

# Pardeep Kumar Mishra vs State (The Nct Of Delhi) & Anr on 7 October, 2020

**Author: Yogesh Khanna**

**Bench: Yogesh Khanna**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(CRL) 1217/2020  
PARDEEP KUMAR MISHRA

Through : Mr.Rahul Dhankar,  
Kumar and Ms.Ayushi R  
Advocates.

versus

STATE (THE NCT OF DELHI) & ANR. ...

Through : Ms.Richa Kapoor, ASC fo  
Respondent No.2/Anil  
person with SHO Vivek  
ASI Rajbir PS Janak P

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA  
ORDER

% 07.10.2020

1. The hearing has been conducted through Video Conferencing.
2. This petition is filed for quashing of FIR bearing No.01/2020 under Section 25/54/59 Arms Act, PS Janak Puri, Delhi. The petitioner is an employee of M/s. Balaji Associates, owned and run by Mrs.Sangeeta Gahlot w/o respondent no.2.
3. It is stated on 14.01.2020 the respondent no.2 was attending a family function at Tilak Nagar, Delhi but in some hurry he left his bag in office while proceeding towards such function. The said bag contained medicines prescribed by the doctor, mobile phone charger, arms license, some cash and other things. The respondent No.2 suffers from diabetes.
4. It is submitted the respondent no.2 called the petitioner to bring his bag to the venue of function for taking his medicines. The petitioner after his call rushed towards Tilak Nagar and he being an employee of respondent no.2 was not allowed to open the bag or to take things out from it.
5. The petitioner then took the fastest mode of transport i.e. Metro to reach on time at the function. As he entered into Navada Metro Station and while scanning of bag in X-BIS machine, his bag was seized by the staff of the Metro security as they found arms and ammunition in the said bag, with some other articles.

6. The CISF staff of Navada Metro Station referred the matter to the Police and the present FIR was registered. It is stated on 20.01.2020, the application for Jama Talashi was filed and it was allowed on 01.02.2020 and all things, except arms and ammunition, were directed to be released to respondent no.2.

7. The State has verified the Arm's License belong to Mr.Anil Gahlot/respondent no.2 herein and is valid till 31.07.2022. It is stated the possession of cartridges by the petitioner was not a conscious possession and as such he would not be made liable under Section 25/54/59 Arms Act. He supports the case of petitioner.

8. In Abdul Nasir Barish vs. State of NCT of Delhi passed in W.P.(CRL.) 3516/2015 the Court held:

"The petitioner's possession of the 8 live cartridges in his check- in baggage was not conscious. The petitioner was evidently not aware that the said 8 cartridges form part of his check-in baggage. The possession of the said 8 live cartridges has been sufficiently explained by the petitioner as his father, who was also a co-passenger, had a licensed revolver to which those cartridges related."

In the said judgment of this Hon'ble Court the judgement of the Hon'ble Apex Court in Gunwant lal v. The State of Madhya Pradesh, (1972)2 SCC 194 has been cited wherein the following observation of the Hon'ble Apex Court has been taken due note of:

"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. In any disputed question of possession, specific facts admitted or proved alone will establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question."

9. In the matter of Anzum Azgar Zaidi in CRL.REV.PET.150/2019 the Court observed :

"the trial court was also conscious of the fact that the petitioner could not have had the requisite mens rea and that appears to be the reason that charge was not framed under section 25 (under which the FIR and Charge Sheet was filed) and was framed only under section 30 of the Arms Act". That this Hon'ble Court, in the matter of and also in the matter of Ranvir Arora vs. State of NCT OF DELHI CRL MC. 729/2017

quashed the FIR under section 30 Arms Act also gave reference of the matter of Gaganjot Singh (supra) in a case of recovery of a solitary live cartridge found from the possession of the petitioner therein expressed his lack of awareness as the bag recovered belonged to his uncle and held that the possession of the petitioner therein was not conscious and quashed the proceedings."

10. In Hari Kishan vs. State (NCT of Delhi) in CRL.M.C.3865/2016 order dated 31.05.2019 the Court observed :

"quashed the FIR under section 25 of Arms Act registered with Police Station Qutub Minar Metro, for the alleged possession of a live round (8MM KF-91) on 25.2.2014 at 12.35 hours at the Saket Metro Station (South Side X- BIS machine) and was later charge sheeted for the alleged commission of an offence punishable under Section 25 of the Arms Act, 1959. That even the prosecution has not investigated the friend of the petitioner, i.e. Inderjeet Singh who allegedly held a valid Arm Licence of .32 Calibre and from him the petitioner had borrowed the bag which contained the alleged live cartridge. Nothing contrary is placed to show that the petitioner had knowledge or had conscious possession of the alleged cartridge even if the story of the prosecution is believed. It is settled law that in the absence of the conscious possession of a live cartridge, which cannot be used for any purpose, Section 45(d) of the Arms Act shall be applicable and it would be justified to end all such proceedings to secure the ends of justice."

11. In Birender Shukla vs. The State of Govt. of NCT of Delhi, in CRL.M.C.117/2018 order dated 25.05.2019 the Court held:

"that In the absence of the conscious possession of live cartridge, which cannot be used for any purpose, section 45(d) of the Arms Act would not be applicable and it would be justified to end all such proceedings to secure the ends of justice."

12. In view of the above since the possession of the cartridges was not a conscious possession by the petitioner and since the petitioner is merely an employee of respondent no.2, the petitioner would not be liable to be charged under Section 25/54/59 of Arms Act, hence the FIR bearing no. No.01/2020 under Section 25/54/59 Arms Act, PS Janak Puri, Delhi and the proceedings emanating therefrom stands quashed.

13. Petition stands disposed of in terms of above. Pending application(s) if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

OCTOBER 07, 2020 DU