

(2022) 04 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Petition No. 1302 Of 2021

Ritesh Taneja

APPELLANT

Vs

State And Anr.

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 482
Arms Act, 1959 — Section 5(d), 25, 25(1)(a), 30
Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 5

Citation : (2022) 04 DEL CK 0029

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Amir Chaudhary, Karan Dhalla

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking following prayers :-

(i) Quash the FIR No. 044/2019 dated 06.02.2019 P.S. IGI Airport, Delhi, u/s 30 Arms Act 1959 qua the Petitioner/accused person named in the FIR along with all the proceedings emanating there from

(ii) Pass such other and further orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The brief facts of the case are that on 06.02.2019, the petitioner was departing from New Delhi to Raipur, via GoIndigo flight No. 6E-2757, seat No. 7F. It is alleged that during screening of the petitioner's hand baggage 15 live cartridges were recovered. On questioning, the petitioner could not produce any arms licence but he stated that those cartridges were related to him and he

possesses the licence but the same was not carried by him at that time. He only produced the deposition slip of his licenced weapon. Hence, the present FIR bearing No 044/2019 under Section 30 Arms Act, 1959 was registered.

3. I have heard the learned counsel for the petitioner, learned APP for the State. I have also perused the status report filed by the State.

4. It is submitted by counsel for petitioner that the question of recovery of alleged ammunitions from the baggage of the petitioner though, not in dispute, but the petitioner holds a valid arms license bearing no. 538/GIV/PS-KICHA/USN/2009 issued by District Magistrate, Udham Singh Nagar. It is further submitted that the petitioner had no knowledge of the said cartridges in his baggage and the same came to light at the time of security check. It is further submitted by the learned counsel for the petitioner that the petitioner was not in 'conscious possession' of the alleged recoveries, hence, no offence under the Arms Act, 1959 is made out.

5. On the other hand, learned APP for the State opposed the present petition and submitted that the petitioner was in 'conscious possession' of the seized ammunitions, though he admitted that the ammunition found in the hand baggage has no ability to be used without a firearm. It is further submitted by learned APP that the ammunition recovered was sent to FSL and the FSL report vide No. SFSL(DLH)3632/BAL/617/16, dated 19.10.2020 has been received from Ballistics Division and it has been verified that the fifteen .32 cartridges are live and can be fired through the .32 caliber firearms. It is further submitted that a letter was sent to District Magistrate, Udham Singh Nagar, Uttarakhand for verification of accused/petitioner Arms License No 538/GIV/PS/Kichha/USN/09 vide letter No. 5240/R/SHO/IGIA dated 19.12.2020 and same has been verified and issued to Ritesh Taneja S/o Sh. Kashmir Lal Taneja R/o Ward No. 11 PS-Kichha Udham Singh Nagar, Uttarakhand of .32 caliber revolver No. N-3657 along with cartridges No. 10/25 and valid only in the state of Uttarakhand.

6. Now, in the instant case, the question which is to be considered is whether the petitioner was in conscious possession of the ammunitions allegedly recovered from him or not. 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.

7. 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"

8. 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."

9. In the case of Sanjay Dutt Vs. State reported in 1994(5) SCC410 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.

10. So, 'conscious possession' of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender. The question involved in the instant case, is fully covered by the principles laid down by the Supreme Court in the abovesaid decisions, 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 said cartridges, however, he expressed his lack of awareness in respect of the said cartridges. He also holds a valid arms licence. The said licence has been duly verified from the concerned DM Office and found that the licence was issued in the name of the petitioner and the same was valid till 11.09.2021. It is pertinent to mention here that 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 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.

11. Therefore, keeping in view the law laid down in above mentioned judgements and looking into the fact that the petitioner was not aware of the live cartridges in his hand baggage till the same were detected during screening of the petitioner's baggage and there is nothing on record to show that the petitioner is involved in any other offence except the mere recoveries made from the hand baggage of the petitioner, therefore, I find that continuance of the proceeding would be a futile exercise as the necessary ingredients to constitute the offence in question is missing. Accordingly, the present petition is allowed and FIR bearing No 044/2019 under Section 30 Arms Act, and the proceedings emanating therefrom are hereby quashed.

12. The petition stands disposed of accordingly. Pending applications, if any, are also disposed of accordingly.