

(2018) 04 DEL CK 0163
In the Delhi High Court
Case No : CRL.M.C. 960 of 2018

UNDIS VATVEDT SINGH

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Arms Act, 1959 — Section 25, 54, 59 ,45(d)

Citation : (2018) 04 DEL CK 0163

Hon'ble Judges : SANJEEV SACHDEVA

Bench : Single Bench

Advocate : Madhav Khurana, Varun Singh Thapa, Akshai Malik,

Final Decision : Allowed

Judgement

SANJEEV SACHDEVA, J.

1.The petitioner seeks quashing of FIR No.223/2015 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Order- on-Charge dated

11.01.2018.

2.The allegations in the FIR are that the petitioner, who is a Norwegian national, was travelling to Norway from Delhi. During scrutiny one live

cartridge was found in her Check-in Baggage.Â Â

3.The contention of learned counsel for the petitioner is that the petitioner had gone to visit the relatives of her husband in Nabha, Punjab and

thereafter she was to travel to Norway.Â Since, she ran short of space in her baggage, a Bag was borrowed from one of the relatives of her husband

namely Mrs. Sandesh Mohinder Kaur.Â It is contended that the petitioner was not aware that the said Bag contained a live cartridge.Â At the time

when the petitioner was apprehended, the petitioner immediately stated that the

bag was borrowed from Mrs. Sandesh Mohinder Kaur.Â Â

4.The arms licence of Mrs. Sandesh Mohinder Kaur had been produced, which has been got duly verified by the Investigating officer and the bore of the live cartridge tallies with the weapon registered in favour of the Mrs. Sandesh Mohinder Kaur

5.Learned counsel for the petitioner submits that it is not only mere presence of a live cartridge which is to be established, what is necessary to be established is conscious possession. He submits that there is no evidence to show that the petitioner was conscious of the presence of a live cartridge in her baggage and, as such, since, there is absence of mens rea, the petitioner could not be charged with such offence.Â

6.It is a settled proposition of law that possession under Section 25 of the Arms Act refers to not only physical possession but also the requisite mental element i.e. mens rea of conscious possession.Â Mere custody without mens rea would not constitute an offence under the Arms Act.Â Conscious possession of any fire arm/ammunition is a necessary ingredient of the statutory offence entailing strict liability on the offender.

7.Reference may also be had to the decisions of coordinate benches of this court in Gaganjot Singh vs. State (Govt. of NCT of Delhi),Â 2014 SCC

Online Del 6885;Â Jaswinder Singh Vs. State (Govt of NCT of Delhi), 2015 SCC Online Del 10894 ; Sonam Chaudhary vs. State: 2016 SCC Online

Del 47; Mandeep Lambs vs. State (Govt. of NCT of Delhi): 2017 SCC Online Del 9885 and of the Supreme Court in Gunwantlal vs. State of Madhya

Pradesh: (1972) 2 SCC 194.

8.In the absence of the conscious possession of a live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act would be

applicable and it would be justified to end all such proceedings to secure the ends of justice.

9.Perusal of the record shows that the subject case is clearly covered by the decisions referred to above and the principle of law laid down by the

Supreme Court. There is no sufficient evidence or reasonable ground of suspension to justify conscious possession of the live cartridge recovered

from the baggage of the petitioner.Â The baggage from which it is recovered belongs to a relative of the husband of the petitioner.Â There is no

material on record to show that the petitioner was conscious of the possession of

the live cartridge.Â Â

10.From the perusal of the record it can be safely interpreted that the said possession of the cartridge does not fall within the ambit of conscious

possession, which is a basic ingredient to establish guilt for an offence under Section 25 of the Arms Act.Â Â

11.In view of the above, the petition is allowed.Â Â

12.FIR No.223/2015 under Sections 25/54/59 Arms Act, Police Station IGI Airport as also Order- on-Charge dated 11.01.2018 and the consequent

proceedings emanating therefrom are accordingly quashed.Â

13.Order Dasti under the signatures of the Court Master.Â Â