

(2007) 10 DEL CK 0107

In the Delhi High Court

Case No : Criminal A. No. 725 of 2004

Latif Mohammad Butt @ Bilal Ashraf

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5
Penal Code, 1860 (IPC) — Section 53A

Citation : (2007) 99 DRJ 182

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Syed Mehdi Hussain, for the Appellant; Manoj Ohri, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This appeal has been preferred by the appellant against the judgment dated 13th July, 2004 whereby the appellant was convicted by the Trial Court under Sections 4 and 5 of the Explosive Substances Act and against the order of sentence whereby the Trial Court sentenced the appellant to undergo RI for 10 years and a fine of Rs. 5,000/- under each Section.

2. During arguments, the counsel for the appellant submitted that the case of the appellant was of October, 2000 and the appellant was governed by Explosive Substances Act 1908 as it stood in the year 2000. The Explosive Substances Act was amended by Act No. 54 of 2001 and punishment as provided under Sections 4 and 5 of the Explosive Substances Act was changed. The counsel argued that under the unamended provisions of the Explosive Substances Act, the petitioner could not have been sentenced for a period of 10 years under either Section 4 or Section 5 of the Explosive Substances Act and maximum punishment that could have been awarded to him was 05 years and 07 years under each Section respectively. He, Therefore, prays that appeal of the appellant be allowed as far as his sentence is concerned however, the conviction is not being challenged by the appellant.

3. It is not disputed that commission of offence in case of appellant had taken place in the year 2000 and at that time, the provisions of Sections 4 and 5 stood as under:

4. 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) ...

(b) ...

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.

4. Section 5 reads as under:

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 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.

5. It is argued by the Counsel that in view of Section 53(A) of the Indian Penal Code the transportation part of the punishment has to be considered omitted from the statute and Therefore, Sections 4 and 5 of the Explosive Substances Act, 1908 have to be read as if there was no sentence of transportation provided and only sentence regarding imprisonment was provided.

6. This Court in Criminal Appeal No. 581/2004 decided on 21st February, 2007 held that the legal position in respect of position under Sections 4 and 5 of the Explosive Substances Act has to be read bereft of transportation part and the maximum imprisonment u/s 4 could only be for a term of 07 years with fine and u/s 5 of the Explosive Substances Act it could only be for a period of 05 years with fine. In view of the judgment of this Court, the appeal of the appellant is allowed to the extent of modification of sentence. The order of the sentence of the Trial Court is modified to the following effect:

The appellant/accused shall undergo RI for 07 years and fine of Rs. 5,000/- u/s 4 and RI for 05 years and fine of Rs. 5,000/- u/s 5 of the Explosive Substances Act in default of fine he shall further undergo SI for 06 months in each lapse.

7. If the appellant has already undergone the above sentence and not wanted in any other case he be set at liberty.

A copy of this order be sent to Superintendent Tihar Jail.