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

Date of Decision: 28.07.2021

+ CRL.M.C. 1530/2022 & CRL.M.A. 6618/2022

NAMANPREET S DHILLON Petitioner

Through: Mr. Sunil Manchanda, Adv.

versus

STATE Respondent

Through: Mr. Aashneet Singh, Ld. APP
Insp. Virendra Pakhare, PS IGI
Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. This is a petition filed seeking quashing of the FIR No. 0308/2021 dated 15.11.2021 registered at PS IGI Airport, New Delhi under Section 25 of the Arms Act and all proceedings emanating therefrom.
2. The counsel for the petitioner submits that the Petitioner is a U.S Resident, holder of U.S Passport No. 546351425 and visited India as his grandmother was not well and also for celebrating Diwali with his family.
- 2.1 On 15.11.2021, while traveling from New Delhi to Chicago, the accused/petitioner, during physical search at the IGI airport was found in possession of one Ammunition. Upon being asked to produce valid documents for the ammunition, the accused/petitioner was unable to show the same.

- 2.2 Thereafter on the complaint of Mr. Manmohan Chamola, Senior Associate, Pernr. No. 00010612 DIAL Security & Vigilance, Terminal-3, I.G.I. Airport, New Delhi, the FIR in the present case was registered wherein he mentioned that on 15.11.2021, the live ammunition was recovered from the Petitioner.
- 2.3 The petitioner was subsequently brought to the duty officer, police station, IGI and the evidence was marked and handed over to him and subsequently the FIR bearing No. 0308/2021 was registered.
- 2.4 After enquiry, it was found that the petitioner had no knowledge about the bullet which was recovered from his baggage.
3. The counsel submits that the Petitioner's Uncle (Tayaji) had used his licensed weapon in celebratory firing during Diwali and one of the cartridges inadvertently remained in the pocket of trouser of the petitioner.
4. Unfortunately, the Petitioner wore the same trouser while traveling to the IGI Airport and unintentionally and inadvertently, the cartridge remained in the pocket and the same was detected upon X-Ray at the departure Hall of the IGI airport.
5. The Petitioner was surprised and shocked when the 1 live ammunition was discovered from him and therefore, the possession of the live ammunition was not a 'conscious possession'. In support, the counsel has relied upon the High Court judgment of *Mandeep Lamba v. State (Govt of NCT) & Anr.* [(2017) SCC OnLine Del 9885] wherein the court had

quashed the FIR under Section 25 of Arms Act, 1959 on the ground that proceedings cannot continue upon mere possession of live cartridges.

6. According to the status report which has been handed over in court and has been taken on record, the license of paternal uncle of the petitioner has been verified. It is stated in the status report that accused Namanpreet S. Dhillon produced a copy of Arms License bearing No. DM/TRN/DUP/GNDS/0816/171 of his uncle Palvinder Singh Dhillon issued from the Office of District Magistrate, Tarn Taran, Punjab, and same was sent to the office of District Magistrate, Tarn Taran, Punjab for verification through proper channel. Subsequently, it was reported by the office of District Magistrate, Tarn Taran, Punjab that the said license was issued to Palvinder Singh Dhillon.
7. In *Adhiraj Singh Yadav Vs. State*, decided on 31.12.2020 in W.P.(CRL) 754/2020, this Court held that:

“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].”

8. While deciding a similar matter titled ‘*Mitali Singh v. NCT of*

Delhi & Anr., decided 15.12.2020, W.P.(CRL) No. 2095/2020, this court made the following observation:

“8. *The courts have in a number of decisions held that the conscious possession of an ammunition is sine qua non to prosecute the possessor under the Arms Act, 1959.*”

9. *In Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194*, the Constitution Bench of the Supreme Court has held as under:-

“*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 none-the-less 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 someone 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 (sic) 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."

10. *In Sanjay Dutt v. State through CBI Bombay (II), Crimes 1994 (3) 344 (SC) the Supreme Court has observed as under:-*

"20. 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 unauthorized substance has been understood."

11. Extrapolating from the principles enunciated in the above judgements, 'conscious possession' is a core ingredient to establish the guilt for offences punishable under the Arms Act,

1959. Mere possession without the awareness cannot make the accused liable of the offence.

12. In the instant case, the claim of the Petitioner is that his Paternal Uncle (Tayaji) Sh. Palwinder Singh Dhillon had an arms licence and it was his cartridge that inadvertently remained in the pocket of his trouser which was detected by the X-ray Machine at the Departure Hall at the IGI Airport.

13. It is very much evident from the facts that the Petitioner was indeed not in conscious possession of the cartridge but rather inadvertently carried it with him during the X-ray Scan.

14. Also, a coordinate bench of this court in **Chan Hong Saik Thr. SPA : Arvinder Singh v. State & Anr.** [2012 (130) DRJ 504], held that a recovery of a single cartridge without any firearm is a minor ammunition which would be protected by clause (d) of Section 45 of the Arms Act. The relevant para of the judgement is produced hereinunder:-

“45. Though, the petitioner has not admitted recovery of the cartridge and claimed trial, however, even if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without fire arm is a minor ammunition which is protected under clause (d) of section 45 of the Arms Act.

46. In view of the above discussion, the aforesaid FIR No.126/2011 registered at PS IGI Airport, charges framed against the petitioner vide order dated 18.08.2011 and all criminal proceedings emanating therefrom are hereby quashed”.

15. 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*.
16. In light of the mentioned judgements, where the facts are *par 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.
17. However, I am of the view that since the police machinery has been put in motion on account of the acts of commission & omission on behalf of the petitioner and useful time of the police which could have been utilised for important matters has been misdirected towards these petty matters, therefore, the petitioner must do some social good for the society
18. The FIR in the present case will be quashed subject to the petitioner providing a kit to each students of a primary school (MCD School or a Government School, comprising of minimum 200 students) consisting of 50ml of Mosquito Repellent and 50 ml of Hand Sanitizer. The primary school will be identified by the Ld. APP in consultation with the IO within a period of 5 days and the kit shall be given within a period of 1 week thereafter.

- 19.The petitioner shall file a compliance report and the IO will verify the factum of the compliance.
- 20.List for compliance on 16.08.2022.
- 21.The petition is disposed off in the aforesaid terms.

JULY 28, 2022 / (MS)

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)



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