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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.04.2022

+ **W.P.(CRL) 2351/2021**

VARUN SHARMA

..... Petitioner

Through: Mr. Dalvinder Singh, Advocate

versus

THE STATE (GOVT. OF NCT DELHI)

..... Respondent

Through: Ms. Nandita Rao, ASC for the State,
SI Seetaram

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. The petitioner is working with Carnival Corporation having its registered office in Miami, Florida, U.S. and is a permanent resident of India. The petitioner gets short term contractual appointments for a period of 4 to 6 months on mercantile Ships, and hence is regularly travelling internationally on account of his job profile.
2. On 03.09.2020, the petitioner came to New Delhi from Indore, (Madhya Pradesh) via flight No. 912 Vistara UK Airlines from Indore to New Delhi for taking another international flight from New Delhi to France on 04.09.2020 via KLM Airways Flight No. KL872 from New Delhi to Amsterdam. From Amsterdam he was supposed to take another flight to Saint Martin, U.S. The petitioner had not been stopped at Indore Airport but when he arrived at IGI Airport, New

Delhi for changing his flight to France, the security officers found one live cartridge in his bag and subsequently FIR No. 0190/2020 on 04.09.2020 u/s 25 Arms Act, 1959 registered at P.S. IGI Airport, New Delhi was registered. The petitioner has complete lack of knowledge or information as to how and from where the live cartridge has been recovered from his baggage. The petitioner is totally unaware of the source of ammunition found in baggage.

3. The petitioner further submits that he does not have any Arms licence nor any of his family members possess one.
4. 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].”

5. While deciding a similar matter titled ‘*Mitali Singh v. NCT of Delhi & Anr.*’, W.P.(CRL) No.. 2015/2020 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 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 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.”

6. In the present case, it is clear that the petitioner has no knowledge as to how the live ammunition was in the petitioner’s possession. The above cited judgments require conscious possession or knowledge of possession for it to be an offence. Even the status report does not attribute any motive or knowledge to the petitioner. Noting and in view of the above u/s FIR No. 0190/2020 u/s 25 Arms Act, 1959 registered at P.S. IGI Airport, New Delhi and proceedings emanating therefrom are hereby quashed, subject to payment of costs Rs. 40,000/- to Delhi High Court Legal Services Committee.

JASMEET SINGH, J

APRIL 25, 2022/dm

[Click here to check corrigendum, if any](#)

नस्यमेव जयते