

(2022) 05 DEL CK 0114

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 797 Of 2022

Ravi Inder Singh Johar

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)(a)

Arms Act, 1878 — Section 19(1)(f)

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

Citation : (2022) 05 DEL CK 0114

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Harsimran Kaur Rai, Prem Kumar, Amit Ahlawat

Judgement

Jasmeet Singh, J

1. The present petition is filed and preferred by Ravi Inder Singh Johar, the petitioner for quashing of FIR No. 500/2018 registered at P.S. IGI Airport, New Delhi u/s 25 of the Arms Act and the proceedings emanating therefrom.

2. The petitioner is present in Court and has been identified by Ms. Harsimran Kaur Rai, learned counsel for the petitioner.

3. It is the Petitioner's contention, that on 07.09.2018, the petitioner was travelling to Bangkok from Delhi by flight No. TG-324 and to his utter surprise during screening of his handbag, five cartridges were discovered. He states that since he had to rush to Delhi from Ludhiana, Punjab to reach the IGI Airport on time for his flight, he could not check the contents of the handbag which he had borrowed from his mother. Hence, he had no reason to check for its contents.

4. He further states that his mother, to whom the handbag containing the cartridges belongs to, holds a valid receipt for their purchase from the Fort Nelson, Museum, London. The said cartridges are dummy cartridges sold at the museum as memorabilia.

5. Furthermore, the petitioner did not have any knowledge of the presence of the cartridges inside the handbag he had just borrowed from his mother. Even in the chargesheet there is no mention that the petitioner had conscious possession of the alleged cartridge.

6. The status report on record discloses the following:

"During further course of investigation, the exhibits (05 Cartridges) were sent to FSL, Rohini, Delhi for examination and expert opinion and as per FSL report '(i) Five.308" improvised cartridges without propellant having firing pin impressions marked exhibits A1 to A5 are not live. (ii) The exhibits A1 to A5 are ammunitions defined in the Arms Act, 1959'."

7. 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)]."

8. 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 clement 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 clement, 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."

9. The above judgments require conscious possession or knowledge of the possession on part of the accused. The Petitioner has been able to make out a case that he was not conscious about the possession of the ammunition. He has also stated on record that they were dummy cartridges and the subsequent actions have taken place unknowingly.

10. Furthermore, the Status Report on record discloses that the ammunition was not live.

11. Noting the above, FIR No. 500/2018 dated 07.09.2018 registered u/s 25 of the Arms Act, 1959, P.S. IGI Airport against the petitioner and the proceedings emanating therefrom is hereby quashed, subject to payment of costs of Rs. 25000/- to DHCLSC within 4 weeks and proof be filed, failing which, the file will be put up.