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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 14.01.2025

+ **CRL M.C. No. 144 of 2025**
RAMESH CHANDRA

.....Petitioner

Through:

Versus

STATE OF NCT OF DELHI

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 482 of CrPC/Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking quashing of the FIR No. 330/2021 dated 02.12.2021 under Section 25 of the Arms Act, 1959 ("*Arms Act*") registered at PS IGI Airport, Delhi.
2. It is stated in the FIR that on 01.12.2021 at 23:53 hours, one live ammunition (i.e. one cartridge) was recovered from physical inspection of the petitioner's bag. The petitioner failed to show any valid license for the same and hence, the present FIR was registered.
3. The petitioner is a citizen of India and works as a cook in Dubai.
4. Learned counsel for the petitioner states that the petitioner was planning to travel back to Dubai and purchased a bag from a roadside market and put his belongings in the bag. The petitioner was in a hurry



to catch the flight and he did not check the bag before putting his belongings in it and was thus unaware about the said one cartridge recovered from his bag.

5. He further submits that the petitioner did not have any knowledge about the presence of the recovered live ammunition in the bag. The petitioner had no intention to carry a live ammunition and the petitioner would not have carried the recovered ammunition had he known about its presence in the bag. Moreover, a single live ammunition without a fire arm can serve no illegal purpose and the recovery is only that of one single cartridge and not a fire arm.
6. Reliance is placed on the judgement of the Hon'ble Supreme Court in ***Gunwantlal v. State of M.P., (1972) 2 SCC 194*** that mere possession would not constitute offence for which conscious possession is required. Relevant portion reads as under:-

“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 nonetheless 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 Jurisprudence 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 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...”

7. I have heard the learned counsels for the parties.
8. Time and again the Hon’ble Supreme Court and this Hon’ble Court has held that the unconscious possession would not attract the rigours of the Arms Act. In ***Gunwantlal (supra)***, the Hon’ble Supreme Court emphasized that it is the necessity for the prosecution to prove that the possession of the arm or ammunition is a conscious one. This position was reiterated by the Hon’ble Supreme Court in ***Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410*** and more particularly in para 19 which reads as under:-

“19. 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 unauthorised substance has been understood. (See Warner v. Metropolitan Police Commissioner [(1969) 2 AC 256 : (1968) 2 All ER 356] and Sambasivam v. Public Prosecutor, Federation of Malaya [1950 AC 458] .)”

9. In the case of ***Gaganjot Singh v. State, W.P. (CRL) 1169/2014 dated 01.12.2014***, the Division bench of this Court has held that mere possession of the live ammunition, is insufficient to point to suspicion, much less reasonable suspicion of the petitioner’s involvement in an offence which necessarily has to be based on proven conscious possession. The operative portion of the said judgement reads as under:

“ 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).”

10. In *Namanpreet S Dhillon v. State, CRL.M.C. 1530/2022 dated 28.07.2022*, I have already held that the recovery of a single cartridge and no fire arm makes it clear that the petitioner therein did not have conscious possession of the live cartridge. The operative part of the said judgement reads as under:

“15. It is apparent from the facts of the case that only a single cartridge has been recovered from the Petitioners and no other fire arm has been recovered from him which makes it clear that the petitioner was not having conscious possession of the live cartridge. This is a testament to the fact that there was no animus possidendi.”

11. In the present case, the petitioner has submitted that he was not in conscious possession of the live ammunition as he had hurriedly put his belongings in a bag that he had bought from a roadside shop without checking it first. The same appears to be genuine as only a single cartridge and no other fire arm has been recovered from the petitioner.
12. The petitioner has been able to make out a case that he was not in conscious possession of one cartridge and that the presence of the same in the bag was merely inadvertence and carelessness.
13. In view of the said facts and circumstances, there is nothing to show



conscious and intentional possession of one cartridge by the petitioner, therefore grounds under Section 25 of Arms Act remain unmet.

14. Keeping in mind the financial capacity of the petitioner as he is working as a cook in Dubai, no costs are imposed.
15. The aforesaid FIR No. 330/2021 dated 02.12.2021 under Section 25 of the Arms Act and the consequential proceedings arising therefrom are quashed.
16. The petition along with pending applications, if any, is disposed of.

JASMEET SINGH, J

JANUARY 14, 2025 / (MS)
(Corrected and released on 21.01.2025)