

(2002) 05 OHC CK 0015

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3355 of 1998

Bikalananda Beura

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 482
Explosives Act, 1884 — Section 9B

Citation : (2002) 2 OLR 36

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S. Ch. Sahoo, S.K. Sahoo, G.C. Swain and A.P. Ray, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

L. Mohapatra, J.—This application u/s 482. Cr.P.C. has been filed challenging the order dated 23.7.1998 passed by the learned S.D.J.M. (Sadar), Cuttack in G.R. Case No. 739/1994 framing charge for commission of offence u/s 9-B of the Indian Explosives Act as well as under Sections 25/27 of the Arms Act.

2. The case of the prosecution is that on 10.5.1994 from the house of the petitioner one gupti, one gun, one small knife, three numbers of parsuram farsa, two numbers of tenta, two iron rods, one sword, some live bombs, white powder, red powder, fishing net, etc. were recovered and seized. Pursuant to such-seizure, the aforesaid G. R. Case was registered for commission of offence u/s 9-B of the Indian Explosives Act as well as under Sections 25/27 of the Arms Act. On 5.5.1997 when the matter was taken up for framing of charge, an application was filed by the petitioner to discharge him on the ground that no offence is made out even the seizure of the articles stated above is accepted. Refusing the prayer to discharge the petitioner, the learned Magistrate framed charge in respect of the aforesaid offences. Challenging the said order, the petitioner approached this Court in CrI. Misc. Case No. 1982/1997. While disposing of the application on 28.5.1997, this Court directed the learned Magistrate to reconsider

the matter and pass necessary orders recalling the order framing charge in the event it is found that no offence is made out. On re-consideration, the learned Magistrate by order dated 23.7.1998 confirmed the earlier order dated 5.5.1997 and the order dated 23.7.1998 is under challenge before this Court in this application.

3. Shri Sahoo, learned counsel appearing for the petitioner referring to different provisions of the Arms Act as well as the Indian Explosives Act, submitted that even accepting that the material stated above had been seized from the house of the petitioner, no offence either under Indian Explosives Act or under Arms Act has been made out and accordingly, the petitioner should have been discharged. According to Shri Sahoo Section - 9(B) of the Indian Explosives Act provides that whoever in contravention of rules made u/s 5 or of the conditions of a licence granted under the said rules possesses any explosive shall be punishable. Explosive has been defined in Sub-section (d) of Section 4. On examination of the articles seized, none of the articles prescribed in a definition of explosive having been found no offence is committed.

4. He further submitted that so far as Section 25 of the Arms Act is concerned there being no allegation that the petitioner was manufacturing or selling, transferring etc. any arms or ammunition in contravention of Section 5, no offence is committed. The only offence that can be said to have been committed by the petitioner is u/s 25(IB) for being in possession of such ammunition in contravention of Section 3. This provision will also not be applicable in absence of a sanction u/s 39 of the Act. In this connection, a decision of this Court reported in 1990 (1) OLR 574 Md. Subhan v. State of Orissa is relied upon. This Court in the aforesaid decision has clearly held that, for instituting a prosecution u/s 25 of the Arms Act, no sanction is necessary but for prosecution of Section 27 of the Act sanction is necessary. So far as Section 26 of the Arms Act is concerned, it is submitted by the learned counsel for the petitioner that there being no material to show that the petitioner ever used the arms and ammunition seized from his house, offence u/s 27 is not attracted.

5. In the light of the argument advanced by Shri Sahoo, it is now required to examine the provisions of law. So far as the offence under the Indian Explosives Act is concerned, it is alleged that the petitioner committed the offence u/s 9-B of the Act. Section 9(b) of the Indian Explosives Act, 1884 prescribes that whoever in contravention of rules made u/s 5 or of the conditions of a licence granted under the said rules, possesses, uses, sells or transports any explosive shall be punishable. The word "explosive" has been defined in Sub-section (d) of Section 4 of the Act, which runs as follows :

"Explosive means gunpowder, nitroglycerine, nitro-glycol, gun-cotton, di-nitro toluence, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-trinitramine pentatrythritol, tetranitrate, tetryl-nitro-guanidine, lead aside, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether

a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect be explosion or pyrotechnic effect, and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, catridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause."

The materials seized had been sent for examination and the chemical examination report indicates that Ext. C is explosive. Ext. C indicates that the materials seized is a mixture of potacium chloride and arsenic sulphide. The said chemical does not find place in the definition of explosive as stated above. Therefore, the petitioner was though found to be in possession of some materials they are not explosives as defined under Sub-section (D) of Section 4 of the Act. I therefore, agree with the submission of the learned counsel for the petitioner that no offence u/s 9-B of the Act has been committed. So far as Arms Act is concerned, the offence alleged is u/s 25 of the Act. Section 25 of the Act prescribes that whoever manufactures, sells, transfers, converts, repairs, tests or proves or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5 shall be punished. The F.I.R. dated 11.5.1994 indicates that the S.I. of Madhupatna Police Station-received a confidential report that some criminals are taking shelter in the house of the petitioner armed with deadly weapons and bombs after commission of the crime vide Madhupatna P.S Case No. 133 dated 10.5.1994 and they had also concealed several types of arms in the said house to attack their rival party members. On receipt of such confidential report, he conducted raid and the above articles were seized. There is absolutely no allegation in the F.I.R. that the petitioner was in possession of the arms for the purpose of sell, transfer, repair, test or proof and accordingly. I agree with the learned counsel for the petitioner that no offence u/s 25 of the Arms Act, 1959 has been committed. However, it appears that the petitioner being in possession of the aforesaid arms and ammunition committed an offence under 25 (IB) of the Act. Section 39 of the Act specifically provides that no prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate. Section 25 (IB) clearly prescribes that the possession of arms and ammunitions must be in contravention of Section 3. If at all any offence has been committed by the petitioner for being in possession of the arms and ammunition in contravention of Section 3 of the Act in absence of a sanction u/s 39 from the District Magistrate, he could not have been prosecuted.

6. Coming to Section 27 of the Act, it appears that the provision provides for punishment to a person who uses any arms or ammunition in contravention of Section 5. Section 5 prohibits use of any arms or ammunition without a licence. There being no allegation in the F.I.R. that the petitioner had ever used any one of the arms or ammunition seized from his house, the offence u/s 27 of the Act is also not made out. I accordingly, do not find any material to support the impugned order passed by the learned S.D.J.M. (Sadar), Cuttack. Accordingly,

the order dated 5.5.1997 and 23.7.1998 framing charge u/s 9-B of the Indian Explosives Act and Sections 25 and 27 of the Arms Act stand quashed.

The Crl. Misc. Case is disposed of accordingly.