

(2019) 05 DEL CK 0294

In the Delhi High Court

Case No : Criminal Revision Petition No. 150 Of 2019, Criminal Miscellaneous Application No. 7697 Of 2019

Anjum Asgar Zaidi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Arms Act, 1959 — Section 25, 30, 45(d), 54, 59

Citation : (2019) 3 JCC 1743

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Aishwarya Dobhal, Hilal Haider, Hirein Sharma

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns order on charge dated 01.11.2017 whereby the petitioner has been charged for having committed an offence punishable under Section 30 of the Arms Act.
2. The allegations in the FIR are that during screening of the hand baggage at the Airport, in the bag of the petitioner, one live ammunition of 32 bore was found. FIR was registered against the petitioner alleging violation of Sections 25/54/59 of the Arms Act.
3. At the time of framing of charge after hearing arguments, the trial court was of the view that a charge under Section 30 of the Arms Act was liable to be framed.
4. Learned counsel for the petitioner submits that the petitioner had a valid arms licence and since he was enroute to Lucknow and the closest Airport from Noida was IGI Airport at Delhi, he had to catch his flight from Delhi. He submits that the petitioner was not aware that there was a live cartridge in the trolley bag

which was carried in the hand-baggage. The fact that the petitioner was not conscious of the presence of the live cartridge is borne out from the fact that there was no attempt by the petitioner to conceal the same at the time of putting the bag for x-ray screening.

5. Learned counsel further submits that mens rea would be required for constituting an offence under Section 30 of the Arms Act and relies the judgment of this Court in CrI. M.C No. 854/2018 'Jasbir Chahal Vs. State' dated 07.05.2018 (2018 SCC OnLine Del 8839) and as also judgments of the coordinate benches of this Court in Gaganjot Singh Vs. State (Govt. of NCT of Delhi), 2014, SCC Online Del. 6885; Jaswinder Singh Vs. State (Govt. of NCT of Delhi), 2015 SCC Online Del 10894; Sonam Choudhary Vs. State; 2016 SCC Online Del 47; Mandeep lambs Vs. State (Govt. of NCT of Delhi); 2017 SCC Online Del 9885 and of the Supreme Court in Gunwant lal Vs. State of Madhya Pradesh (1972) 2 SCC 194 and Abdul Nasir Barich Vs. State (NCT of Delhi), 2014 (1) JCC 168.

6. The petitioner is a permanent resident of Noida (UP) and was catching a flight from Indira Gandhi International Airport, Delhi (in short 'IGI Airport') enroute to Lucknow. The petitioner has a valid arms licence, however, the licence was valid only for the State of Uttar Pradesh.

7. FIR was initially registered against the petitioner under Section 25 of the Arms Act which entails punishment of not less than three years and which may extend upto seven years besides fine. Section 30 of the Arms Act is a punishment of contravention of any condition of a licence or the rule and entails punishment for a term which may extend to six months or with fine which may extend to Rs. 2500/- or with both.

8. The allegations against the petitioner is that the petitioner contravened the condition of a licence, in as much as, carried a live cartridge beyond the State of Uttar Pradesh.

9. It is settled proposition of law that possession under Section 25 of the Arms Act refers to not only physical possession but also the requisite mental element i.e. mens rea of conscious possession. In the absence of conscious possession of the live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act would be applicable and it would be justified to end all such proceedings to secure the ends of justice. Jasbir Chahal versus State 2018 SCC OnLine Del 8839 Gunwant lal Vs. State of Madhya Pradesh (1972) 2 SCC 194.

10. In the subject case, petitioner did not make any attempt to conceal the live cartridge in the bag and had handed over the bag for x-ray screening. It is common knowledge that in case any arms or ammunition are present in a bag which is screened by X-ray, the arm and ammunition would be easily detected unless attempt is made to conceal the same. It is not the case of the prosecution that any attempt was made by the petitioner to conceal the same so as to avoid detection. Clearly petitioner did not have the conscious possession. Further the record does not show any material to suggest any reasonable ground for

suspicion to even justify conscious possession of the live cartridges recovered from the baggage of the petitioner. There is no material on record to show that the petitioner was conscious of the possession of the live cartridges.

11. From the perusal of the record it can be safely inferred that the presence of live cartridge in the hand bag was not within the knowledge of the petitioner and petitioner did not have the requisite mens rea for committing the said offence.

12. The impugned order further shows that the trial court was also conscious of the fact that the petitioner could not have had the requisite mens rea and that appears to be the reason that charge was not framed under Section 25 (under which the FIR and Charge Sheet was filed) and was framed only under Section 30 of the Arms Act.

13. The case of the petitioner is squarely covered by the decisions of this Court and also the judgment of the Supreme Court in *Gunwantlal Vs. State of Madhya Pradesh*; (1972) 2 SCC 194.

14. In view of the above, the impugned order on charge is clearly not sustainable and is accordingly set aside. The petitioner is accordingly discharged.

15. The petition is allowed in the above terms.

16. Order dasti under signatures of the Court Master.