

(2018) 05 DEL CK 0065
In the Delhi High Court
Case No : CRL.M.C. 854 of 2018

JASBIR CHAHAL

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

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

Citation : (2018) 05 DEL CK 0065

Hon'ble Judges : SANJEEV SACHDEVA

Bench : Single Bench

Advocate : Madhav Khurana, Jaivir Bains, Mukesh Kumar

Final Decision : Allowed

Judgement

SANJEEV SACHDEVA, J.

CRL.M.C. 854/2018 & CrI.M.A.3140 /2018(stay)

1.The petitioner seeks quashing of FIR No.477/2014 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Summoning Order dated

17.01.2017.

2.The allegations in the FIR are that the petitioner, who is a Canadian Citizen of India origin, was travelling to Canada from Delhi. During scrutiny 12

live cartridges of 0.25 bore was found in the hand Baggage.Â Â

3.The contention of learned counsel for the petitioner is that the petitioner was travelling to Mexico via Canada to attend a marriage and was not

aware that the hand bag contained live cartridges.Â At the time when the petitioner was apprehended, the petitionerÂ immediately stated that he

was not aware that live cartridges were present.Â He had earlier possessed a valid arms licence and a pistol of 0.25 bore, the bore of which live

cartridges were found in his baggage.Â Â

4.The arms licence of the petitioner has been duly verified by the Investigating Officer and the bore of the live cartridges tallied with the weapon,

which was registered in favour of the petitioner.Â Â

5.Learned counsel for the petitioner submits that it is not only mere presence of live cartridges which is to be established, what is necessary to be

established is conscious possession. He submits that there is no evidence to show that the petitioner was conscious of the presence of live cartridges

in his baggage and, as such, since, there is absence of mens rea, the petitioner could not be charged with such offence.Â Â

6.Learned counsel for the petitioner submits that further it is apparent that if the petitioner had any mens rea or mala fide intention, he would not have

carried the live cartridges in his hand baggage without being concealed as he was aware that hand baggage is always screened.

7.It is a 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.Â Mere custody without mens rea would not constitute an offence under the Arms Act. Conscious

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

8.Reference may also be had to the decisions of Coordinate Benches of this court in Gaganjot Singh vs. State (Govt. of NCT of Delhi),Â 2014 SCC

Online Del 6885;Â Jaswinder Singh Vs. State (Govt of NCT of Delhi), 2015 SCC Online Del 10894 ; Sonam Chaudhary vs. State: 2016 SCC Online

Del 47; Mandeep Lamba vs. State (Govt. of NCT of Delhi): 2017 SCC Online Del 9885 and of the Supreme Court in Gunwantlal vs. State of Madhya

Pradesh: (1972) 2 SCC 194 and Abdul Nasir Barich versus State(NCT of Delhi) , 2017(1) JCC 168.

9.In the absence of the conscious possession of 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.

10.Perusal of the record shows that the subject case is clearly covered by the decisions referred to above and the principle of law laid down by the

Supreme Court. There isnâ??t sufficient evidence or reasonable ground of

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

11.From the perusal of the record it can be safely interpreted that the said possession of the live cartridges do not fall within the ambit of conscious possession, which is a basic ingredient to establish guilt for an offence under Section 25 of the Arms Act.Â Â

12.In view of the above, the petition is allowed.Â Â

13.FIR No.477/2014 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Summoning Order dated 17.01.2017 and the consequent proceedings emanating therefrom are accordingly quashed.Â

14.Order Dasti under the signatures of the Court Master.Â Â