

Wasim Soliman vs The State (N.C.T Of Delhi) on 24 November, 2020

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1705/2020

WASIM SOLIMAN

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Through: Mr.S.P. Singh and Mr. Harm
Singh, Advocates

versus

THE STATE (N.C.T OF DELHI)

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Through: Mr. R.S. Kundu, ASC for th

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HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 24.11.2020

1. The hearing has been conducted through Video Conferencing.
2. This is a petition for quashing of FIR No.387/2016, under Sections 25/54/59 Arms Act, 1959, registered at PS:IGI Airport, New Delhi.
3. As alleged, on 9.10.2016, at about 1210 hours, the petitioner was departing for Vishakapatnam from T-3, Domestic Airport, IGI Airport, Delhi with his wife and minor child. During the security check-up, one live cartridge was recovered from the petitioner's bag.
4. It is the case of the petitioner that he had no knowledge of such live cartridge in his bag and that his brother, who is in Army had used such bag earlier and that the petitioner was never in conscious possession of such live cartridge and he had travelled on the same date by air, but no such live cartridge was detected nor the petitioner was made aware of it.
5. Learned ASC for the State is present.
6. I have heard the arguments.
7. The petitioner has filed on record the true copy of the license and the weapon card of one Mr. Ragib Soliman, his brother. The army ID of Mr.Ragib Soliman is also filed.

8. In Sonam Chaudhary & Ors. v. The State (Govt. of NCT of Delhi) & Ors., MANU/DE/0026/2016, this Court held as under:-

"34. Therefore, applying the said principles of law, as discussed above, and considering the fact that the petitioners had left behind the live cartridge/cartridges in their luggage by mistake and/or inadvertent oversight, when they started their respective journeys and that the petitioners were not aware of the presence of the live cartridge/cartridges in their handbags till the same were detected by the security personnel during screening of the baggages at the concerned places, it can be safely inferred that the said possession does not fall within the ambit of „conscious possession . Admittedly, no firearm or weapon has been recovered from any of the petitioner and they have not extended any threat to any person or police official, hence, no offence under Section 25 of the Act is made out against any of the petitioner. Therefore, allowing continuance of the criminal proceedings against them would be an abuse of the process of Court."

9. Further, in Navdeep Kaur v. The State NCT of Delhi, MANU/DE/5766/2017, this Court held as under:

"3. Times without number, this Court has stated that without the requisite mental intent for possessing the fire arm, no offence under Section 25 of the Arms Act can at all be said to have been made out.

4. In Gunwantlal vs. The State of Madhya Pradesh, AIR 1972 SC 1756, it has been held by the Supreme Court that the possession of fire arms must have the element of consciousness or knowledge of that possession in the person who is charged for such an offence. Possession simpliciter would not constitute the offence. That apart, without the presence of the fire arm, cartridge would not fall in the category of an ammunition which could be used.

5. Considering the aforesaid facts, this Court is of the view that the proceedings against the petitioner should not be allowed to be continued."

10. Further, in Gurpreet Singh Mangat v. State of NCT of Delhi & Ors., MANU/DE/0868/2020, this Court held as under:

"8. The above proposition of law was reiterated by the Hon ble Apex Court in Sanjay Dutt v. State Through CBI Bombay (II), Crimes 1994 (3) 344 (SC) and held 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 unauthorised substance has been understood.

9. In the present case, there is nothing on record to suggest that petitioner was in conscious possession of the cartridge and he was aware of the said fact. Mere recovery of cartridge itself is not sufficient to prove the offence in the absence of any intention. It is contended by Ld. Counsel for the petitioner that by mistake brother-in-law of the petitioner kept his jacket between the trolley bags of the petitioner. Petitioner was unaware of the said jacket and entered the airport with the said jacket. It is also a matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridge for committing any offence.

10. In view of the above discussion, this court is of the opinion that no offence is made out against the petitioner under Section 25 Arms Act. This court is further of the view that allowing continuation of criminal proceedings against the petitioner will be an abuse of process of law. The writ petition is, therefore, allowed and proceedings emanating from FIR bearing no. 56/2020, u/s. 25 Arms Act, registered with PS IGI Airport, Delhi are hereby quashed. The petition stands disposed of accordingly."

11. In view of above, there is no use to continue with the proceedings of the present FIR as the facts disclose the petitioner was not in conscious possession of the live cartridge and as such, FIR No.387/2016, under Sections 25/54/59 Arms Act, 1959, registered at PS:IGI Airport, New Delhi stands quashed. All the proceedings emanating therefrom are also quashed.

YOGESH KHANNA, J.

NOVEMBER 24, 2020 tp