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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1984/2020 & CrI.M.A.No.16584/2020**
VIVEK KUMAR GUPTA Petitioner
Through : Mr.Prithvi Raj Chauhan, Advocate.
versus
STATE OF NCT OF DELHI Respondent
Through : Mr.Rahul Mehra, Standing Counsel
(Crl) with SI Rajiv Gulati, PS IGI
Airport.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **22.01.2021**

1. This petition is filed for quashing of FIR No.258/2020 under Section 25 Arms Act registered against the petitioner at PS-IGI Airport, Delhi and the criminal proceedings emanating therefrom.
2. The facts are the petitioner is completing his masters in civil engineering from Texas A and M University U.S.A and is a permanent resident of Bhilai District, Chhattisgarh. It is stated he completed his primary and secondary education from Bhilai. He also completed his Bachelors in 2017 in Civil Engineering from NIT, Raipur.
3. On 31.10.2020, the petitioner went for the first time along with his friends in a fire range shop at Texas for shooting practice. This is legal in Texas for anyone above 21 years of age. The friends were his batch mates. After the shooting practice the entire floor was spread with bullets. The petitioner was carrying a hand bag along with him. There were many people inside the practise area. It was a possibility that somebody may have placed a bullet cartridge in the petitioner's front bag pocket or it may have dropped accidentally in the front pocket of the handbag. The petitioner had no

knowledge about this fact the cartridge was in the handbag. He took the bag along with him while returning to his residence from the fire range shop. The petitioner booked a ticket to Delhi. He stuffed the bag with two laptops, chargers and headphone. He was not aware the bullet cartridge was lying in the bag.

4. The handbag and other luggage of the petitioner was scanned at Houston Airport, U.S.A. on 13.11.2020 and nobody raised any objection. The petitioner arrived at New Delhi on 14.11.2020 at about 09.30 PM. His Covid test was done at Delhi International Airport. He then went back to the Domestic Terminal around 06.00 AM to board a flight to Raipur. He put his handbag along with other luggage on an input roller for scan and during the scanning the operator observed a live cartridge and an empty case in his handbag. The same was checked physically and one live bullet and one empty case were recovered from the bag and hence the present FIR was registered against him.

5. No fire mark or weapon has been recovered from the possession of the petitioner nor had he extended any threat to any person or any police official but despite this fact that the present FIR was registered against him. The learned counsel for the petitioner has relied upon various judgement, wherein the FIRs under Section 25 Arms Act with similar circumstances, were quashed by this Court.

6. In *Davinder Singh Dhindsa Vs. The State(N.C.T of Delhi)* in W.P.(Cr1)344/2019, decided on 01.04.2019, the Court held as under:

13. The issue involved in the present case, is covered by the principles laid down in above said decision of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, as there is no sufficient evidence or reasonable ground of suspicion to justify 'conscious possession' of the live cartridge

recovered from the baggage of the petitioner. The petitioner was in possession of the said cartridge; however, he expressed his lack of awareness in respect of the said cartridge. He also holds a valid arms license bearing No-DM/SNG/ ARM/ AMAR/0218/ 17. The said license has been duly verified from the concerned DM Office and found that the license was issued in the name of the petitioner. Further there is no other material on record to show that the petitioner was conscious of his possession of the live cartridge. The FSL report by itself is insufficient to point to reasonable suspicion of petitioner's involvement in an offence which is based on proven 'conscious possession'. Hence, it can be safely inferred that the said possession by the petitioner does not fall within the ambit of 'conscious possession' which is a core ingredient to establish the guilt for offence punishable under Section 25 of the Arms Act, 1959. Therefore, on the basis of mere possession of the live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959 and the same shall be quashed to secure the ends of justice.

14. Applying the aforementioned principles of law, and considering the fact that the petitioner was unaware of the live cartridge in the bag till the same was detected by the security staff during the screening of the baggage, this court finds that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking and this court has always shown its keenness in quashing such futile proceedings. Reference in this regard can also be made to Michael Joseph Hayden vs State (Gnct) (2018 sec Online 8940), Jasbir Chahal VS State (2018 2 JCC 1043), Undis Vatvedt Singh vs State (2018 SCC Online Del 8591), Francisco Del Pino Madrona vs. NCT of Delhi (2017 (4) JCC 2646).

7. In *Hari Kishan Vs. State(NCT of Delhi)* decided on 31.05.2019 CrI.M.C. No.3865/2016, the court held as under:-

“24. 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.

8. Also in *Gurpreet Singh Mangat Vs. State of NCT Delhi* W.P.(Crl) 337/2020, decided on 16.03.2020, the Court held as under:-

“9. In the present case, there is nothing on record to suggest that petitioner was in conscious possession of the cartridge and he was aware of the said fact. Mere recovery of cartridge itself is not sufficient to prove the offence in the absence of any intention. It is contended by Ld. Counsel for the petitioner that by mistake brother-in-law of the petitioner kept his jacket between the trolley bags of the petitioner. Petitioner was unaware of the said jacket and entered the airport with the said jacket. It is also a matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridge for committing any offence.”

9. Considering the facts and the law stated above, the facts do not show the petitioner was in *conscious possession* of a live cartridge and an empty case. There is nothing on record to support the same, hence in the circumstances, the FIR No.258/2020 under Section 25 Arms Act registered against the petitioner at PS-IGI Airport, Delhi and the criminal proceedings emanating therefrom stands quashed. The passport of the petitioner, if retained by the police, be released to him against proper receipt/acknowledgment. Pending application(s) if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

JANUARY 22, 2021

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