

Jashandeep Singh vs The State & Anr on 23 June, 2021

Author: Jasmeet Singh

Bench: Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 5978/2019
JASHANDEEP SINGH

Through: Ms. Saahila, Adv.
versus

THE STATE & ANR

Through: Mr. Sanjeev Sabharwal,
State

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH
ORDER

% 23.06.2021 The petitioner vide the present petition seeks quashing of FIR No.699/2018, PS IGI Airport, registered under Sections 25 of the Arms Act. The case of the Petitioner is that the Petitioner is a Mechanical Engineer who belongs to Punjab. The Petitioner came to Delhi to board a flight to Toronto by Air Canada flight No.AC-043, from Delhi to Toronto.

On 31.12.2018, while he was waiting for his flight No. AC-043 from Delhi to Canada, the Petitioner was detained as 01 live ammunition (bullet) was detected from his check-in baggage under Tag No.596063. The petitioner was detained as 01 live ammunition (bullet) was detected from his check-in baggage under Tag No. 596063 by the security officials at the Airport.

On the basis of the said incident, FIR was registered and Charge Sheet was filed before learned ACMM on 14.11.2019.

Learned counsel appearing for the Petitioner has relied upon five judgments and one of them being Hari Kishan versus State of NCT, 2019 (SCC online Del 8829). The relevant paragraphs of the said judgment reads as under:

2. The petitioner, vide this petition seeks the quashing of the said FIR submitting to the effect that the petitioner has a clean record, does his job peacefully, has a diploma in Electronics and works as a marketing executive and on 25.2.2014 at 11:15 a.m. he had started from his house at Sangam Vihar for Kashmiri Gate through a Gramin Sewa auto rickshaw and reached the Malviya Nagar Metro Station. He further states that there were 9 to 11 passengers seated in that auto and that when the DMRC officials informed him about the live cartridge, he was shocked and surprised in as much as he did not have any knowledge about the presence of one live cartridge in the side pocket of his bag which side pocket of his bag was half transparent (which

was half made with jaali fabric) and did not have any zip or lock. The petitioner has further submitted that the final report i.e. the report under Section 173 of the Code of Criminal Procedure, 1973 brings forth that there was no fire arm or any weapon of any kind recovered from the possession of the petitioner apart from the alleged recovery of that one live cartridge from the outside pocket of the bag of the petitioner. The petitioner further submits that there is not a whisper of an averment in the charge sheet that he had conscious possession of the alleged cartridge. The petitioner has submitted that the charges against him have been framed and that the trial would take time and he seeks the quashing of the FIR, the quashing of the summoning order and the quashing of the charge sheet as he did not have any conscious knowledge of the presence of any live cartridge in the said pocket of his bag which was half transparent, unlocked and unzipped.

3. Inter alia, the petitioner submits that it is settled law that the expression 'possession' occurring in Section 25 of the Arms Act, 1959, means possession of the requisite element i.e. conscious possession and that mere custody without the awareness of the nature of such possession does not amount to any offence under the Arms Act, 1959.

8. Reliance is placed on behalf of the petitioner on the verdict of Sonam Chaudhary v. The State (Government of NCT of Delhi); Nitin Verma v. State (Government of NCT of Delhi & Anr.); Dharmendra Singh v. The State (Government of NCT of Delhi), Ronald Albert v. State (Government of NCT of Delhi), disposed of vide common judgment dated 6.1.2016 reported in 2016 1 JCC 307. The facts in each of the aforementioned cases are in circumstances *pari materia* to the instant case and it has been observed vide paragraph 31 to 36 thereof as under:

"31. Recently, this Court in the case bearing CrI.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 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.

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.

36. Keeping in view the law discussed above, the facts and circumstances of each case and in the light of the aforementioned observations, the FIRs noted above alongwith subsequent proceedings are hereby quashed against the petitioners."

9. Reliance was also placed on behalf of the petitioner on the verdict of this Court in *Jaswinder Singh v. State (Government of NCT of Delhi)*: 2015 (4) JCC 2339, to contend to similar effect. The observations of this Court in this case are to the effect:

16. Even the Division Bench of this Court in the case of *Gaganjot Singh v.*

State, W.P.(Crl) No. 1169/2014 decided on 1st December, 2014, relied on the judgement of Constitution Bench of *Sanjay Dutt (supra)* as well as *Gunwant Lal (supra)* and quashed the FIR and subsequent proceedings in the case while holding in Para 12 as under:

"As noticed previously, a solitary cartridge- which on examination by expert has been confirmed to be a live one was found by the police. The petitioner was in possession of it. However, he expressed his lack of awareness of that article; and also that the bag from which it was recovered belonged to his uncle. The Police, in the final report, does not indicate that his statement is groundless; there is no material to show that he was conscious of his possession of the cartridge. Though the ballistic report confirms it to be a cartridge and consequently it is 'ammunition', by itself that is insufficient to point to suspicion- much less reasonable suspicion of petitioner's involvement in an offence which, necessarily, has to be based on proven conscious possession. Since there is no such material, the offence cannot be proved even after trial, which would have to proceed, if at all, on the interpretation of the Act placed by the decisions in *Gunwantlal (supra)* and *Sanjay Dutt (supra)*."

28. In view of the verdict of the Hon'ble Division Bench of this Court in Gaganjot Singh (supra) and the catena of verdicts relied upon on behalf of the petitioner which are in facts *pari materia* to the instant case which cases have been adjudicated by the learned Co-ordinate Benches of this Court, and taking into account that there is not a whisper of an averment in the FIR as averred in the charge sheet that the petitioner was aware of being in alleged conscious and knowledgeable possession of the ammunition in question, the FIR against the petitioner is hereby quashed and thus the proceedings emanating therefrom against the petitioner are also quashed.

In view of the catena of decisions mentioned hereinabove and in view of the fact that there is no averment in the FIR that the Petitioner was aware or conscious and knowingly in possession of the ammunition in question, the FIR against the Petitioner is hereby quashed and consequently, the proceedings emanating therefrom are also quashed.

Since the State machinery as well as the officers of DIAL have wasted considerable time, the Petitioner is required to deposit a sum of Rs. 50,000/- with Delhi High Court Bar Association within 3 working days.

The petition stands disposed of.

JASMEET SINGH, J JUNE 23, 2021/ 'ms'