
(2012) 09 JH CK 0012
In the Jharkhand High Court
Case No : Criminal M.P. No. 1133 of 2012

Pravesh Kumar @ Pravesh Kumar Lakhamani	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 4, 5
Explosives Act, 1884 — Section 5, 7
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2013) 1 JLJR 72

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : H.K. Mehta, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. Since all the three applications did arise out of the same F.I.R., the same were heard together and are being disposed of, by a common order.

2. In all the three applications, prayer has been made to quash the First Information Report of Kotal Pokhar P.S. Case No. 80 of 2011 (G.R. No. 324 of 2011), instituted under Sections 379, 411 of the Indian Penal Code and also under Sections 4 and 5 of the Explosive Substances Act.

3. It is the case of the prosecution that during day patrolling, the A.S.I., of Kotal Pokhar Police Station while was passing through an area, he intercepted a Truck bearing Registration No. JH-16A-4304. On search being made, 60 bags of Ammonium Nitrate were being found carried over it. During enquiry, it was found that 15 bags each were to be carried to the Firm of the petitioner, Ramesh Kumar Dokania and Ram Ratan Agrawal whereas 20 bags were being carried to the Hindustan Industries Mining Corporation-Proprietor, of which Pravesh Kumar is the petitioner. Thus, ten bags of Ammonium Nitrate were being found carried

without there being any cash-memos. Therefore, the said 10 bags containing Ammonium Nitrate were taken to be stolen property and hence, a case was lodged which was registered as Kotal Pokhar P.S. Case No. 80 of 2011, under Sections 379 and 411 of the Indian Penal Code and also under Sections 4 and 5 of the Explosive Substances Act against these petitioners as well as the driver, the seller and also the owner of the vehicle.

4. Learned counsel appearing for the petitioners submits that accepting the entire allegations made in the First Information Report to be true neither the offence under the Explosive Substances Act nor even under Sections 379 and 411 of the Indian Penal Code is made out.

5. Learned counsel in this respect submits that all the petitioners are engaged in a business of quarry of stones for which they required Ammonium Nitrate for converting it into as Ammonium Nitrate Fuel Oil for the purpose of blasting of stones and for that, licence has been given to all the petitioners by the Ministry of Commerce and Industry, Petroleum and Explosive Safety Organization (PESO) and for that purpose, Ammonium Nitrate having been purchased from the shop of M/s. Jay Shree Krishna Enterprises were being carried to the respective firms and thereby, no offence is made out under Sections 3 and 4 of the Explosive Substances Act for the reason that the Ammonium Nitrate never happens to be an explosive substance which would be evident from the Notification, published in "The Gazette of India" Extraordinary Part-III on July 21, 2011, wherein it has been notified that the Ammonium Nitrate having chemical Formula $\text{NH}_4 \text{NO}_3$ or any combination more than 45% of the Ammonium Nitrate by weight shall be deemed to be an explosive, within the meaning of the said Act, but at the same time, note appended to it says that the Explosives Rules, 2008 shall not be applicable, to Ammonium Nitrate or any combination thereof, as referred to opening portion of this notification, except for the materials or mixtures classified as explosives under the said Explosives Rules, 2008 and there shall be framed separate rules for regulating the Ammonium Nitrate, or combination thereof u/s 5 and Section 7 of Explosives Act, 1884.

6. Subsequently, some clarification was issued on 4th August, 2011, by the Ministry of Petroleum Explosives and Safety Organization, which reads as follows:--

It is clarified that vide this Notification AN has been declared as an explosive within the meaning of Explosives Act, 1884. As per the rules note of the Notification, a separate set of rules have to be framed. The exercises for framing separate Set of Rules and regulations of AN are in progress. Till Ammonium Nitrate Rules are finally notified, the Ammonium Nitrate is not attracting the provisions of the said Rules of Explosives Rules, 2008.

The rules related to manufacture, conversion, storage dosing & bagging, import, export, transport, possession for sales or use of Ammonium Nitrate will come into force only after Notifications of the Draft Ammonium Nitrate Rules and

receiving the suggestions/objection from the public and finally the Ammonium Nitrate Rules are published in the Government of India Gazette.

7. Thus, by referring to the said notification and the clarification, it was submitted that one cannot be prosecuted under Sections 3 and 4 of the Explosive Substances Act for having possession of the Ammonium Nitrate.

8. Further it was submitted that so far offence under Sections 379 and 411 of the Indian Penal Code is concerned, it is never the case even as per the prosecution that the Ammonium Nitrate which was seized had been stolen or it was the stolen property. Therefore, First Information Report is fit to be quashed as allegation contained, therein do not make out any offence under which the case has been registered.

9. A counter affidavit has been filed, wherein, it has been stated that the petitioners have claimed to be the bona fide purchasers of Ammonium Nitrate, but the receipts under which the said Ammonium Nitrate is claimed to have been purchased does not bear signature of the proprietor of Jay Shree Krishna Enterprises, the seller.

10. Further, it has been stated that as per the condition of the licence the petitioner was required to keep only 200 kgs. of Ammonium Nitrate at a time, but as per the case of the petitioner, more than 200 kgs. Ammonium Nitrate is being carried to its firm. In reply, it was submitted that under the licence, there has been no limitation of keeping Ammonium Nitrate rather it speaks about the Ammonium Nitrate Fuel Oil which as per the licence is required to be kept to the extent of 200 kgs. at a time and thereby, nothing illegality has been committed.

11. Having heard learned counsel appearing for the parties, and on perusal of the record including the Notification and clarification, referred to above, it does appear that simply having possession of the Ammonium Nitrate, one cannot be prosecuted under Sections 3 and 4 of the Explosive Substances Act as Section 3 relates to punishment for causing explosion likely to endanger life or property whereas Section 4 speaks about punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property; which is never the case of the prosecution, particularly when Ammonium Nitrate, as per the notification and classification reference of which has been given hereinabove does not come within the definition of Explosive unless Explosives Rules are framed.

12. Further it is never the case of the prosecution that the explosive was the stolen property rather it is being suspected to be the stolen as according to the prosecution, cash-memo under which Ammonium Nitrate was being carried does not bear the signature of the seller, but seller never comes forward to say that the said Ammonium Nitrate had been stolen at the instance of these petitioners.

13. Thus, I do find no offence whatever has been made out under which the case has been registered.

14. Accordingly, entire criminal proceeding of Kotal Pokhar P.S. Case No. 80 of 2011 (G.R. No. 324 of 2011), is hereby quashed. In the result, this application, stands allowed.