

(2011) 01 JH CK 0012
In the Jharkhand High Court
Case No : Cr.M.P. No. 1079 of 2010

Prakash Prasad Mehta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Explosive Substances Act, 1908 — Section 3, 4, 5

Citation : (2011) 01 JH CK 0012

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Petitioner has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 15.2.2010 by which the order passed by the C.J.M., Hazaribag on 12.11.2009 refusing to release 364 bags of Ammonium Nitrate to the Petitioner was affirmed and the criminal revision was dismissed.

2. Prosecution story in short was that the Sub-Inspector of Police, Ichak Police Station submitted a written report that pursuant to the information that some explosive materials were to be supplied to the extremists near Ichak more, police party proceeded to the pointing place and at the sight of the police party, three persons started running away but the police apprehended them on chase including the Petitioner Prakash Prasad Mehta. On interrogation, the accused confessed their guilt disclosing that they were engaged in trading of Ammonium Nitrate and they are partners and the Petitioner having a godown at Gobarbanda. The police along with the Petitioner went to the godown from where 364 bags of Ammonium Nitrate were seized. Besides, godown of one Mahendra Prasad Mehta was also searched and the police recovered 10 bags of Ammonium Nitrate each weighing 50 Kg and 10 pieces of detonator connected with wire.

3. Petitioner obtained bail from this Court and thereafter, he filed a petition

before the learned C.J.M., Hazaribag for release of 364 bags of Ammonium Nitrate. The learned C.J.M. refused to release the said quantity of Ammonium Nitrate on the ground that the case was registered under Sections 3, 4 and 5 of the Explosive Substance Act and according to the submissions made on behalf of the State, it was stated that as per Gazette of India dated 5th of December, 2008 Ammonium Nitrate or a combination thereof came within the special category of explosive substance for the purpose of the said Act.

4. Against that order, Petitioner preferred a criminal revision before the Sessions Judge, Hazaribag and the case diary was also called for, for disposal of the criminal revision and the learned Sessions Judge while disposing of the criminal revision, quoted certain paragraphs of the case diary that from para-23 it could be revealed that co-accused Mantu Prasad Mehta had been supplying Ammonium Nitrate and detonators to the extremists which was given by the co-accused Mahendra Prasad Mehta. Referring to paragraph-32 of the case diary, the learned Sessions Judge quoted that Petitioner along with other co-accused were supplying Ammonium Nitrate and detonators to the persons who were engaged in stone business and other persons also. Para-30 of the case diary contained that the seized detonators ten in number were sent to B.S.F. Camp and the same were found effective. In view of the materials in the case diary, prayer of the Petitioner for release of the 364 bags of Ammonium Nitrate was refused and the impugned order recorded by the C.J.M. was affirmed.

5. Learned Counsel Mr. Prasad submitted that the entire allegation against the Petitioner is misconceived. As a matter of fact, no licence is required for the sale of Ammonium Nitrate. Petitioner is admittedly a dealer of fertilizers, who used to deal in different nature of chemical fertilizers.

6. In the letter (Annexure-6) of the Government of India, Ministry of Commerce & Industry, Petroleum and Explosives Safety Organisation (PESO), addressed to M/s. M.S. Enterprises, Ammonium Nitrate Wholesellers & Retailer, At & P.O. Karma, Distt.-Koderma, Jharkhand, the Dy. Chief Controller of Explosives, Hazaribagh communicated and clarified that Prilled Ammonium Nitrate is not an explosive and does not come under the purview of the Acts and Rules i.e. Explosive Rules, 1983. He further clarified that no approval or licence under the above rules is required to be obtained from this Department for transport, handling and storage etc.

7. It was further clarified in the letter of Government of India (Annexure-6/1), addressed to the Indian Ammonium Nitrate Manufactures Association, Takshashila, 1st Floor, Madhavdas Pasta Road, Dadar (East), Mumbai-400 014 that "Ammonium Nitrate per say is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosives Substances Act, 1908 at present".

8. However, by memo No. 610 dated 22.12.2009, Inspector General of Police (C.I.D.), Jharkhand, Ranchi, in his letter, addressed to Superintendent of Police,

Hazaribagh has given clarification in view of the memo of Government of India, Petroleum and Explosives Safety Organisation dated 18.3.2009 that "Ammonium Nitrate per say is not an explosive and does not require any licence under either Explosive Act, 1884 or Explosive Act, 1908 at present". But at the same time in the notification of the Government of India dated 10.12.2008 it was ordered, "the Central Government hereby specifies Ammonium Nitrate or a combination thereof as a special category explosive substance for the purpose of the said Act". It was further clarified that no licence is required for storage of Ammonium Nitrate but if the same is used for the criminal activities then it would come certainly within the mischief of Explosives Substances Act, 1908.

9. Learned Counsel Mr. Prasad submitted that no antecedent has been reported against the Petitioner and recovery of 10 pieces of detonator was not made from the possession of this Petitioner rather from the possession of the co-accused Mantu Prasad Mehta.

10. Mr. S.K. Srivastava, the learned A.P.P. on behalf of the State did not dispute the legal position but at the same time he pointed out with reference to certain paragraphs of the case diary that the bags of Ammonium Nitrate were to be disposed of in the hands of the criminals as per the confessional statement of the co-accused Mantu Prasad Mehta but the Petitioner has not admitted his guilt before the police.

11. Having regard to the facts and circumstances of the case, on perusal of the various notifications of the Government and the letters annexed with the present petition, I find that the prayer for release of 364 bags of Ammonium Nitrate reasonably requires consideration, however, with certain conditions.

12. In the facts and circumstances, 364 bags of Ammonium Nitrate, which were seized in connection with Ichak P.S. Case No. 126 of 2009, are directed to be released in favour of the Petitioner on proper identification and examination of relevant documents and invoice to the satisfaction of Additional Sessions Judge, F.T.C.-VII, Hazaribagh in Sessions Trial No. 161 of 2010, however, with the condition that the released 364 bags of Ammonium Nitrate shall be disposed of within the supervision of Ichak police.

13. With these observations, this petition is allowed.

14. Let this order be communicated to the Superintendent of Police, Hazaribagh forthwith.