

(2016) 03 DEL CK 0078
In the Delhi High Court
Case No : CrI. M.C. 4949/2015

Maria Assunta

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Arms Act, 1959 — Section 25, Section 25(1) (a), Section 39
Criminal Procedure Code, 1973 (CrPC) — Section 482
Terrorist and Disruptive Activities (Prevention) Act, 1985 — Section 5

Citation : (2016) 03 DEL CK 0078

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Vikas Sharma, Advocate and Party-in-Person, for the Appellant; Amit Chadha, APP and Vishram Meena, SI, for the Respondent

Final Decision : Allowed

Judgement

P.S. Teji, J.—1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 320/2013 dated 26.10.2013 under Section 25/54/59 of the Arms Act, 1959 registered at Police Station IGI Airport, Delhi and the proceedings arising therefrom.

2. The facts as culled out from the record are that on 25.10.2013 at about 2200 hours, the petitioner who is a United States of America resident reported for pre-embarkment security check at the airport. During screening of her hand baggage, one live cartridge was detected. On inquiry, the petitioner admitted the same but failed to produce any legal document to retain the cartridge. The petitioner was offloaded and handed over to the police for further action along with the recovered cartridge. The inquiry revealed that the petitioner was travelling to Newark by Flight No.UA-83X.

3. On receipt of the information, the police reached the airport and seized the recovered live cartridge after preparing its sketch. The cartridge was converted

into a sealed parcel and FSL form was filled up. A rukka was prepared and FIR of the present case was registered.

4. During the course of investigation, the petitioner was interrogated, who disclosed that she was a USA national and an employee of United Airlines. She was having a boy friend some time ago, namely, Brain Mount who was working with US Army who usually carried her bag for his own use. The boy friend of the petitioner was having a gun in the US and the recovered cartridge might be of the boy friend of the petitioner. After recording disclosure statement of the petitioner, she was put under arrest. Seized cartridge was sent to Forensic Science Laboratory (FSL) and as per the report of the FSL, the recovered cartridge was found to be live. Test fire was successfully conducted in the laboratory and it was opined to be ammunition as defined in the Arms Act. Sanction under Section 39 of the Arms Act was obtained and charge sheet was filed in the Court.

5. I have heard the learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State.

6. Argument advanced by the learned counsel for the petitioner is that the petitioner was unaware that she was in possession of the cartridge lying in her handbag. It is further argued that the petitioner was not in conscious possession of the live cartridge. There is absence of reasonable suspicion and sufficient material against the petitioner to frame charge. It is further argued that the petitioner is a respectable person and she has clean antecedents as she has never been involved in any other criminal case. It is further submitted that the the recovered cartridge might be of the boy friend of the petitioner.

7. On the other hand, the learned APP for the State has opposed the present petition on the ground that on interrogation, the petitioner failed to produce any Valid Arms Licence to authenticate the possession of the cartridge 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 was interrogated who admitted her guilt of carrying live ammunition with her in her hang bag without a valid arms licence. Further, the ballistic expert has opined that the cartridge sent for examination was live and covered under ammunition as defined in the Arms Act, 1959. He further argued that there is sufficient evidence on record against the petitioner to prosecute her under Section 25 of the Arms Act, 1959.

8. I have gone through the ratio of judgment in the case of Gunwantlal v. The State of Madhya Pradesh in which the Hon"ble Apex Court observed that :

"5.....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.

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As we said earlier, 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."

The above position was reiterated by the Constitution Bench of Hon"ble Apex Court in the case of Sanjay Dutt v. State through C.B.I., Bombay in which it was 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 unauthorized substance has been understood. (See Warner v. Metropolitan Police Commissioner 1969 (2) AC 256 and Sambasivam v. Public Prosecutor, Federation of Malaya. , 1950 AC 458.) "

This Court in the case of Gaganjot Singh v. State , has observed that :

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).

In similar circumstances, this Court in Rahul Dhir v. State (NCT of Delhi) & Anr. , 2015 (4) JCC 2577 observed as under :

"In the present case, it is alleged against the petitioner that two cartridges were recovered from his baggage. This Court is of the considered opinion that mere

recovery of cartridges itself is insufficient to prove the offence in the absence of any intention. It was contended by the petitioner that he was having the said cartridges since long as it belonged to his deceased father and he was keeping the same as antique item. It is also matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridges for committing any criminal act. So, there cannot be any intention on the part of the petitioner to carry the recovered cartridges to use them in any offence."

9. The main contention of the learned counsel of the petitioner is that the petitioner had no knowledge of having live cartridge in her hand baggage and that there are no allegations of any firearm being discovered/recovered from her or any allegation of "conscious possession" of the cartridges, therefore the petitioner bonafidely remained oblivious of its presence in her handbag. It is further submitted that, as a matter of fact, no other incriminating material was found or recovered from the petitioner besides the alleged cartridge. He further argued that though the bullet seized and subsequently tested in this case is live one 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.

10. The allegations leveled against the petitioner are that one live cartridge was recovered from her baggage at the time of security check. Undisputedly, the petitioner is a citizen of USA and was working with United Airlines. On 16.10.2013, the petitioner had left for Florida and boarded the United Airlines flight from Tampa International Airport, Florida and then she landed at Newark International Airport, New York from where she came to Mumbai on the same day. Thereafter, the petitioner took an Air India connecting flight on 17.10.2013 to IGI Airport, New Delhi. During the said period, the petitioner went through various security checks and the live cartridge was not found from her hand baggage. The said bullet, during screening of her bag, was found in her hand baggage. The petitioner was not aware of the bullet lying in the hand bag and the same must have been left out in the bag due to inadvertent oversight and the same appears to be genuine and bona fide as no attempt was made by the petitioner to conceal the said bullet nor the said bullet was found hidden in a secret compartment of her baggage to evade detection. The handbag of the petitioner passed through several security checks in different airports and nowhere, the said bullet was detected. Carrying of the bullet in the handbag into the airport though is a mistake, appears to be inadvertent oversight, when she has started her journey from USA.

11. As noticed above, the alleged recovered cartridge, which on examination by expert has been confirmed to be live in nature was seized by the authority. The petitioner, no doubt, was in possession of it. However, she expressed her lack of awareness of the same. There is no material on record to indicate that her statement is groundless. There is no material to show that she was conscious of

possession of the cartridge in her bag. Though the ballistic report confirms it to be bullet and consequently an "ammunition", by itself that is insufficient to raise suspicion, much less reasonable suspicion, of petitioner's involvement in an offence which, necessarily had to be based on proven conscious possession.

12. I am convinced that the petitioner was not conscious/aware of the presence of the bullet in her handbag till it was detected by the security personnel during screening of her handbag at IGI Airport, New Delhi and therefore, it cannot be termed as "conscious possession".

13. This Court is of the considered opinion that mere recovery of cartridge itself is insufficient to prove the offence in the absence of any intention. It was contended by the petitioner that the said cartridge might be of his boy friend who was serving in US Army as he used to carry gun and by mistake the said cartridge came in the hand baggage of the petitioner. It is also matter of record that no weapon was recovered from the petitioner to connect her with the intention to use the recovered cartridge for committing any criminal act. So, there cannot be any intention on the part of the petitioner to carry the recovered cartridge for using it in any offence.

14. Applying the principles, in the decisions noticed supra, to the facts of the present case and considering the attending circumstances, in my opinion, no offence is made out against the petitioner under Section 25/54/59 of the Arms Act, 1959. Hence, allowing continuance of the criminal proceeding against the petitioner would be an abuse of process of law and that the ends of justice require that the impugned proceeding be quashed.

15. In view of the above discussion, the present petition is allowed and FIR No. 320/2013 dated 26.10.2013, under Section 25/54/59 of the Arms Act, 1959 registered at Police Station IGI Airport, Delhi and the proceedings arising therefrom are hereby quashed.