
(2013) 03 JH CK 0096
In the Jharkhand High Court
Case No : Cr. M.P. No. 2041 of 2012

Kamal Sheikh and Sheikh Baitul

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 03 JH CK 0096

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the order dated 4.8.2012 passed by learned Sub-divisional Judicial Magistrate, Deoghar in Jasidih P.S. case no. 140 of 2012 (G.R. No. 631 of 2012) whereby and whereunder cognizance of the offence punishable under Sections 4, 5, 6 of the Explosive Substances Act has been taken against the petitioners. It is the case of the prosecution that when Officer-in-Charge of Jasidih Police Station received secret information that two persons are carrying explosives in a Bus named as Puja Bus plying between Jasidih and Dumka, he along with police party intercepted the Bus bearing registration no. BR-12-A-2201 in the bus stand itself. On search being made, two bags each containing 80 bundles of detonators in total 4000 detonators were found beneath the seat, upon which these petitioners were sitting, which were seized and the petitioners were apprehended. On being quizzed, the petitioner no. 1 Kamal sheikh disclosed that he had purchased the same from one Ishakh Mian by paying a sum of Rs. 3000/- and the same were being carried to sell it to one Udai Ghosh.

2. On such allegation, a case was registered as Jasidih P.S. case no. 140 of 2012 under Sections 4, 5 and 6 of the Explosive Substances Act.

3. After completion of the investigation, police submitted charge sheet against the petitioners, upon which cognizance of the offences punishable under Sections 4, 5 and 6 of the Explosive Substances Act was taken against the petitioners vide order dated 4.8.2012 which is under challenge.

4. Mr. Gautam Kumar, learned counsel appearing for the petitioners by referring to the provision as contained in Section 4(d) of the Explosives Act defining "explosives" submitted that detonator falls within the category of explosive and as such, having possession of it cannot be a subject matter of prosecution under Sections 4, 5 and 6 of the Explosive Substance Act.

5. In this regard it was submitted that detonator is never the substance which itself causes explosion, rather it is a device used to trigger an explosive device which can be done chemically, mechanically or electrically.

6. In such situation, it will never fall within the definition of "Explosive Substances" as defined u/s 2 of the Explosive Substances Act.

7. In this regard it was pointed out that one such matter fell for consideration before the Hon"ble Supreme Court in a case of Lopchand Naruji Jat and Another Vs. State of Gujarat, wherein Their Lordships did hold that the detonator will fall within the definition of Explosives as defined u/s 4(d) of the Explosives Act.

8. As against this learned counsel appearing for the State submitted that detonators being used for purposes of causing explosion would be falling within the definition of explosives defined under the Explosive Substances Act.

9. In the context of the submission, one needs to take notice of the provision of Section 4(d) of the Explosives Act which reads as follows:

4(d) "explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-- toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate or mercury or any other metal, diozo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substance, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause.

10. Further as per Rule 3 of the Explosive Rules, explosives have been classified under Schedule 1. Explosives have been divided into 8 classes. Relevant would be class 6 which reads as follows:

"Class 6 Ammunition class:

"Ammunition" means an explosive of any of the foregoing classes when the same is enclosed in any case or contrivance, or is otherwise adapted or prepared so as to form:

a cartridge or charge for small arms, cannon or any other weapon, or (b) a safety or other fuse for blasting or for shells, or (c) a tube for firing explosives, or (d) a percussion cap, detonator, fog signal, shell, torpedo, war rocket or any other contrivance other than a firework. The ammunition class has three

divisions namely Division 1, Division 2 and Division 3.

Division 1 comprises exclusively of (i) Safety cartridges (ii) Safety fuses for blasting, (iii) Railway for signal and (iv) Percussion caps.

Division 2, comprises any ammunition which does not contain its own means of ignition and is not included in Division 1, such as cartridges for small arms other than safety cartridges and charges for common shells and torpedoes containing any explosives, tubes for firing explosives and war rocket, which do not contain their own means of ignition.

Division 3 comprises any ammunition which contains its own means of ignition and is not included in Division 1 such as detonators fuses, for blasting which are not safety fuses, tubes for firing explosives, containing their own means of ignition.

11. Thus, the expression which has been underlined hereinabove clearly goes to show that detonator is one of the classes of ammunition and it is an ammunition which contains its own means of ignition.

12. Keeping in view the aforesaid aspect of the matter, the Hon'ble Supreme Court in a case of *Lopchand Naruji Jat and another vs. State of Gujarat* (supra) did hold that detonator is an explosive in terms of Section 4(d) of the Explosives Act. That was the case wherein a person on being found in possession of detonator was put on trial and on being convicted was punished u/s 9-B(i)(b) of the Act but the plea which was taken before the Supreme Court is that detonator falls within the categories of the Explosive Substances which submission was not accepted, keeping in view the definition of explosive as given u/s 4(d) of the Explosives Act and also its classification.

13. So far the submission which has been made on behalf of the State that detonator being used for the purpose of causing explosion would be falling within the definition of Explosive defined under Substances Act, is concerned, that is not acceptable.

14. Section 2(a) of the Explosive Substances Act, 1908 reads as follows:

2(a) the express "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

15. On careful reading of the aforesaid provision one would find that any material used for making any explosive substance falls within the definition of explosive substances that apart, any apparatus, machine, etc. which itself is capable or aids in causing any explosion that would also come within the definition of Explosive Substances Act. In other words, any materials, apparatus, machines, etc which itself is capable in causing explosion or with aid of any explosive

substance causes explosion would fall within the definition of Explosive Substance.

16. Here in the instant case as has been noted above, detonator is never the substance which itself causes explosion rather it's device used to trigger an explosive device and the device has been kept in the category of explosive as defined u/s 4(d) of the Explosives Act.

17. In such situation, the order dated 4.8.2012 under which cognizance of the offences under Sections 4, 5 and 6 of the Explosive substances Act has been taken against the petitioners is hereby quashed.

18. However, the matter is remanded back to the court below so that a fresh order be passed in accordance with law on the point of cognizance. Thus, this application stands disposed of.