
(2009) 03 RAJ CK 0024
In the Rajasthan High Court

Jagmal Singh Yadav and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Evidence Act, 1872 — Section 32
Explosive Substances Act, 1908 — Section 4, 5

Citation : (2009) 4 RLW 3124

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This revision petition has been filed by the petitioners, Major Jagmal Singh Yadav and Ram Balak Patel, against the order dated Feb. 6, 2009 of Additional Sessions Judge (Fast Track) No. 4 Deeg Bharatpur in Sessions Case No. 64 of 2008 whereby the trial court framed charges under Sections 4/5 of the Explosive Substances Act, 1908 against them petitioner No. 1 is Proprietor of M/s. Jagmal Singh & Corporation and petitioner No. 2 is employee in the said firm. The said firm is a license holder firm bearing licence No. E/NC/HN/22/13 (E-10019) HN-159/E which was issued by the Chief Explosive Controller, Northern Region, Faridabad (Haryana) and is dealing in providing explosive for the use of mines in the country. For using explosive under the aforesaid license, the petitioner established site project office at village Luhesar, Tehsil Kaman, District Bharatpur and sought permission to use explosive in the mines at Kaman by to Chief controller of Explosive. As per the condition of the licence, "Blasting operation was to be carried out between Sunrise and Sunset and under rule 146(4) of the Explosive Rules, 1983 explosive left over after the day's work was to be returned to the licensed premises from which the same were taken. The use of the explosive were to be restricted upto the area from where the same can be returned to the storage magazine before Sunset. The explosive was to be carried out upto the reasonable distance from the magazine from where it can be brought back within day time. As per the rules

and conditions of the licence, it was essential to bring back the explosive to the magazine within day time and the explosives was not to be stored at any place other than the licensed magazine and transported in an Explosive Van to the site of blasting. The Police recovered explosive articles from the village Luhesar, Police Station Kaman, for that purpose the petitioners were not having any license. On January 15, 2004, Police Station Kaman, Distt. Bharatpur lodged an FIR No. 22 of 2004 against the petitioners under Sections 4/5 of the Explosive Substances Act, 1908 alleging that on inspection at site office of the firm of Major Jagmal Singh, explosives were found there without any license. After investigation, the Police submitted challan against the accused petitioners before the trial court. The trial court vide order dated Feb. 6, 2009 framed charge against the accused petitioners. Hence this revision petition was preferred by the accused petitioners challenging the order of framing charge by the trial court.

3. Mr. Raj Kumar Goyal, the learned Counsel for the petitioner contended that the order framing charge against the accused petitioners is bad in the eye of law, against the material and evidence available on record. The trial Court has committed serious illegality in framing charges for the offence u/s 4/5 of Explosive Substances Act, 1908 against the accused petitioners. Whereas, prima facie on the basis of the prosecution documents itself, no case against the accused petitioners is made out for such offences. Learned Counsel urged that the petitioner No. 1 was granted license by the concerned authorities for using explosive in the mines throughout the country and for village Luhesar, Tehsil Kaman Distt. Bahratpur, the authorised concerned central as well as local authorities granted temporary permission to use the said explosives for mines and the trial court without appreciating the provisions of the Explosive Substances Act framed charge for the offence u/s 4/5 of the Explosive Substances Act. The learned Counsel lastly drawn attention that the charge against the accused petitioners was framed u/s 4/5 of the Explosive Substance Act, but actually they have not committed any such offence they have only committed breach of condition of the licence, which was issued under the Explosive Act and Rules. Hence charge framed against the accused petitioners by the trial court dated Feb. 6, 2009 be set aside.

4. The learned Public Prosecutors appearing on behalf of the State on the other hand opposed the submissions of learned Counsel for the petitioners and contended that the license was granted by the concerned authorities to the petitioner No. 1 to keep the explosive in the magazine. As per the condition of the licence, "Blasting operation was to be carried out between Sunrise and Sunset and under Rule 146(4) of the Explosive Rules, 1983 explosive left over after the day's work was to be returned to the licensed premises from where the same were taken. The use of the explosive was to be restricted upto the area from where the same was returned to the storage magazine before Sunset. The explosive was to be carried out upto the reasonable distance from the maganize from where it was brought back within day time. As per the rules and conditions of the licence, it is essential to bring back the explosive to the magazine within

day time and the explosives cannot be stored at any place other than the licensed magazine and transported in an Explosive Van to the site of blasting. It is thus clear that prima facie the petitioners contravened the provisions of the Explosive Substances Act and the trial court rightly framed the charge against them.

5. I have heard the learned Counsel for the parties and gone through the entire record. In my opinion the trial court rightly framed the charge against the petitioners for contravening the provisions of the Explosive Substances Act. As per the condition of the licence, "Blasting operation was to be carried out between Sunrise and Sunset and under Rule 146(4) of the Explosive Rules, 1983 explosive left over after the day's work was to be returned to the licensed premises from where the same were taken. The use of the explosive was to be restricted upto the area from where the same was returned to the storage magazine before Sunset. The explosive was to be carried out upto the reasonable distance from the magazine from where it was brought back within day time. As per the rules and conditions of the licence, it is essential to bring back the explosive to the magazine within day time and the explosives cannot be stored at any place other than the licensed magazine and transported in an Explosive Van to the site of blasting. Admittedly the explosive was recovered by the Police other than the place of licence. It is thus clear that prima facie the petitioners contravened the provisions of the Explosive Substances Act. This Court in *Om Prakash and Anr. v. State of Rajasthan S.B. Cr. Revision Petition No. 1282 of 2003*, decided on January 22, 2009 laid down following principles in regard to framing of charge by the courts below:

(i) No reasons are required to be recorded when the charges are framed against the accused.

(ii) In cases instituted otherwise than on a Police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused.

(iii) Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused.

(iv) The High Courts to be loathe in interfering at the stage of framing the charges against the accused.

(v) At the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged.

(vi) It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be

incompatible with the innocence of the accused or not.

(vii) At the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

(viii) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any cannot show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial.

(ix) The Supreme Court reminded the High Court of their statutory obligation to not interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons.

(x) Unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

7. The Apex Court in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, held as under:

...it would not be safe at this stage to deprive the prosecution in proving its case on the basis of direct evidence, the statement of the deceased claimed to be admissible u/s 32 of the Evidence Act and the other documents including the inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post mortem report for the cause of death of deceased being hepatic failure following viral hepatitis" cannot be accepted on its face value at this stage. Therefore the order of the High Court would be illegal and liable to be set aside." "The Supreme Court reminded the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protecting the trial and preventing culmination of the criminal cases by having resort to uncalled for an unjustified litigation under the cloak of technicalities of law.

8. For these reasons, I do not find any illegality or infirmity in the order dated Feb. 6, 2009, but the trial court is directed to expedite trial if possible the trial should be completed within a period of 3 months. The revision petition is dismissed.

9. Since the main case has been disposed, the stay application also stands disposed of.