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Conscious & Unconscious Possession of Ammunition and its Consequences under The Arms Act, 1959

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ABSTRACT

It is not unusual for certain people like the Army personnel, serving or retired, or Police personnel, serving or retired, to have forgotten if they had a piece of Firearm or Ammunition on their person.

Moreover, it is also quite possible for a person to have bought an antique piece of Firearm as a memoir and later found out the hard way that the item was a live piece.

In that situation, the courts look into whether the possession was “Conscious or Unconscious”, this current short note looks into the issue and its legal ramifications briefly.

To understand the nuance of possession of Live Ammunition and the extent of “Prohibited Ammunition²”,

Ammunition has been defined quite meticulously under Section 2(1)(b) of the Act as follows:

“Ammunition means ammunition for any firearm, and includes—

- i. Rockets, bombs, grenades, shells [and other missiles,]*
- ii. Articles designed for torpedo service and submarine mining,*
- iii. Other articles containing, or designed or adapted to contain, explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not,*
- iv. Charges for firearms and accessories for such charges,*
- v. Fuses and friction tubes,*

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² Section 2(1)(h) of The Arms Act, 1959:

“prohibited ammunition means any ammunition containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, [missiles,] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition”.

- vi. *Parts of, and machinery for manufacturing, ammunition, and*
- vii. *Such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf*'.

We must also take into account that possession in this context is of two kinds, as inferred through Judgements and the Act itself which are:

- Conscious Possession;
- Unconscious Possession.

The Supreme Court in the landmark judgement of *Sanjay Dutt Vs State*³, has made the following observation in paragraph no. 19:

“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.”

Under the Arms Act “*Conscious Possession*” of Live Ammunition has not been expressly defined, it is upon the prosecution to prove and upon the defence to disprove that there was any “*Conscious Possession*” of Live Ammo or Firearms. The elements to rely upon as has been observed by the Bombay High Court in the case of *Nurit Toker Vs State of Maharashtra*⁴, are:

- Sufficient Evidence
- Reasonable Ground of Suspicion

The observations were in consonance with the judgement of *Sanjay Dutt Vs State*.

The Supreme Court has illuminated on the sense in which possession has been explained under the perspective of Section 25 in the case of *GunwantLal Vs. State of Madhya Pradesh*⁵:

³ Sanjay Dutt Vs State, 1994 SCC (5) 410.

⁴ Nurit Toker Vs State of Maharashtra, 2012 BOMCR (CRI) 154.

⁵ GunwantLal Vs. State of Madhya Pradesh, (1972) 2 SCC 194.

1. There has to be a component in the case where it can be inferred that the person had consciousness, mindfulness, knowledge or awareness of that possession.
2. In the case of absence of real material possession, the person has governance of that armament, in this situation it can be held that there is a continuing possession of that weapon in spite of the real or physical possession being with someone else.

In contrast, the “Criminal Possession” of a weapon in the United States of America is treated along the same lines as that of carrying a concealed weapon, for which the burden lies on the state to prove beyond reasonable doubt that all the satisfactory elements are fulfilled in the specific circumstances of the case and even partial concealment can result in a verdict.

It has been well settled as principle that when a person is not conscious of possession of live ammunition or an illegal firearm then there is no imminent threat to the people around and because of this principle an offence cannot be constituted under Section 25 of the Arms Act, this has been a settled position of law and the Delhi High Court has iterated this numerous time⁶ with the latest being the case of *Narendra Kumar Gupta V. State of NCT Of Delhi*⁷.

SEARCH OF ILLEGALLY POSSESSED FIREARMS:

In a situation where, the police have received secret information, with regards to a person possessing illegal ammunition or firearms at his/her property, can the police search the said property without obtaining a search warrant from a magistrate?

To understand this, we must look into the text of Section 165 of The Code of Criminal Procedure:

- (1) *“Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place with the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be*

⁶ *Paramdeep Singh Sran v. State (NCT of Delhi), Delhi High Court, W.P.: (CrI) 152/2019 decided on 29.08.2019.*

⁷ *Narendra Kumar Gupta v. State (NCT of Delhi), Delhi High Court, WP (CrI.) 744/2021, decided on 18-05-2021.*

made, search, or cause search to be made, for such thing in any place within the limits of such station.

- (2) A police officer proceeding under sub- section (1), shall, if practicable, conduct the search in person.*
- (3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.*
- (4) The provisions of this Code as to search- warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.*
- (5) Copies of any record made under sub- section (1) or sub- section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.”*

The facts and circumstances of each case are governed by their own complexities, the Supreme Court has held that the provisions of Section 165 of the Code of Criminal Procedure cannot be disregarded or overlooked by the police officers as there is nothing specifically mentioned under the Arms Act, 1959 which would in any way suggest that ignorance of this provision of the Code of Criminal Procedure is justified⁸.

The police must reduce into writing their reasons for such a search before obtaining a warrant from the Magistrate Empowered and also, they cannot bypass the provisions of Section 165 of the Code of Criminal Procedure.

The Home Ministry (Ministry of Home Affairs) has amended the Arms Act in the year 2019 and has made certain clarifications:

1. To possess small arms and those arms which may be rare or may come under the category of antique pieces, no licence is compulsory, but this is for Indian Citizens.
2. If a person possessing such arms is in need to carry, move, transfer or transport such items then an applicable licence must be acquired.

⁸ State of Rajasthan v. Rehman, AIR 1960 SC 120.

3. If there is missing an authorisation then no ammunition can be sold for its usage.⁹

CONCLUSION

For a person to carry any ammunition or firearm, they must have a valid licence for the same, otherwise it is an offence. The difference however lies in the definition of possession of the said items, i.e., it is a valid defence in the eyes of the laws if a person was unconscious about their possessing any such illegal items, as it is not held to be of any immediate harm to the general public.

Now, if the Defence is able to prove that, the Arms or Ammunition being Carried by the accused were under unconscious possession then the defence can win the case, it is through corroborative evidence and circumstantial evidence that it can be proved if the person carrying the said items was in conscious or unconscious possession of the same.

⁹ The Arms (Amendment) Act, 2019 No. 48 Of 2019.