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

+ W.P.(CRL) 754/2020

ADHIRAJ SINGH YADAV

..... Petitioner

Through Mr Kumar Piyush Pushkar, Advocate.

versus

STATE

..... Respondent

Through Mr Rajesh Mahajan, ASC for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.12.2020

[Hearing held through videoconferencing]

CRL.M.A. 5635/2020

1. Allowed, subject to all just exceptions.

CRL.M.A. 5636/2020 (delay 46 days in refiling)

2. For the reasons stated in the application, the same is allowed. The delay in re-filing the petition is condoned.

W.P.(CRL) 754/2020 & CRL.M.A. 5634/2020 (stay), CRL.M.A. 18172/2020 (early hearing),

3. The petitioner has filed the present petition, *inter alia*, praying that the FIR No. 0135/2019 under Section 25 of the Arms Act, 1959 registered with PS IGI Airport and all proceedings emanating therefrom be quashed.

4. The said FIR was registered on 07.04.2019 as twenty live cartridges were recovered from the hand baggage of the petitioner while he was to

board a Vistara Airlines flight for travelling from Delhi to Ahmedabad.

5. The petitioner states that he is an engineering student and had appeared for Air Force common Admission Test. He was scheduled to travel to Ahmedabad for appearing in the interview which was scheduled to be held on 08.04.2019 at 3 AFSB (Gandhinagar) Airforce Area, Sector-25, Gandhinagar-382009. The petitioner states that he had borrowed the light yellow brown hand baggage from one Ms Bindu Gupta who is the wife of his landlord Colonel Prashant Gupta. It is submitted that his family and that of Colonel Prashant Gupta were very close and since the petitioner was to travel to Ahmedabad and he did not possess suitable luggage, he had borrowed the same from Ms Gupta.

6. It is the petitioner's case that he was not aware that there was any live ammunition kept in the sleeves of the said bag. He states that even Ms Gupta was not aware of the same and therefore had not removed the live ammunition from the luggage before handing it over to the petitioner.

7. The said live ammunition belongs to Col Prashant Gupta who also holds a valid arms licence.

8. The status report has been filed and it has been verified that the petitioner had borrowed the luggage from Ms Bindu Gupta. It has also been verified that at the material time Col. Prashant Gupta held a valid arms licence bearing no. 2515/9/2017 PS Sec-20, NOIDA, UP. He also admitted that the ammunition recovered from the petitioner belongs to him. During the course of investigation, the seized ammunition was sent to FSL for ballistic examination and opinion. The FSL report has since been received.

9. It is the petitioner's case that he was not conscious of the fact that there the luggage carried by him contained live ammunition. He states that

he was in a hurry and packed the luggage with his belongings oblivious of the fact that it also contained live ammunition.

10. 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.”

11. 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.”

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.

13. In view of the status report, Mr Mahajan, learned ASC appearing for the State also submits that there is no material to doubt the explanation provided by the petitioner.

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)].

15. In view of the above, this Court considers it apposite to allow the present petition as this Court is of the view that the same would meet the ends of justice. Accordingly, FIR No. 0135/2019 under Section 25 of the Arms Act, 1959 registered with PS IGI Airport and all proceedings emanating therefrom are quashed.

VIBHU BAKHRU
(Vacation Judge)

DECEMBER 31, 2020
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