

(2022) 05 DEL CK 0305

In the Delhi High Court

Case No : Criminal Writ Petition No. 505 Of 2022

Gurveer Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-05-2022

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)(a), 30

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

Citation : (2022) 05 DEL CK 0305

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Vikas Gupta, Deepak Choudhary, Hemant Dixit, Sohail Sharma, Avi Singh

Judgement

Jasmeet Singh, J

1. This is a petition filed seeking quashing of the FIR 33/2022 dated 25.01.2022 registered at PS IGI Airport under Section 30 Arms Act and all proceedings emanating therefrom.

2. The brief facts of the case are as under:

3. The Petitioner was travelling from Delhi to Toronto, Canada, in flight no. AC043, seat no. 35B, and was at Terminal 3, Indira Gandhi International Airport, New Delhi. The Petitioner after entering the airport went for the clearance check where he reportedly placed his jacket along with other articles in the X-Ray Baggage Inspection System for screening and checking of the articles.

4. During the screening of the jacket, the authorized person deployed at the airport for the screening post, noticed an image of live ammunition which were assumingly 3 in number. To be certain, the security sent the Petitioner for a physical check.

5. The Petitioner's jacket was identified by the Petitioner when enquired about it

and the authority checked the jacket physically in the presence of the Petitioner. During the physical checking of the jacket, 3 live ammunitions were recovered from it and the same were marked in the FIR. Additionally, during the physical checking the petitioner was questioned for having any valid arms license, but the petitioner didn't have any supporting physical documents in his possession for carrying of ammunition. Thereafter, the Petitioner was handed over to the IGI Airport police station for further investigation or legal action.

6. A complaint under section 30 Arms Act was registered against the Petitioner.

7. The Petitioner submits that he hails from Pilibhit, Uttar Pradesh and is a permanent resident of Canada and has an accommodation in India.

8. He further submits that he possesses a valid arms license bearing number 281031001446582018 valid up to 23.12.2022 for the territory of UP.

9. The Petitioner submits that he came to India for visiting his other family member and while going back to Canada, wore an old jacket of his, without checking the same as he had to take the flight from IGI to Canada and for that had to first reach Delhi from Uttar Pradesh.

10. Thereafter, as submitted above, three live ammunitions were found from his jacket.

11. The Petitioner submits that he was not in conscious possession of the alleged ammunition as he wore the jacket after very long time and couldn't check it thoroughly as he was in a rush to reach the airport.

12. The said ammunitions and Petitioner's passport were seized, and Petitioner was released on bail.

13. Ld. ACMM, New Delhi District vide order dated 28.01.2022 released Petitioner's passport and released Petitioner on bail.

14. The Petitioner fulfilled all the conditions imposed upon him by the trial court and got his passport released after which he went back to Canada on 07.02.2022.

15. The status report has been handed over in court, records that the Petitioner produced a valid license in his name issued vide No. 53/2019, PS Puranpur in the name of Gurveer Singh, however, the veracity of the same has not been verified.

16. 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)].”

17. 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.””

18. The above judgments require conscious possession or knowledge of the possession. The Petitioner has been able to make out a case that he was not conscious about the possession of the live ammunition. It was a mishap that the live ammunition remained in his jacket and he came to airport with the same jacket. He has produced a valid arms license and the status report records the same. Even though the authenticity is yet to be verified, prima facie, the facts as submitted and the status report taken on record, corroborates that the Petitioner did not have knowledge of the possession.

19. In view of the aforesaid, the FIR 33/2022 dated 25.01.2022 registered at PS IGI Airport under Section 30 Arms Act and all consequential proceedings emanating therefrom are hereby quashed subject to the petitioner paying costs of Rs. 30,000/- to DLSA.

20. Proof of receipt be filed with the court registry.

21. The status report is taken on record.