
(2013) 05 MP CK 0127

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 683 of 2013

Harishankar and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 5 MPHT 14

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Imtiaz Hussain, for the Appellant; Ramesh Kushwaha, Public Prosecutor for the Respondent/State, for the Respondent

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the order impugned dated 15-1-2013 passed by learned Second Additional Sessions Judge, Aastha, District Sehore in Sessions Trial No. 196/2012 framing charges punishable under Sections 4B and 5 of the Explosive Substances Act, 1908 (for short "Act") this revision u/s 397 read with Section 401, Cr.PC. has been filed by the applicants. As per the case of prosecution, the explosive substance namely "Ammonium Nitrate" was seized from the possession of the applicants on 17-3-2012 and since it is an explosive substance, therefore, the case was registered against applicants and a charge-sheet was submitted upon which learned Trial Court framed charges punishable under Sections 4B and 5 of the said Act. Learned Counsel for the applicants has invited my attention to Gazette Notification of the Government of India, dated 11-7-2012 wherein from the date of its publication, Ammonium Nitrate Rules, 2012 were enforced, hence according to learned Counsel the charges under Sections 4B and 5 of the said Act cannot be framed against the applicants, because on 17-3-2012 the rules which were existing, under those rules Ammonium Nitrate was not included. Hence, it has been prayed that charges which are framed against the applicants be quashed.

2. On the other hand, Shri Ramesh Kushwaha, Public Prosecutor for respondent/State argued in support of the impugned order and submitted that since

Ammonium Nitrate would come within the ambit and sweep of explosive substance, therefore, charges under Sections 4B and 5 of the said Act have rightly been framed against the applicants.

3. Having heard learned Counsel for the parties, I am of the view that this revision deserves to be allowed.

4. Undisputedly, the rules namely Ammonium Nitrate Rules, 2012 came into force from the date of its publication which is 11th July, 2012. Annexure P-2, which is the Gazette Notification of Government of India, dated 11-7-2012 by which, rules have been published, is on record. Thus, Rule 3 which pertains to Ammonium Nitrate as an explosive substance would be deemed as explosive substance with effect from 11-7-2012 and not earlier to it.

5. On bare perusal of another Government Gazette, dated 21-7-2011, this Court finds that the Explosive Rules, 2008 were not made applicable to Ammonium Nitrate or any combination thereof. On bare perusal of Annexure P-5, it is clear that it is a clarification issued by the Government of India on 18th March, 2009 making clarification that Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908.

6. Since the Ammonium Nitrate Rules, 2012 came into force only on 11-7-2012, therefore, earlier to commencement of these rules, on 17-3-2012 if Ammonium Nitrate was found in the possession of the applicants, no licence thereof was required since it was clarified by the Government of India vide its clarification dated 18th March, 2009 (Annexure P-5) wherein specifically it has been mentioned that Ammonium Nitrate per se is not an explosive and does not required any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908 at present.

7. Hence I am of the view that because on 17-3-2012 no licence was required by the applicants to carry on the trade of Ammonium Nitrate, therefore, they cannot be prosecuted and charged under Sections 4B and 5 of the Act. Ab judicatio, this revision succeeds and is hereby allowed. The impugned order 15-1-2013 as well as the charges framed under Sections 4B and 5 of the said Act are hereby quashed. All the applicants are discharged.