

Shafeek Ahmad vs State (Nct Of Delhi) on 15 March, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 459/2022

SHAFEEK AHMAD

Through: Dr. Ajay P. Tushir
Malik, Advocates.
versus

STATE (NCT OF DELHI)

Through: Mr. Yasir Rauf An
with Mr. Alok Sharma and M
Advocates with SI Umesh Ya
Airport.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

OR

% 15.03.2024

1. This writ petition has been filed on behalf of the Petitioner under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.240/2021 dated 29.08.2021 under Section 30 of the Arms Act, 1959 (hereinafter referred to as the "Arms Act") registered at P.S.: I.G.I. Airport, including all proceedings emanating therefrom.

2. It is stated in the petition that Petitioner is an Indian National and a permanent resident of Uttar Pradesh. He came to Delhi as he was to board Flight No.6E-2234 to Lucknow and had reservation on seat No.08 F. While the Petitioner was waiting for his flight at the airport, he was detained as six live cartridges of 0.32 mm caliber revolver bearing mark "32 S & WL K.F." were found in the hand baggage of the Petitioner. The bullets were seized and sent to FSL for ballistic examination and Petitioner was brought to the Police Station, after completion of formalities at the Airport.

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3. Case of the Petitioner is that he holds an arms license bearing No. 1633/III/P.S. Swar, issued by the Licensing Authority i.e. District Magistrate, Rampur, Uttar Pradesh, India and the cartridges pertain to the licensed weapon. Petitioner was travelling to Lucknow from Delhi and inadvertently, it escaped his notice that the cartridges were in the hand baggage. Petitioner claims that he was not in 'conscious possession' of the cartridges and possession simplicitor is not enough to attract Section

25/30 of the Arms Act. In *Sonam Chaudhary & Ors. v. The State (Govt. of NCT of Delhi) and Ors.*, 2016 SCC OnLine Del 47, this Court has held that in the expression "conscious possession" occurring in Section 25 of the Arms Act, the word "possession" means possession with requisite mental element and mere custody does not amount to an offence under the Arms Act. It is further urged that case of the Petitioner is squarely covered by several judgments of this Court and relies on the decisions in *Dhanwant Kaur v. State & Anr.*, 2016 SCC OnLine Del 5492; *Jagat Singh v. The State (N.C.T of Delhi)*, W.P. (Crl.) 309/2020, decided on 03.02.2020; *Ram Prakash Mishra v. The State (N.C.T of Delhi)*, W.P. (Crl.) 674/2020, decided on 11.03.2020; and *Raj Mulk v. The State (NCT of Delhi)*, W.P. (Crl.) 1007/2022, decided on 21.09.2022.

4. Status report has been filed. It is stated that during the course of investigation, Petitioner provided a copy of his Arms License, issued by the District Magistrate, Rampur, Uttar Pradesh. Further, a request for verification of the Arms License was sent to District Magistrate, Uttar Pradesh, in response to which it was intimated that the license was issued to the Petitioner on 17.09.2003 and is valid only for the State of Uttar Pradesh and valid upto 31.12.2021 for 0.32 bore revolver No.F-8865. During further This is a digitally signed order.

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5. I have heard learned counsel for the Petitioner and learned ASC for the State.

6. Reading of the status report shows that Petitioner possesses an Arms license issued by the District Magistrate, Rampur, Uttar Pradesh, which was valid upto 31.12.2021 for 0.32 bore revolver only for the State of Uttar Pradesh. Petitioner has taken a categorical position that he was not in conscious possession of the live cartridges and this position is uncontroverted in the Status Report. In this view of the matter, Petitioner rightly contends that his case is squarely covered by several decisions of this Court, some of which have been mentioned above. In *Ram Prakash Mishra (supra)*, this Court has quashed the FIR registered under Section 30 of Arms Act on the ground that Petitioner claimed that he was not in conscious possession and the live cartridges had remained in his hand bag, which position was not refuted by the State. Relevant paragraphs of the order are as follows:-

"7. It is now well settled that no offence under the Arms Act, 1959 would be made out if the person in possession of the ammunition was not aware of its existence. (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) This is a digitally signed order.

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8. In the present case, the petitioner claims that he was not conscious of the fact that the said live cartridges had remained in his hand bag. This Court finds no reason to disbelieve the aforesaid statement. The learned counsel appearing for the respondent also states, on instructions, that the FIR in question may be quashed.

9. In view of the above, the present petition is allowed and the FIR in question is quashed."

7. Same view was taken by this Court in Gurveer Singh v. State, 2022 SCC OnLine Del 1585 and relevant paragraphs for ready reference are extracted hereunder:-

11. The Petitioner submits that he was not in conscious possession of the alleged ammunition as he wore the jacket after very long time and couldn't check it thoroughly as he was in a rush to reach the airport.

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16. In Adhiraj Singh Yadav Vs. State, decided on 31.12.2020 in W.P.(CRL) 754/2020, this Court held that:

"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)]."

17. While deciding a similar matter titled 'Mitali Singh v. NCT of Delhi & Anr., decided 15.12.2020, W.P.(CRL) No. 2095/2020, this court made the following observation:

"8. The courts have in a number of decisions held that the conscious possession of an ammunition is sine qua non to prosecute the possessor under the Arms Act, 1959.

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 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 05/04/2024 at 21:16:11 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 clement 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 clement, 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.""

18. The above judgments require conscious possession or knowledge of the possession. The Petitioner has been able to make out a case that he was This is a digitally signed order.

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not conscious about the possession of the live ammunition. It was a mishap that the live ammunition remained in his jacket and he came to airport with the same jacket. He has produced a valid arms license and the status report records the same. Even though the authenticity is yet to be verified, prima facie, the facts as submitted and the status report taken on record, corroborates that the Petitioner did not have knowledge of the possession."

8. I may also refer to the decision of this Court in Ritesh Taneja v. State and Ors., 2022 SCC OnLine Del 971, wherein the Court has taken a similar view and the relevant passages are as follows:-

"1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking following prayers :-

(i) Quash the FIR No. 044/2019 dated 06.02.2019 P.S. IGI Airport, Delhi, u/s 30 Arms Act 1959 qua the Petitioner/accused person named in the FIR along with all the proceedings emanating there from

(ii) Pass such other and further orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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6. Now, in the instant case, the question which is to be considered is whether the petitioner was in conscious possession of the ammunitions allegedly recovered from him or not. It is settled law that the expression 'possession' under Section 25 of the Arms Act, 1959 refers to possession backed with the requisite mental element, that is, conscious possession.

Mere custody without the awareness of the nature of such possession does not constitute an offence under the Arms Act, 1959.

7. The question of conscious possession has been elaborately dealt with by the Constitution Bench of the Supreme Court in the case of Gunwantlal Vs. State of Madhya Pradesh, reported in (1972) 2 SCC 194, wherein it was observed as under:

"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 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 05/04/2024 at 21:16:12 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"

8. In the case of Gaganjot Singh vs. State reported in 2014 (3) JCC 2020 the Delhi High Court had observed the following:

"12. 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 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 a 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)."

xxxx xxxx xxxx xxxx "16. In Chan Hong Saik (supra), like in the present case, a single live cartridge was found from the possession of the alleged offender. The learned Single Judge proceeded to quash the criminal proceedings.

The discussion in that judgment was that there were no suspicious circumstances other than the mere recovery of the live cartridge from the possession of the charged individual. In para 43, learned Single Judge was of the opinion that the single live cartridge " cannot be used for the purpose without fire arms" and then proceeded to state:

"though the petitioner has not admitted recovery of the cartridge and claimed trial, however, if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 5 of the Arms Act."

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10. So, 'conscious possession' of any fire arm/ammunition is a necessary ingredient of the statutory offence, entailing strict liability on the offender. The question involved in the instant case, is fully covered by the principles laid down by the Supreme Court in the abovesaid decisions, as there is no sufficient evidence or reasonable ground of suspicion to justify 'conscious possession' of the live cartridges recovered from the This is a digitally signed order.

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11. Therefore, keeping in view the law laid down in above mentioned judgements and looking into the fact that the petitioner was not aware of the live cartridges in his hand baggage till the same were detected during screening of the petitioner's baggage and there is nothing on record to show that the petitioner is involved in any other offence except the mere recoveries made from the hand baggage of the petitioner, therefore, I find that continuance of the proceeding would be a futile exercise as the necessary ingredients to constitute the offence in question is missing. Accordingly, the present petition is allowed and FIR bearing No 044/2019 under Section 30 Arms Act, and the proceedings emanating therefrom are hereby quashed."

9. In view of the aforesaid decisions, uncontroverted position taken by the Petitioner that he was not in conscious possession of the 6 live cartridges, which remained in his hand baggage and factum of the revolver being licensed, this Court is of the view that present FIR deserves to be quashed. Accordingly, FIR No.240/2021 dated 29.08.2021 under Section 30 of the Arms Act, 1959 registered at P.S.: I.G.I. Airport, is hereby quashed, including all proceedings emanating therefrom.

10. Petition stands disposed of.

JYOTI SINGH, J MARCH 15, 2024/pa/DU This is a digitally signed order.

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