

Mir Joseph vs The State (Nct Of Delhi) on 3 May, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 3099/2022
MIR JOSEPH

THE STATE (NCT OF DELHI)

Through: Mr. Sanjay L
(CrL.) for State with
Shivesh Kaushik, Advo
IGI Airport.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 03.05.2024

1. This writ petition has been filed on behalf of the Petitioner under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.315/2021 dated 22.11.2021 under Section 25 of the Arms Act, 1959 (hereinafter referred to as the "Arms Act") registered at P.S.: I.G.I. Airport, including all proceedings emanating therefrom.

2. Case of the prosecution is that on 22.11.2021, complainant Mamidipaka Prasad Kumar along with Pax, applicant came to the Police Station and handed over a complaint alleging that the applicant was travelling from Delhi to Srinagar by Vistara flight and on checking, five ammunition were recovered from his baggage and accordingly, present FIR was registered. During investigation, statement of the witnesses were recorded under Section 161 Cr.P.C. and travel documents of the applicant were obtained. Applicant was interrogated wherein he disclosed that on This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/05/2024 at 20:38:46 21.11.2021, he was travelled from USA and on 22.11.2021, he was to depart from Srinagar from T-3 IGI Airport, New Delhi to visit his ancestral property. While packing the luggage, he forgot to check his jacket in which five live cartridges of 0.22 bore were left by mistake and he inadvertently carried them with him. During further course of investigation, a letter was sent to the Embassy of the United States of America through proper channel on 30.03.2022 for verification of the firearm Permit No.3079181 followed by a reminder letter on 18.04.2024 but there has been no response.

3. Learned counsel for the Petitioner submits that Petitioner is a doctor by profession and an NRI. He had come to India to visit his native place in Srinagar and was detained for possession of five live cartridges in his check- in baggage under tag number UK-0228423261 by the security officials at the airport. It was confirmed after verification that the cartridges were from the licensed pistol owned by the Petitioner and therefore no offence is made out under Section 25 of the Arms Act, 1959. It is contended that this Court in Dhanwant Kaur v. State & Anr., CRL.M.C. 3593/2016, decided on 04.10.2016, has quashed the FIR finding that the Petitioner had inadvertently not checked the pouch in which she kept her jewellery and was therefore not in conscious possession of the five live cartridges. In the present case also, Petitioner had no knowledge about the presence of the cartridges in his check-in baggage and nothing has been shown by the prosecution to come to a different conclusion. In Gunwant Lal v. The State of Madhya Pradesh, (1972) 2 SCC 194, the Supreme Court has held that possession of firearm must be conscious to entail prosecution under the Arms Act, 1959. Reliance is also placed on the judgment of the Division Bench of the Bombay High Court in Nurit Toker v. State of Maharashtra, This is a digitally signed order.

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4. Mr. Sanjay Lao, learned Standing Counsel for the State per contra argues that Petitioner was found in possession of five live cartridges kept in his check-in baggage while travelling from Delhi to Srinagar and could not explain the possession and the FIR should not be quashed.

5. I have heard learned counsel for the Petitioner and learned Standing Counsel for the State.

6. Petitioner is a doctor by profession working in United States of America. He has taken a categorical position that he was not in conscious possession of the live cartridges and this position is uncontroverted in the Status Report. Antecedents of the Petitioner are clean and he has not been found indulging in any criminal activity in the past. Petitioner rightly contends that his case is squarely covered by several judicial precedents. In Ram Prakash Mishra v. The State NCT of Delhi, W.P. (CRL) 674/2020 decided on 11.03.2020, this Court had quashed an FIR registered under Section 30 of Arms Act, 1959 on the ground that Petitioner claimed that he was not in conscious possession and the live cartridges had remained in his hand bag, which position was not refuted by the State. Relevant paragraphs of the order are as follows:-

"7. It is now well settled that no offence under the Arms Act, 1959 would be made out if the person in possession of the ammunition was not aware of its existence. (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. In the present case, the petitioner claims that he was not conscious of the fact that the said live cartridges had remained in his hand bag. This Court finds no reason to disbelieve the aforesaid statement. The learned counsel appearing for the respondent also states, on instructions, that the

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9. In view of the above, the present petition is allowed and the FIR in question is quashed."

7. This Court in Gurveer Singh v. State, 2022 SCC OnLine Del 1585, observed as follows:-

11. The Petitioner submits that he was not in conscious possession of the alleged ammunition as he wore the jacket after very long time and couldn't check it thoroughly as he was in a rush to reach the airport.

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16. 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)]."

17. 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 This is a digitally signed order.

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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 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.""

18. The above judgments require conscious possession or knowledge of the possession. The Petitioner has been able to make out a case that he was not conscious about the possession of the live ammunition. It was a mishap that the live ammunition remained in his jacket and he came to airport with the same jacket. He has produced a valid arms license and the status report records the same. Even though the authenticity is yet to be verified, *prima facie*, the facts as submitted and the status report taken on record, corroborates that the Petitioner did not have knowledge of the This is

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8. I may also refer to the decision of this Court in Ritesh Taneja v. State and Ors., 2022 SCC OnLine Del 971, wherein the Court has taken a similar view and the relevant passages are as follows:-

"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.

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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."

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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)."

xxxx xxxx xxxx xxxx "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."

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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 This is a digitally signed order.

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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."

9. In *Rajeev Kumar Tandon v. The State (NCT of Delhi) & Anr.*, CRL.M.C. 6386/2019, decided on 04.08.2023, this Court quashed the FIR against the Petitioner who was a doctor by profession on the ground that he was not in conscious possession of the live cartridges and therefore offence was not made out within the meaning of Section 25 of the Arms Act, 1959. I may also allude to the decisions of this Court in *Swaran Kanta v. State of NCT of Delhi Through Chief Secretary*, W.P.(CRL.) 2492/2021 decided on 20.02.2023 and *Mandeep Singh v. The State (NCT of Delhi) & Ors.*, W.P.(CRL.) 1094/2023 decided on 11.08.2023, where a similar view has been taken.

10. In view of the aforesaid decisions and the uncontroverted position that the Petitioner was not in conscious possession of the five live cartridges, which were found in his check-in baggage and the pistol being licensed, this Court is of the view that present FIR deserves to be quashed. Accordingly, FIR No.315/2021 dated 22.11.2021 under Section 25 of the Arms Act, 1959, This is a digitally signed order.

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11. Petition stands disposed of.

JYOTI SINGH, J MAY 3, 2024/DU This is a digitally signed order.

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