

(2019) 04 DEL CK 0016

In the Delhi High Court

Case No : Criminal Writ Petition No. 344 Of 2019

Davinder Singh Dhindsa

APPELLANT

Vs

State (N.C.T Of Delhi)

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Arms Act, 1959 — Section 5, 25, 25(1)(a)
Code Of Criminal Procedure, 1973 — Section 482
Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 5

Citation : (2019) 3 AD(Delhi) 465

Hon'ble Judges : Sangita Dhingra Sehgal, J

Bench : Single Bench

Advocate : Siddhartha Shankar Ray, Abhik Kumar, Suryadeep Singh, Rinku Mathur, Rajesh Mahajan, Jyoti Babbar

Final Decision : Disposed Off

Judgement

Sangita Dhingra Sehgal, J

1. The present petition under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of FIR No. 0196/2018, under Section 25 of the Arms Act, 1959 registered at Police Station - IGI Airport, New Delhi.

2. The brief facts of the case are that on 18.04.2018 the petitioner along with his wife, son and sister was travelling from New Delhi to Canada; by China Southern Airlines bearing flight No. CZ-360 and during the course of screening, One cartridge bearing mark "KF 325 & W.L" was detected inside his check in baggage by the security personnel at IGI Airport, New Delhi. Pursuant to the same, FIR No. 0196/2018 dated 19.04.2018 u/s 25 of the Arms Act 1959 was registered at P.S. IGI Airport, Delhi.

3. Learned counsel for the petitioner submitted that the petitioner is Arms

License holder bearing No. DM/SNG/ARM/AMAR/0218/17 valid till 01.02.2021 issued at Sangrur, Punjab by the District Magistrate, Sangrur on 02.02.2018.

4. It was added that the petitioner, packed his jacket in his check in baggage and failed to notice that one cartridge had been left in the jacket and was detected during the baggage check at the Airport.

5. Per contra, Mr. Rajesh Mahajan, Additional Standing Counsel for the State opposed the present petition on the ground that prima facie it is clear that the petitioner was in 'conscious possession' of the seized cartridge, moreover, the exhibited cartridge was sent to FSL and it was opined by the expert that the recovered bullet was a live ammunition as defined in the Arms Act, 1959.

6. I have heard the submissions of the learned counsel for the parties and perused the material available on record.

7. From the perusal of the record, it transpires that the petitioner is having a valid arms License bearing No. DM/SNG/ARM/AMAR/0218/17 valid for Punjab only issued by District Magistrate, Sangrur, Punjab which was verified from District Magistrate, Sangrur, Punjab and the same was found to be genuine and valid upto 01.02.2021.

8. With respect to the issue of 'conscious possession', it is settled law that the expression 'possession' under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, 'conscious possession'. Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

9. In the case of Sanjay Dutt Vs. State reported in 1994(5) SCC 410 the Supreme Court inter alia observed that:

"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.

Therefore 'conscious possession' of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

10. Further, the question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of Gunwantlal Vs. State of Madhya Pradesh, reported in (1972) 2 SCC 194, wherein it was observed as under:

"the possession of a firearm under the Arms Act 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 besides physical possession being in someone else. The first pre-condition 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 the case of Gaganjot Singh vs. State reported in 2014 (3) JCC 2020 the Delhi High Court had observed the following:

"12. As noticed previously, a solitary cartridge - which on examination by expert has been confirmed to be a live one -was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also, that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic

report confirms it to be cartridge and consequently it is "ammunition", by itself, that is insufficient to point to suspicion - much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after a trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in Gunwantlal (supra) and Sanjay Dutt (supra).

Xxxx xxxx xxxx xxxx

"16. In Chan Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings. The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge " cannot be used for the purpose without fire arms" and then proceeded to state:

"though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act."

12. The same view has been reiterated by a coordinate bench of this court in

Sonam Chaudhary vs. State reported in 2016 SCC Online Del 47 which reads as:

"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."

13. The issue involved in the present case, is covered by the principles laid down in above said decision of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, as there is no sufficient evidence or reasonable ground of suspicion to justify 'conscious possession' of the live cartridge recovered from the baggage of the petitioner. The petitioner was in possession of the said cartridge; however, he expressed his lack of awareness in respect of the said cartridge. He also holds a valid arms license bearing No- DM/SNG/ARM/AMAR/0218/17. The said license has been duly verified from the concerned DM Office and found that the license was issued in the name of the petitioner. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridge. The FSL report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven 'conscious possession'. Hence, it can be safely inferred that the said possession by the petitioner does not fall within the ambit of 'conscious possession' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959. Therefore, on the basis of mere possession of the live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

14. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridge in the bag till the same was detected by the security staff during the screening of the baggage, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking and this court has always shown its keenness in quashing such futile proceedings. Reference in this regard can also be made to Michael Joseph Hayden vs State (Gnct) (2018 SCC Online 8940), Jasbir Chahal vs State (2018 2 JCC 1043), Undis Vatvedt Singh vs State (2018 SCC Online Del 8591), Francisco Del Pino Madrona vs. NCT of Delhi (2017 (4) JCC 2646).

15. Before quashing the FIR, I deem it appropriate to impose costs of Rs. 20,000/- on the petitioner to be deposited in the Advocates Welfare Fund, Bar

Council of Delhi, Delhi High Court as a pre-condition for the quashing of the aforesaid FIR as due to the casual attitude of the petitioner, the entire state machinery was set in motion. Consequently, FIR no. 0196/2018 under section 25 of the Arms Act, 1959 registered at Police Station - IGI Airport, New Delhi and proceedings emanating therefrom are hereby quashed. Costs be deposited within one week from the date of passing of this order.

16. Registry is directed to list the matter before court in case the receipt of costs be paid by the petitioner is not filed within the stipulated time.

17. Accordingly, the present petition stands disposed of.