

(2020) 09 DEL CK 0128

In the Delhi High Court

Case No : Criminal Writ Petition No. 1511 Of 2020

Amrik Singh

APPELLANT

Vs

NCT Of Delhi & Anr

RESPONDENT

Date of Decision : 22-09-2020

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)(a)

Arms Act, 1878 — Section 19(1)(f)

Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 5

Citation : (2020) 09 DEL CK 0128

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Amir Chaudhary, Kartik Gaur, R.S. Kundu

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that FIR No. 087/2020, under Section 25 of the Arms Act, 1959, registered with PS IGI Airport, New Delhi, be quashed.

2. The said FIR was registered as four live rounds of .32 (SNW) Caliber were recovered from the handbag of the petitioner on 10.02.2020. It is stated that on that date, the petitioner was travelling from New Delhi to Milan by flight no. AI-137. During the screening process, his hand baggage was screened and it was discovered that the petitioner was carrying four live rounds of .32 (SNW) Caliber. At the material time, the petitioner could not produce any arms license and therefore, the FIR in question was registered.

3. It is the petitioner's case that he was unaware of the ammunition lying in his hand baggage. He stated that he held a licensed firearm and the ammunition in question had been issued to him for his licensed firearm. He had kept the same in his luggage, which he was using for his travel to Milan. Although, he had

removed the contents of the luggage prior to using the same for his travel, inadvertently, the cartridges kept in the said luggage had escaped his attention.

4. The status report has been filed. It is stated that during the course of investigation, it was verified that the petitioner had a valid arms license bearing no. 373/PA Kurali/DM SAS Nagar, Punjab, which was valid up to 12.03.2021. It was also verified that the petitioner had been issued ammunition for non-prohibited bore (NPB) 32 Bore Revolver, which was the licensed firearm possessed by the petitioner.

5. In the given circumstances, this Court finds no reason to disbelieve the petitioner that he was unaware of the four rounds of ammunition that remained in the said hand baggage.

6. 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."

7. 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"

8. As stated hereinbefore, this Court finds no reason to suspect that the petitioner was in conscious possession of the live ammunition in his hand baggage. Thus, the allegation that the petitioner was in possession of the ammunition is unsustainable. This Court is of the view that no offence under Section 25 the Arms Act, 1959 is made out in the given facts.

9. This Court has in a number of similar cases, quashed the FIRs [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]

10. In view of the above, the petition is allowed and FIR No. 087/2020 under Section 25 of the Arms Act, 1959, registered with PS IGI Airport, New Delhi and all proceedings emanating therefrom, are quashed.