

(2013) 01 RAJ CK 0117

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 432 of 2011

Kanhaiya Lal and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Explosive Substances Act, 1908 — Section 5

Citation : (2013) 3 Crimes 62 : (2013) 3 RLW 1913 : (2013) 1 WLN 454

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Suresh Kumbhat and Mr. Sheetal Kumbhat, V.K. Mathur and Ms. Garima Chouhan, for the Appellant; Chandralekha, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—This criminal revision under Sec. 397 read with Section 401 Cr.P.C., is directed against the order dt. 21.05.2011 passed by the learned Addl. Sessions Judge, Churu in Sessions Case No. 4/2009 whereby the charge under Sec. 5 of the Explosives Substances Act has been framed against the petitioner. Succinctly stated the facts of the case are that the petitioner submits that in this case the petitioners were apprehended on 22.02.2009 while transporting Ammonium Nitrate. The Ammonium Nitrate recovered from the possession of the petitioner was seized and an F.I.R. was registered under Sec. 5 of the Explosive Substances Act, 1908 against them. After completion of investigation a charge-sheet was filed against them for the said offence. The learned trial Court framed charge vide order dt. 21.05.2011 against the petitioners for the aforesaid offence. The order framing charge has been challenged in the instant revision petition.

2. Learned counsel for the petitioner contends that Ammonium Nitrate was notified to be a special category explosive substance on 10.12.2008 vide Gazette

Notification No. S.O. 2899 (E) but thereafter the Department has issued further clarification whereby it was clarified that no license was required for manufacturing, storage, possession and sale of Ammonium Nitrate. He has placed on record a letter dt. 16.03.2009 issued by the Joint Secretary to the Government of India, Ministry of Commerce and Industry wherein it has been mentioned that no licence is required for the purpose of manufacturing, storage, sale and possession of Ammonium Nitrate. Learned counsel further placed on record the Gazette Notification dt. 21.07.2011, as per which the Central Government has declared Ammonium Nitrate to be an explosive within the meaning of Explosives Substance Act with effect from the date of said notification. Learned counsel for the petitioner has relied upon a decision of the Hon"ble Andhra Pradesh High Court in CrI. Petition No. 3334 of 2010 wherein relying upon the said notification, the Hon"ble Andhra Pradesh High Court has held that storage, sale and transportation etc. of Ammonium Nitrate does not attract provisions of the Explosives Act, 1884.

3. This Court issued notice to the Union of India and Mr. V.K. Mathur, learned standing counsel appearing of the Union of India has submitted a letter of the Under Secretary to the Government of India dt. 30.04.2012 with supporting documents as per which, it has been specifically reiterated that on 22.02.2009 i.e. on the date of seizure no license was required to carry Ammonium Nitrate as the rules for regulating the use of Ammonium Nitrate had not been promulgated by that time.

4. Having considered the facts and circumstances of the case and keeping in view the factual and legal situation which has been discussed above, it is apparent that storage, sale and transportation etc. of Ammonium Nitrate was not an offence on 22.02.2009. The said substance has been brought under the umbrella of Explosives Act, 1884 only by notification dt. 21.07.2011 issued by the Government of India. The possession thereof without any licence has been brought within the purview of the Explosives Act, 1884 w.e.f. 21.07.2011 only- Any possession, transportation etc. of the said chemical before this date would not be covered under the definition of the offences under the Explosive Substances Act, 1908 or the Explosives Act, 1884.

5. In this view of the matter, it is apparent that the order framing charge against the petitioners cannot be sustained as the possession of Ammonium Nitrate was not declared by any statute to be an offence on 22.09.2009 i.e. the date of seizure. The revision petition is allowed accordingly. The order dt. 21.05.2011 passed by the learned Addl. Sessions Judge, Churu in Sessions Case No. 4/2009 is quashed.