
(2013) 04 RAJ CK 0077

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 574 of 1997

Jai Kumar Bhatt and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5

Citation : (2013) 2 Crimes 688 : (2013) 4 RLW 2958 : (2013) 4 WLN 350

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Sheetal Kumbhat, for the Appellant; K.K. Rawal, PP, for the Respondent

Final Decision : Disposed Off

Judgement

Sandeep Menu, J.—Heard learned counsel for the parties. The instant revision petition has been preferred by the petitioners being aggrieved of the order dated 15.11.1997 passed by learned Special Judge, SC/ST Act Cases, Udaipur in Sessions Case No. 75/1992 whereby the learned Special Judge has rejected the prayer of the accused petitioners to send their case to the concerned Magistrate for trial in relation to the offences under Sections 4 and 5 of the Explosive Substances Act, 1908. The petitioners were charge-sheeted for the said offences and their case was committed to the Court of Sessions as the offences were posed as triable exclusively by the Sessions Court. The petitioners filed an application before the committal court for sending their case to the concerned Magistrate on the ground that the offences under Sections 4 and 5 of the Explosive Substances Act are punishable with imprisonment for 7 years and 5 years respectively and as such the same are triable by the Court of a First Class Magistrate only. The said application was rejected on 15.11.1997 on which the petitioners have approached this Court through this revision. Learned counsel for the petitioner contended that Section 4 of the Explosive Substances Act prescribes imprisonment for a period of 7 years or transportation for a fixed term

of "twenty years" and Section 5 of the said Act prescribes punishment for a period of 5 years or transportation for a fixed term of "fourteen years"". He contended that the phrases used in the said Sections "transportation for a term" which may extend to 20 years and 14 years respectively stand omitted by the effect of Section 53A, of the Indian Penal Code. He contended that upon the omission of the said phrase from both the Sections, the offences would remain punishable only with imprisonment of 5 years and 7 years respectively and, as such, the case would be triable by the Court of First Class Magistrate by virtue of the schedule to the Cr.P.C. He thus submitted that the learned Special Judge has committed a grave error in rejecting the application filed by the accused for sending their case to the concerned Magistrate for trial. In support of his submissions, learned counsel for the petitioners placed reliance on the following judgments:-

(1) Latif Mohammad Butt @ Bilal Ashraf Vs. State (NCT of Delhi),

(2) Javed Ahmed Munshi Vs. The State, and

(3) Sabu Vs. State of Kerala,

2. Per contra, learned Public Prosecutor has opposed the submissions advanced at the bar.

3. Heard and considered the arguments advanced at the bar, perused the order impugned and the record.

4. For easy reference, the relevant provisions of law i.e. Sections 4 & 5 of the Explosive Substances Act and Section 53A I.P.C. are reproduced hereunder:-

Section 4 of the Explosive Substances Act:-

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.-Any person who unlawfully and maliciously-

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India; shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

Section 5 of the Explosive Substances Act:-

Punishment for making or possessing explosives under suspicious circumstances.

- Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Section 53A I.P.C.:-

Construction of reference to transportation.-

(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 2 [1955], (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall,-

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.

5. Sub-section (4) of Section 53A I.P.C. is the provision germane for the case. From a bare reading of Sub-Section (4) of Section 53A, it would be apparent that the phrase "transportation for a term" as mentioned in Sections 4 and 5 of the Explosive Substances Act shall be deemed to be omitted in pursuance to the amendment made in I.P.C. by the Criminal Law Amendment Act of 1955. The term "transportation for life" stands converted to "imprisonment for life". The punishment which is provided in both the Sections of the Explosive Substances Act refers to transportation of a fixed term of 20 years and 14 years respectively. Once the said phrases are omitted, then the punishments which remain in the Sections 4 & 5 would be for terms of 7 years and 5 years respectively.

The Special Act i.e. Explosive Substances Act, does not prescribe the forum of trial, therefore, the reference had to be had to the Code of Criminal Procedure. In the Schedule of Cr.P.C., particularly, the second part thereof, classification of

offences against other laws has been given. It is provided in the Schedule that if the punishment is death, imprisonment for life or imprisonment for more than seven years, the offence would be cognizable, non-bailable and triable by the Court of Sessions. It has further been provided that if the punishment is in presentment for 3 years but not more than 7 years, such offence would be a cognizable & non-bailable offence and is classified to be triable by the Court of First Class Magistrate.

6. The maximum punishment for the offences for which the accused petitioners are facing trial in the present case is seven years and as such the case would fall in the category of a case triable by the Court of the First Class Magistrate. Thus, the trial of the petitioners has to be held by the Court of a First Class Magistrate. Resultantly, the instant revision petition succeeds, the order dated 15.11.1997 is quashed and the learned Special Judge, SC/ST Act Cases, Udaipur is directed to remit the matter to the learned Chief Judicial Magistrate, Udaipur for trial in accordance with law.

Stay petition also stands disposed of.

Record of the trial court be sent back forthwith.