Gaganjot Singh v. State* : MANU/DE/3227/2014**

10. The learned Additional Public Prosecutor for the State submits that even as per the record of the State Crime Record Bureau, the petitioner has no previous involvement or conviction. Status Report has been filed, it is stated that the license of the petitioner has been verified through proper channel and as per the verification report dated 12.04.2019 the license was issued to the accused Pritpal on 25.02.2003 and the same was valid till 31.12.2017 in all over India.

11. The question that falls for consideration of this Court is that whether the petitioner was in '*conscious possession*' of the ammunition allegedly recovered from him or not.

12. A perusal of Section 25 of the Arms Act shows that the term '*possession*' refers to the possession backed by the requisite mental element, that is conscious possession. Therefore, mere custody, without being aware of such possession does not constitute an offence under the Arms Act.

13. The term '*conscious possession*' has been elaborately dealt with by the Constitution Bench of the Hon'ble Apex Court in the case of ***Gunwantlal v. State of M.P.* : (1972) 2 SCC 194**. The



relevant paragraph of the said judgment reads as under:

“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. In the case of ***Sanjay Dutt v. State through CBI, Bombay***



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(II) : (1994) 5 SCC 410, the Constitution Bench of the Hon'ble Apex Court, while discussing what entails conscious possession, observed as under:

“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.”

15. It is the petitioner's case that he was not conscious of the fact that the bag carried by him contained live cartridges. He states that he unconsciously took the bag with his belongings oblivious of the fact that it also contained live cartridges. It is to be kept in mind that the arms which are alleged to be carried by the petitioner is not the gun but the cartridges. It is not disputed that the petitioner is holding a valid arms licence.

16. The petitioner's version is a plausible one. It is settled law that the Court, while exercising jurisdiction under Section 482 of the CrPC, can interfere at any stage to prevent abuse of the process of Court, with the safeguard that the use of such power should be legitimate.



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17. The State has not alleged that the possession was conscious or there was some *mens rea* behind carrying the cartridges. The present case seems to be a case where the petitioner inadvertently carried the cartridges in his bag.

18. In similar circumstances, this Court in ***Adhiraj Singh Yadav Vs. State, decided on 31.12.2020 in W.P.(CRL) 754/2020***, held as under:

“12. In view of the above, it is well settled that an offence under Section 25 of the Arms Act would not be made out in cases where the suspect was not conscious that he was in possession of live ammunition.

14. This Court has in several cases held that unconscious possession would not attract the rigours of the said Act. [See: Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) &Anr.: W.P. (Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State &Ors.: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.: (Crl) 152/2019 decided on 29.08.2019].”

19. In ***Sonam Chaudhary v. The State (Government of NCT of Delhi) : CRL.M.C. 471/2015*** this Court, held that:

“31. Recently, this Court in the case bearing Crl.M.C.No.4207/2104, titled as „Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.’, decided on 11.08.2015, held that since the prosecution has failed to prove that the possession was conscious possession and, therefore, on the basis of mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959. Accordingly, while allowing the petition noted above, this Court quashed



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the FIR, summoning order and all proceedings emanating therefrom.

32. Thus, the law is well settled that ‘conscious possession’ is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.

33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua the petitioners under the Arms Act, 1959.

*34. Therefore, applying the said principles of law, as discussed above, and **considering the fact that the petitioners had left behind the live cartridge/cartridges in their luggage by mistake and/or inadvertent oversight, when they started their respective journeys and that the petitioners were not aware of the presence of the live cartridge/cartridges in their handbags till the same were detected by the security personnel during screening of the baggages at the concerned places, it can be safely inferred that the said possession does not fall within the ambit of ‘conscious possession’.** Admittedly, no firearm or weapon has been recovered from any of the petitioner and they have not extended any threat to any person or police official, hence, no offence under Section 25 of the Act is made out against any of the petitioner. Therefore, allowing continuance of the criminal proceedings against them would be an abuse of the process of Court.*

35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed.”

(emphasis supplied)

20. It is also worth noting that Section 45(D) of the Arms Act does not make the acquisition/possession or carrying of minor



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parts of arms or ammunition which are not intended to be used along with complementary parts an offence under the Arms Act. In the present case, barring the allegation of the petitioner having been found in possession of 14 live cartridges in his baggage, there is no other material on record to show that the petitioner was in conscious possession of the said live ammunition.

21. On a holistic reading of the facts and the material placed on record, this Court is of the opinion that the necessary ingredients for the offence under Section 25 of the Arms Act are not made out against the petitioner.

22. This Court finds that continuance of the proceedings would be a futile exercise and accordingly, for the reasons stated above, this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

23. However, keeping in mind the fact that the chargesheet has already been filed in the case arising out of FIR No. 26/2019, and the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

24. In view of the above, FIR No. 26/2019 and all consequential proceedings arising therefrom are quashed, subject to the payment of cost of ₹50,000/- by the petitioner, out of which ₹20,000/- to be deposited with Delhi Police Welfare Fund, ₹10,000/- to New Delhi Bar Association (Patiala House Courts), ₹10,000/- to Delhi Bar Association (Tis Hazari District Courts) & ₹10,000/- to Shahdara Bar Association (Karkardooma District



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Courts) within a period of weeks from the date.

25. The present petition is allowed in the aforesaid terms.

MAY 1, 2024

AMIT MAHAJAN, J