

(2011) 11 RAJ CK 0033

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2784 of 2011

Lokesh Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 482
Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 120B, 201, 295, 295A, 302
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 18, 20

Citation : (2012) 3 RLW 2307

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Basant Singh Chhaba, for the Appellant; G.C. Chatterjee, Special Public Prosecutor, for NIA, Ashwani Choubisa, Public Prosecutor, for NIA, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Mahesh Chandra Sharma, J.—This petition has been filed u/s 482 Cr.P.C. for quashing of the impugned order dated 23.6.2011 passed by Special Judge, NIA Court, Jaipur whereby the application filed by the National Investigation Agency in FIR No. 4/11 dated 6.4.2011 Police Station NIA New Delhi was allowed. Brief facts of the case are as under:

A report was lodged by one Syed Sarver Chisty on 11.10.2007 stating therein that at 6.12 p.m. a slam like bomb blast occurred at Aahta-A-Noor in which many people injured and out of them two have been expired on the spot. Upon which FIR No. 85/2007 was registered at Police Station Dargah District Ajmer for the offence under Sections 302, 307, 323 and 295 IPC and Section 3 of the Explosive Substances Act. During the course of the investigation the accused petitioner was arrested on 15.5.2010 by the Anti Terrorist Squad (ATS) Rajasthan. After investigation in detail, challan was filed against the accused petitioner on 20.10.2010 before the court concerned for the offence under

Sections 302, 307, 323, 295-A, 201 and 120-B IPC, u/s 3 of the Explosive Substances Act and under sections 13, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967-2008. By the order dated 6.4.2011 the investigation of the case was handed over to the National Investigation Agency New Delhi and the same was registered as FIR No. 4/2011 dated 6.4.2011 against the petitioner with other co-accused persons again, whose investigation was pending u/s 173(8) Cr.P.C. and after thorough investigation supplementary charge sheet was filed by the NIA against the co-accused and investigation is further kept pending u/s 173(8) Cr.P.C. against other accused persons. On 23.6.2011 an application was filed by one Arvind Digvijy Negi, Addl. Superintendent of Police and Investigating Officer. NIA New Delhi. The petitioner filed the copy of the application with this petition. The Court passed the order on the application itself on 23.6.2011 allowing the application. The copy of the application and the orders thereon reads as under:

23.6.2011

Presented by Shri AD Negi. Heard Seized articles mentioned above are already in FSL, except article at S.No. 8 & 3. As per application comparative examination seems to be essential. Hence, applicant is permitted to get the above articles re-examined/comparatively examined.

Sd/-

2. This petition has been preferred under Sec. 482 Cr.P.C. for quashing of the order dated 23.6.2011 passed by the Special Judge, NIA Jaipur. Mr. Basant Singh, learned counsel for the petitioner has contended that this application was filed by the investigating officer with the ulterior motive and upon that application neither opportunity was given to the accused to file counter nor he was heard and exparte order was passed hence it should be quashed and set aside. He has further contended that the charge sheet has been filed on completion of the investigation and thereafter supplementary charge sheet has been filed and in between the said application was moved by the investigating officer and the court ordered for reinvestigation of the case instead of further investigation. He has further submitted that the investigating agency has not followed the proper procedure as required by the law. There is no provision under the NIA Act for filing appeal against the interlocutory order and hence this petition under Sec. 482 Cr.P.C. has been filed. He has further requested to this court that direction should be given to the trial Court for fair trial. He has further contended that the trial Court may be directed to conduct the trial by following the proper procure and protecting the constitutional right of the accused petition. In relation to procedure of the court he has drawn attention of this Court towards Rule 26 of the General Rules (Criminal) 1980.

3. On the other hand, Mr. G.C. Chatterjee, Special Public Prosecutor for the NIA and Mr. Ashwani Choubisa, Public Prosecutor for the NIA have contended that the charge sheet has been filed and the investigation is pending against other

accused persons and the existing accused persons u/s 173(8) Cr.P.C. This means the investigation is going on and is not complete and the NIA wants that the recovered articles as mentioned by the investigating agency in the application dated 23.6.2011 to be sent to CFSL for re-examination and this examination is essential to further confirm the other Blasts which have occurred in Malegaon First Malegaon Second, Samjota Express, Modasa and Maqa Masjid of Heydrabad, because of the fact during the course of investigation it was brought to the notice of the NIA that in all the Bomb Blasts procedure and material are same and for that purpose comparative examination of the material mentioned in the application is necessary. The NIA Court has rightly passed the order for re-examination of the material mentioned in the application. The order passed by the NIA does not call for any interference u/s 482 Cr.P.C. This misc. petition filed by the petitioner challenging the order passed by the NIA court for comparative examination of the articles mentioned in the application, deserves to be rejected.

4. I have gone through the application filed by the Investigating officer NIA New Delhi and the orders passed by the NIA court on the application. The order passed by the NIA court relates to comparative examination of articles mentioned in the application for further investigation in the case to further confirm the other Blasts which have occurred in Malegaon First, Malegaon Second, Samjota Express, Modasa and Maqa Masjid of Hyderabad. Rule 26 of the General Rules (Criminal, 1980 reads as under:

26. Order-sheet.- Upon institution of a case, an order sheet in the prescribed form (F.III) shall be opened. Upon it shall be recorded-

- (i) every routine order passed by the Court in the case;
- (ii) a note of every other order passed (including every order regarding the production of a document before the Court);
- (iii) a note of the date of each hearing attendance of parties by name, the names of the pleaders appearing and the proceedings on that date. An order, not being an order for adjournment or postponement, the reasons for which are required to be recorded at length shall not be written on the order- sheet but only note of the order and of the date on which it was made shall be entered on it. Every entry upon the order- sheet shall be made at the earliest opportunity and shall be signed by the Presiding officer. Every order sheet shall bear at its top the number and the title of the case;
- (iv) all financial transaction relating to the case.

The Presiding Officer of the NIA Court has already given the reasons while passing the order on the application and hence it cannot be said that any procedural irregularity has been committed by the Presiding Officer in drawing orders on the application itself. The AP High Court in CRLP 8668 of 2011 vide order dated September 23, 2011 in similar circumstances declined the prayer challenging the order passed by the NIA Court for further analysis.

The investigation of the case is still pending u/s 173(8) Cr.P.C. with the NIA New Delhi. After considering the rival submissions and in the facts and circumstances of this case I do not find any illegality or infirmity in the order dated 23.6.2011 passed by the Special Judge, NIA Jaipur. However the prayer made by the counsel for the petitioner regarding fair trial, and protecting his constitutional right of the petitioner and to adopt the due process of law is reasonable. For that purpose the Special Public Prosecutor and the Public Prosecutor do not oppose the same.

For these reasons the misc. petition being devoid of merit stands rejected. The trial court is directed to adopt the due process of law and fair trial protecting the constitutional rights of the accused petitioner. The counsel for the petitioner is free to raise all the objections raised in this petition or any other objections if any at the appropriate stage of the trial. The stay application also stands rejected.