

(2017) 08 DEL CK 0050

In the Delhi High Court

Case No : 1633 of 2017

MANDEEP LAMBA

APPELLANT

Vs

STATE (GOVT. OF NCT) & ANR.

RESPONDENT

Date of Decision : 18-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Arms Act, 1959](#), [Section 25](#), [Section 59](#), [Section 5](#)

Citation : (2017) 08 DEL CK 0050

Hon'ble Judges : Sangita Dhingra Sehgal

Bench : SINGLE BENCH

Advocate : Rana Kunal, Akshai Malik

Final Decision : Disposed off

Judgement

1. The present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as " Cr.P.C .") has been filed by the petitioner for quashing of FIR No.178/2016, under Section 25 of the Arms Act, 1959 registered at Police Station - IGI Airport, New Delhi .

2. The case of the prosecution is that on 15.05.2015 a complaint was received at P.S. IGI Airport, Delhi from the Security Shift Incharge/Dhananjay, alleging that during screening 8 live cartridges of 7.65 GFL were detected and recovered from the check-in baggage of the petitioner. On that day, the petitioner was departing for Lucknow from New Delhi, via Jet Airways Flight No.9W2637. During interrogation, the petitioner failed to produce a valid arms license or any authorization regarding possession of the live cartridges in his registered bag. Hence, on the said complaint, the case vide FIR No.178/2016 dated 15.05.016 under Section 25 of Arms Act, 1959 was registered. However, the petitioner was not arrested in the present case as his arrest was deferred and was relieved on a written undertaking that he would join the investigation as and when required.

3. During the course of investigation, the ammunitions recovered from the petitioner's bag were sent to FSL, Rohini, Delhi for Ballistic examination and expert opinion. The FSL report revealed that the cartridges recovered from the accused were 7.65mm standard cartridges and the same were live ones which can be fired through a 7.65mm bore firearm. The exhibits were stated to be ""ammunition"" as defined in Arms Act, 1959. Hence charge-sheet was prepared against the petitioner under Section 25 / 54 / 59 of the Arms Act, 1959 and filed in the Court of ACMM, Patiala House Court, New Delhi.

4. Learned counsel for the petitioner contended that the bag containing the 8 live cartridges belonged to the brother-in-law of the petitioner/Parminder Teotia, who holds a valid Arms License bearing number 1602, Police Station - Daurala, Meerut, UP and as the petitioner was in a hurry, he inadvertently forgot to check the said bag thoroughly before packing his clothes in it. Also, as the petitioner was unaware of the possession of said cartridges in the bag he did not declare the same at security check and was informed about the same by the Officials only. Therefore, the petitioner seeks exemption under Section 45(d) of Arms Act, 1959 as he bonafidely remained oblivious of the presence of live cartridges in his baggage.

5. It was further submitted that despite the physical possession of the live cartridges being with the petitioner , the constructive possession of the said cartridges still continued with his brother in law who held a valid arms license for the same. Learned counsel for the petitioner also argued that though the articles seized and subsequently tested in this case are live

cartridges and therefore constitutes "ammunition", nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence. Therefore , as the possession in the present case was neither "conscious" nor "intended", offence under the Arms Act, 1959 could not be made out.

6. Per contra, Akshai Malik APP for the State opposed the present petition on the ground that on interrogation, the petitioner-herein failed to produce any valid arms license to authenticate the possession of the ammunition as legal and thus prima facie an offence under Section 25 of the Arms Act, 1959 was made out. He further argued that during the course of investigation, the accused on interrogation admitted his guilt of carrying live ammunition with him in his bag without a valid arms license. Further, the ballistic expert has opined in the FSL report that the cartridges sent for examination are live and covered under "ammunition" as defined in the Arms Act, 1959.

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

8. At the outset, it is observed hereby that 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 . Therefore "conscious possession" of any fire arm/ ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender.

9. 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....."

Therefore, in light of the view taken by the Apex Court in the aforesaid judgement, two pre conditions must be satisfied to hold a person guilty for an offence under Section 25(1) (a) of the Arms Act, 1959. First is the existence of the mental element i.e. the knowledge or consciousness of the possession and second is the existence of power or control over the weapon in question either by virtue of actual physical possession or by constructive possession.

10. Returning to the issues involved in the present case, the same are covered by the principles laid down in above said decision of the Supreme Court, as there is no sufficient evidence or reasonable ground of

suspicion to justify conscious possession of the live cartridges recovered from the baggage of the petitioner. The petitioner was in possession of the cartridges, however, he expressed his lack of awareness of that article and also that the bag from which it was recovered belonged to his brother in law. There is no material on record to show that the petitioner was conscious of his possession of the live cartridges. Though the ballistic report confirms it to be a cartridge falling within the meaning of "ammunition", the 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 cartridges the proceedings cannot continue qua the

petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

11. Applying the dictum of the Apex Court in *Gunwantlal* (supra) to the facts of the instant case, 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. Consequentially FIR no.178/2016 under Section 25 of the Arms Act,1959 and proceedings emanating therefrom are hereby quashed.

12. Accordingly, the present petition stands disposed of.