

Mandeep Singh vs State (Govt Of Nct Of Delhi) on 12 April, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (CRL) 2165/2020
MANDEEP SINGH

Through: Ms. Harsimran Kaur Rai
Prem Kumar, Advocates

versus

STATE (GOVT OF NCT OF DELHI)

Through: Mr. A. Aggarwal, ASC f
along with SI Satish K
P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 12.04.2022

1. The instant writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking following reliefs:-

"(a) quash the FIR No. 247/2018 dated 18.05.2018 registered with Police Station: IGI Airport, under section 25/54/59 of Arms Act, 1959 and proceedings emanating there-from;

(b) quash the Cr. Case No. 9576/2019 pending before the Ld. ACMM, Patiala House Courts, New Delhi;..."

2. The brief facts of the case as per the FIR are that on 17th May, 2018, the petitioner was travelling to Dubai from Delhi by IndiGo Airlines flight No. 6E-47. During the pre-embarkation screening of his check-in baggage, seven live cartridges were discovered from his check-in baggage. The petitioner carried his check-in baggage without thoroughly checking the contents and therefore, himself could not have known the presence of one cartridge in his luggage. He was unaware about the presence of the said cartridge.

3. During the course of investigation the petitioner produced the valid Arms License in his name and after further investigation the police filed charge-sheet in the aforementioned FIR, on the basis that

seven live cartridges were found in the possession of the petitioner.

4. It is submitted that the petitioner holds a Valid Arms license bearing No. DM/SAS/DUP/MLNG/0616/55 (old license no. 281/DMSANAGAR/ PSMULLANPURGARIB) issued by District Magistrate - Mohali which was valid upto 7th July, 2018.

5. Learned counsel appearing on behalf of the petitioner, to strengthen his arguments, has relied on the judgment passed by this Hon'ble Court in "Chan Hong Siak through Arvinder Singh vs. State & Anr, Crl.M.C No. 3576/2011" decided on 2nd July, 2012. He further relied on the case of "Adhiraj Singh Yadav vs. State, W.P. (Crl) 754/2020" decided on 31st December, 2020. He has also relied on the judgment passed by the Bombay High Court in "Jerusalem vs. State of Maharashtra, W.P. (Crl) 3569/2011".

6. Learned counsel appearing on behalf of the petitioner submitted that in view of the facts and laws laid down by this Court as well as other High Courts, aforesaid FIR and other proceedings pertaining to the said FIR may be quashed.

7. Per contra, Mr. A. Aggarwal, learned ASC for State vehemently opposed the petition and submitted that the petitioner was detected carrying seven live cartridges in his luggage during the screening process. However, it is not contended that during the course of investigation, the accused also produced an arms license bearing No. DM/SAS/DUP/MLNG/0616/55 and the same has been verified by the concerned authorities. It is also not contended that there are any criminal antecedents of the petitioner.

8. Heard learned counsel for the parties and perused the record including the status report filed today in the Court.

9. In Sanjay Dutt v. State through CBI Bombay (II), Crimes 1994 (3) 344 (SC) the Hon'ble 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."

This Court has in several cases including Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) & Anr., W.P. (Crl) 2143/2019 decided on 27th September, 2019, Aruna Chaudhary v. State & Ors., W.P. (Crl.) 1975/2019 decided on 25th September, 2019 and Paramdeep Singh Sran

v. The State (NCT of Delhi), W.P. (Crl) 152/2019 decided on 29th August, 2019, held that unconscious possession would not attract the rigours of the Arms Act, 1959.

10. In the instant case, petitioner was in possession of seven live cartridges, without any arms, which would have served no purpose in isolation. Moreover, neither there was an element of knowledge of possession of cartridge nor any underlying criminal intention. As per the status report, during the course of investigation it was revealed that the said cartridge belonged to the petitioner who had an arms license which has been verified by the concerned authorities. It is also an admitted fact that there are no criminal antecedents of the petitioner.

11. Keeping in view the aforesaid facts and circumstances, the arguments advanced by the learned counsel appearing on behalf of the parties and the judgments discussed above, this Court considers it apposite to allow the present petition. Accordingly, FIR No. 247/2018 registered at Police Station IGI Airport for an offence punishable under Section 25/54/59 of the Arms Act, 1959 registered at Police Station IGI Airport and all proceedings emanating therefrom are hereby quashed.

12. Accordingly, the petition stands disposed of.

CHANDRA DHARI SINGH, J APRIL 12, 2022 Dy/ct