

Prabhsharan Kaur Bhatia & Anr vs Govt Of Nct Delhi & Ors on 7 May, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1246/2024 & CRL.M.A. 12135/2

PRABHSHARAN KAUR BHATIA
& ANR.

Through: Mr. Gursimar Singh
Chirag Gupta and
Akshat Vachher, A

ver

GOVT OF NCT DELHI & ORS.

Through: Mr. Rahul Tyagi,
the State with
Sibou, Mr.
Mahajan, Ms. Ai
Parashar, Ms. U
Mahipal Singh B
Ms. Anju Rani,
Sood and Ms. Ai
Segal, Advs. wi
Pratima, PS IGI
Mr. Vinay Yadav
with Ms. Tanish
GP for R-3 / UO

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 07.05.2024 CRL.M.A. 12136/2024 (exemption from filing, fair, translated, typed and certified copies of the annexures)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(CRL) 1246/2024 & CRL.M.A. 12135/2024

3. The present petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), inter alia, seeking quashing 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 14/05/2024 at 20:33:13 of FIR No. 261/2024 dated 07.04.2024, for offence under Section 25 of the Arms Act, 1959, registered at Police Station I.G.I. Airport. The petitioners also seek restoration of the VISA granted in favour of the petitioners which was allegedly cancelled by Respondent No.3.

4. It is averred that one live cartridge was seen during the screening of the hand baggage of Petitioner No.1. The same was subsequently recovered during physical check. The present FIR was registered against Petitioner No.1 as she failed to produce valid documents for carrying the seized ammunition. Petitioner No.2 is the husband of Petitioner No.1.

5. During the investigation, Petitioner No.1 produced a copy of an Arms License issued in the name of their son in respect of a .32 Bore revolver, which was renewed from 23.12.2021 till 22.12.2026.

6. The learned counsel for the petitioners submits that Petitioner No.1 is a senior citizen and a school principal. He submits that Petitioner No.1 was completely unaware and unconscious of the presence of the live cartridge in her handbag.

7. He submits that Petitioner No.1 had no criminal intention to carry the cartridge which was seized.

8. He submits that the son of the petitioners had procured a licensed .32 revolver and cartridges from the Department of Home Affairs and Justice, Government of Punjab. He submits that the petitioners are law abiding citizens, and had surrendered/ deposited the pistol and cartridges with Majha Gun House, Taran Taran on 02.04.2024 in safe custody due to imposition of Model Code of Conduct.

9. He submits that the handbag which was used to carry and deposit the pistol and cartridges was torn from the inside due to 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 14/05/2024 at 20:33:13 which one cartridge went further inside the bag, and was thereafter inadvertently carried by Petitioner No.1 while travelling.

10. He submits that the offence under Section 25 of the Arms Act, 1959 is not made out when the suspect is not conscious of the possession of live ammunition. In support of his contention, the learned counsel for the petitioners has placed reliance on the judgment of a Coordinate Bench of this Court in the case of Adhiraj Singh Yadav v. State : W.P.(CRL) 754/2020.

11. The learned Additional Public Prosecutor for the State submits that even as per the record of the State Crime Record Bureau, Petitioner No.1 has no previous involvement or conviction. As per the Status Report, it is stated that the license of the son of the petitioners has been verified through proper channel and the same is valid till 22.12.2026.

12. The offence under Section 25 of the Arms Act, 1959 is non-compoundable.
13. The question that falls for consideration of this Court is whether Petitioner No.1 was in 'conscious possession' of the ammunition allegedly recovered from her or not.
14. A perusal of Section 25 of the Arms Act, 1959 shows that the term 'possession' refers to the possession backed by the requisite mental element, that is conscious possession. Therefore, mere custody, without being aware of such possession does not constitute an offence under the Arms Act.
15. The term 'conscious possession' has been elaborately dealt with by the Constitution Bench of the Hon'ble Apex Court in the case of *Gunwantlal v. State of M.P.* : (1972) 2 SCC 194. The relevant paragraph of the said judgment reads as under:

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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 14/05/2024 at 20:33:14 "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 some one 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."

16. In the case of *Sanjay Dutt v. State through CBI, Bombay (II)* : (1994) 5 SCC 410, the Constitution Bench of the Hon'ble Apex Court, while discussing what entails conscious possession, observed 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 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 14/05/2024 at 20:33:14 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."

17. It is the case of Petitioner No.1 that she was not conscious of the fact that the bag carried by her contained one live cartridge. It is stated that Petitioner No.1 took the handbag with her that she had carried to surrender the pistol and cartridges oblivious of the fact that one cartridge had been left in her bag due to it being torn from inside. It is to be kept in mind that the arms which are alleged to be carried by Petitioner No.1 is not a gun but only one cartridge. It is not disputed that the son of the petitioners is holding a valid arms licence.

18. The version of Petitioner No.1 is a plausible one. It is settled law that the Court, while exercising jurisdiction under Section 482 of the CrPC, can interfere at any stage to prevent abuse of the process of Court, with the safeguard that the use of such power should be legitimate.

19. The State has not alleged that the possession was conscious or there was some mens rea behind carrying the cartridge. The present case seems to be a case where Petitioner No.1 inadvertently carried the cartridges in his bag.

20. In similar circumstances, a Coordinate Bench of this Court in Adhiraj Singh Yadav Vs. State : W.P.(CRL) 754/2020, held as under:

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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 14/05/2024 at 20:33:14 "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)]."

21. In *Sonam Chaudhary v. The State (Government of NCT of Delhi)* : CRL.M.C. 471/2015, another Bench of this Court, held that:

"31. Recently, this Court in the case bearing Crl.M.C.No.4207/2104, titled as „Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.', decided on 11.08.2015, held that since the prosecution has failed to prove that the possession was conscious possession and, therefore, on the basis of mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959. Accordingly, while allowing the petition noted above, this Court quashed the FIR, summoning order and all proceedings emanating therefrom.

32. Thus, the law is well settled that 'conscious possession' is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.

33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua the petitioners under the Arms Act, 1959.

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 This is a digitally signed order.

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35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed."

(emphasis supplied)

22. It is also worth noting that Section 45(d) of the Arms Act, 1959 does not make the acquisition/possession or carrying of minor parts of arms or ammunition which are not intended to be used along with complementary parts an offence under the Arms Act. In the present case, barring the allegation of the Petitioner No.1 having been found in possession of one live cartridge in her hand baggage, there is no other material on record to show that Petitioner No.1 was in conscious possession of the said live ammunition.

23. On a holistic reading of the facts and the material placed on record, this Court is of the opinion that the necessary ingredients for the offence under Section 25 of the Arms Act, 1959 are not made out against Petitioner No.1.

24. This Court finds that continuance of the proceedings would be a futile exercise and accordingly, for the reasons stated above, this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

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25. In view of the above, FIR No. 261/2024 and all consequential proceedings arising therefrom are quashed, subject to the payment of cost of 10,000/- by Petitioner No.1, to be deposited with Delhi Police Welfare Fund, within a period of eight weeks from the date.

26. As far as prayer (b) regarding restoration of the VISA of the petitioners is concerned, the learned counsel for Respondent No. 3, on instructions, submits that the Visa granted in favour of the petitioners has not been cancelled.

27. He submits that the respondent authorities in any case have no power to cancel the Visa issued by the Australian Authority.

28. In view of the submission of the learned counsel of Respondent No.3, no order is required to be passed as far as prayer (b) is concerned.

29. The present petition is partly allowed in the aforesaid terms.

AMIT MAHAJAN, J MAY 7, 2024 'PB' This is a digitally signed order.

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