

# Prashant Gupta vs State (Govt. Of Nct Of Delhi) on 18 December, 2020

**Author: Vibhu Bakhru**

**Bench: Vibhu Bakhru**

\$~2

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (CRL) 1949/2020

PRASHANT GUPTA

Through

.....  
Mr. Jaspreet Singh Rai,

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Ms. Kamna Vohra, ASC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 18.12.2020 [Hearing held through videoconferencing] Crl. M. A. No.16281/2020

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

3. Issue notice.

4. Ms.Vohra, the learned ASC appearing for the State accepts notice.

5. The present petition has been filed, inter alia, praying that FIR bearing No.231/2018 under Section 25/54/59 of the Arms Act, 1959 registered with Police Station IGI Airport and all proceedings emanating therefrom be quashed. The said FIR was registered as it was reported that five live cartridges were discovered in the check-in baggage of the petitioner while he was scheduled to travel from Delhi to Goa by Air Asia Flight (15-

773) on 09.05.2018. It is verified that the petitioner possessed a valid Arms Licence (Licence bearing No.8283-8383/Atrauli/Aligarh/UP) issued by the State of Uttar Pradesh, at the material time.

6. It is the petitioner's case that he had to travel urgently and in the hurry and inadvertently, he did not remove cartridges from his luggage. He had packed his belongings in the luggage oblivious of the fact that that the the same also contained five live cartridges. He states that he was not conscious

that his baggage contained the said cartridges and was shocked when the same were discovered in his check-in bag while screening.

7. Ms. Vohra, the learned ASC appearing for the State submits that the petitioner has violated the terms of his Arms Licence as the said Arms Licence was limited to the State of Uttar Pradesh and the petitioner had carried the cartridges outside the said State. She states that in this view, a charge-sheet has also been filed.

8. In the present case, there appears to be no material to doubt the petitioner's assertion that he was not aware of the live cartridges in his luggage. Admittedly, the petitioner had a valid Arms Licence and it was not illegal for him to possess the said live cartridges. However, he was not permitted to carry the same outside the State of Uttar Pradesh. As noted above, it has been explained by the petitioner that he had done so inadvertently and was not conscious of the possession of the said cartridges at the relevant time.

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 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 (sic) 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."

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."

11. This Court has also held in several decisions, in somewhat similar facts, that unconscious possession would not attract the rigours of the said Arms Act, 1959. [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]].

12. In view of the above, the present petition is allowed and FIR bearing No.231/2018 under Section 25/54/59 of the Arms Act, 1959 registered with Police Station IGI Airport and all proceedings emanating therefrom are quashed.

VIBHU BAKHRU, J DECEMBER 18, 2020 dr