

(2013) 04 JH CK 0170

In the Jharkhand High Court

Case No : Criminal M.P. No. 322 of 2013

Chandan Kumar Singh @ Chandan Kumar and Another

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : (2013) 4 JLJR 96

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Nikki Sinha, for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—Heard the learned counsel appearing for the petitioners and the learned counsel for the State. This application has been filed for quashing of the entire criminal proceedings of Pakur (T) P.S. Case No. 216 of 2011 (G.R. No. 567 of 2011), including the order dated 28.5.2012, whereby and whereunder, the then Chief Judicial Magistrate, Pakur, took cognizance of the offence punishable u/s 4/5 of the Explosive Substances Act.

2. Before advertng to the submissions advanced on behalf of the parties, the case of the prosecution needs to be taken notice of.

3. It is the case of the prosecution that when a search was made in a shop, being run in the partnership by these two petitioners and one Raj Kumar Mishra, 600 bags of Ammonium Nitrate were found stored in the shop and, therefore, a case was lodged u/s 4/5 of the Ex-plosive Substances Act.

4. Mr. Rajesh Kumar, learned counsel appearing for the petitioners submits that accepting the entire allegations, made in the F.I.R., to be true, no offence is made out under Sections 4 and 5 of the Explosive Substances Act, for the reason that the Ammonium Nitrate never happens to be an explosive substance, which would be evident from the Notification published in The Gazette of India, Extraordinary Part-III on July 21, 2011, wherein it has been notified that the Ammonium Nitrate having chemical Formula $\text{NH}_4 \text{NO}_3$ or any combination more

than 45% of the Ammonium Nitrate by weight shall be deemed to be an explosive, within the meaning of the said Act, but at the same time, note appended to it says that the Explosive Rules, 2008 shall not be applicable, to Ammonium Nitrate or any combination thereof, as referred to opening portion of this notification, except for the materials or mixtures classified as explosives under the said Explosives Rules, 2008 and there shall be framed separate rules for regulating the Ammonium Nitrate, or combination thereof u/s 5 and Section 7 of Explosives Act, 1884.

5. Subsequently, some clarification was issued on 4th August, 2011, by the Ministry of Petroleum Explosives and Safety Organization, which reads as follows:--

It is clarified that vide this Notification AN has been declared as an explosive within the meaning of Explosives Act, 1884. As per the rules footnote of the Notification, a separate set of rules have to be framed. The exercises for framing separate set of Rules and regulations of AN are in progress. Till Ammonium Nitrate Rules are finally notified, the Ammonium Nitrate is not attracting the provisions of the said Rules of Explosive Rules, 2008.

The rules related to manufacture, conversion, storage dosing & bagging, import, export, transport, possession for sales or use of Ammonium Nitrate will come into force only after Notifications of the Draft Ammonium Nitrate Rules and receiving the suggestions/objection from the public and finally the Ammonium Nitrate Rules are published in the Government of India Gazette.

6. Thus, by referring to the said notification and the clarification, it was submitted that one cannot be prosecuted under Sections 3 and 4 of the Explosive Substances Act for having possession of the Ammonium Nitrate.

7. The aforesaid proposition has already been laid down earlier by this Court in a case of Pravesh Kumar @ Pravesh Kumar Lakhamani Vs. The State of Jharkhand, and other connected matters).

8. In spite of time being granted no counter affidavit was filed. In such situation, the submissions advanced in the context of the Gazette Notification and the clarification issued subsequently, is to be accepted that having possession of the Ammonium Nitrate in absence of Ammonium Nitrate Rules, Ammonium Nitrate cannot be taken to be an explosive substance and, thereby, the impugned order dated 28.5.2012, under which cognizance has been taken u/s 4/5 of the Explosive Substances Act read with Section 120B IPC, is hereby quashed. In the result, this application stands allowed.