

(2019) 03 DEL CK 0244

In the Delhi High Court

Case No : Criminal Writ Petition No. 784 Of 2019

Pawan Gaur

APPELLANT

Vs

State (N.C.T Of Delhi) & Anr

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Arms Act, 1959 — Section 5(d), 25, 25(1)(a)

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

Citation : (2019) 259 DLT 105 : (2019) 2 JCC 1107

Hon'ble Judges : Sangita Dhingra Sehgal, J

Bench : Single Bench

Advocate : Ajay P. Tushir, Varun Malik, Satya Ranjn Swain, Rahul Mehra

Final Decision : Disposed Off

Judgement

Sangita Dhingra Sehgal, J

1. The present petition under Article 226/227 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. 341/2018, 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 01.07.2018, the petitioner was departing from New Delhi to Bangalore, via Air Asia Flight No. 15-721. That during screening of the baggage under tag No. 0007070645 the complainant noticed a suspicious image and the baggage was referred to physical check during which, one live cartridge was recovered from the check-in baggage of the petitioner thereafter the FIR no. 341/2018 dated 02.07.2018 under Section 25 of Arms Act, 1959 was registered.

3. Learned counsel for the petitioner did not dispute the recovery of one live cartridge from the baggage of the petitioner but submitted that the petitioner holds a valid arms license issued to him from Rajasthan bearing No- 11/2006/DM/

GNR. He however, argued that the petitioner had no knowledge of the said cartridge in his baggage and the same came to light at the time of security check.

4. Learned counsel for the petitioner further contended that the petitioner was not in the 'conscious possession' of the alleged live cartridge and even no weapon or arms were recovered from the petitioner during the physical check-up. Learned counsel for the petitioner further contended that though the seized ammunition belonging to the petitioner is a live cartridge and constitutes "ammunition", nevertheless, the long line of authorities have held that mere possession without any consciousness of such possession would not constitute an offence under the Arms Act. He further contended that the possession in the present case was neither 'conscious' nor 'intentional', hence, no offence under the Arms Act, 1959 is made out.

5. Per contra, Mr. Rahul Mehra, Standing Counsel for State, opposed the present petition and contended that the petitioner was in 'conscious possession' of the seized ammunition, though he admitted that the ammunition found in the check in baggage has no ability to be used without a firearm.

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

7. At the outset, it is observed 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, 1959.

8. 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 unauthorized 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.

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....."

10. 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).

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"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."

11. The issues involved in the present case, is fully 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 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 No-11/2006/DM/GNR. 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 and the same was valid till 21.06.2019. The purchase of ammunition by the petitioner from Pawan Armoury, Arms & Ammunition, Sri Gaya Nagar, Rajasthan also stood verified by the state. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridges in his baggage. 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.

12. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridges in the bag till the same were 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. Consequently FIR no. 341/2018, under Section 25 of the Arms Act 1959 and proceedings emanating therefrom are hereby quashed.

13. Accordingly, the present petition stands disposed of.