

(2015) 06 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Revision Nos. 597, 665 and 733 of 2012

Sadanand Prasad Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Explosive Substances Act, 1908 — Section 2, 2(a), 2(b), 3, 4

Citation : (2015) 3 JLJR 520

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Arun Kumar Srivastava, Leena Mukherjee and Ruby Pandey, for the Appellant; Amresh Kumar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J.—All the three revision applications have been heard together and are being disposed of by this common order.

2. The petitioners of the three revision applications call in question the legality of the order dated 27.06.2012 passed by the learned Additional Judicial Commissioner-IV, Ranchi in Sessions Trial No. 183 of 2007, whereby and whereunder the petition filed for discharge of the petitioners under Section 227 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been rejected.

3. The petitioners have been made accused in Hatia P.S. Case No. 52 of 2001 instituted at the instance of Inspector-cum-Officer-in-Charge of Hatia Police Station on 22.03.2001 for the offence under Sections 3/4/5 of Explosive Substance Act and under Section 17 of C.L.A. Act on the allegation that the Officer-in-charge received the confidential information that in the house of one Bal Govind Sahu near Satrangi Bazar, huge quantity of explosives have been kept and the said Bal Govind Sahu used to sell those explosives to the extremists and after that the informant along with police force conducted raid of the house of

Bal Govind Sahu and seized 500 detonators being high explosive ignition, 122 pieces of gelatin, 25 kg. black substance kept in a bag, appeared to be gun Powder, and 102 bundles of safety fuse and on enquiry, the said Bal Govind Sahu and his son Tulsi Sahu informed that they have purchased it from one Aslam @ Pappu in Khunti but even after on demand, no document relating to the purchase was produced and they also disclosed that one Raj Kishore Sahu of Tipudana and Upender Pandey, a Munshi of Madan Singh of a place Bal Siling, have also purchased it and on the basis of the said information, raid was conducted in the shop of Raj Kishore Sahu and 21 detonators used for high explosive was seized and on enquiry, Raj Kishore Sahu also disclosed that he had purchased the explosive from Aslam @ Pappu of Khunti and further raid was conducted in the room of Upender Pandey, Munshi of Madan Singh and 70 pieces of detonators from a Box upon which it was inscribed " high explosive" and 11 bundles of safety fuse were seized and on demand, he also failed to produce the documents relating to the explosives and all the persons were taken into custody.

4. It appears from the record that after investigation, the police submitted the charge-sheet in the above sections against the petitioners and other accused persons whereafter cognizance was also taken under Sections 3/4/5 of Explosive Substance Act and also under Section 17 of the C.L.A. Act. After commitment of the case to the Court of Sessions, a petition under Section 227 of the Code for their discharge was filed, which was rejected vide order dated 27.06.2012 holding that there are sufficient materials on record to frame charges against the petitioners.

5. It appears from the order impugned that the question of sanction and other issues were raised before the court below but before this Court, relying upon a judgment reported in 2013(2) J B C J 234 (Kamal Seikh and another v. State of Jharkhand), solitary question was raised by the learned counsel for the petitioners that the detonator, which was seized by the police, is not a substance, which itself causes explosion rather it is dependent on a devise used to trigger and it will never fall within the definition of "Explosive Substance" as defined under Section 2 of the Explosive Substance Act (in short "the Act"). As such, no offence is made out against the petitioners and they deserve to be discharged. Besides the above, no other point was raised by the learned counsel for the petitioners.

6. Contrary to aforesaid submissions, learned counsel representing the State submitted that "detonators" being used for purpose of causing explosion would fall within the definition of "Explosive Substance" as defined in Section 2 of this Act and secondly that at this stage, a roving enquiry is not possible and the court below has rightly held that sufficient materials are available on record to frame charges against the petitioners.

7. For better appreciation of the issue raised by the learned counsel for the petitioners, it is necessary to take notice of the definition of "special category explosive substance" and "explosive substance" is defined in Sections 2(a) and

(b) of the Explosive Substances Act, 1908, which reads as follows:--

"Section 2(a)- the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement; Section 2(b)- the expression "special category explosive substance" shall be deemed to include research development explosive (RDX), pentaerythritol tetra nitrate (PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee-1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify for the purposes of this Act."

Besides the above, the word "explosive" has also been defined in Section 4(d) of the Explosives Act, 1884 and I think it proper to quote the said definition also hereinbelow for better appreciation, which is as follows:--

"Section 4(d):- "explosive" means gunpowder, nitroglycerine, nitroglycol, guncotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate of mercury of any other metal, diazo-di-nitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fogsignals fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause."

8. Now coming to the question whether the seized articles were explosives or not, it appears from paragraph 155 of the case diary that a report was called for from the Forensic Science Laboratory, Jharkhand, Ranchi and the said Laboratory in its report clearly disclosed that the substances recovered were explosive. The report of the expert of the said Laboratory is quoted hereinbelow:--

"Result of Examination

"(1) On the basis of chemical analysis conducted in the Laboratory, high explosive mixture of Nitroglycerine with Cellulose and Potassium Nitrate could be detected in exhibits kept in Glass phial marked A1 and A2 noted in item (1) and (2).

It is, therefore, concluded that the contents of the exhibits kept in the Glass phial marked A1 and A2 in item (1) and (2) respectively are constituents of Gelatine

cartridge, which is also known as Stick Dynamite.

(2) On the basis of chemical and physical examination, it has been found that the exhibits kept in glass phials marked A3, B1 and C1 noted in item "3", "6" and "7" respectively are aluminum detonators containing sensitivity high explosive mixture of lead azide and lead styphnate. These were found to be effective.

(3) Low explosive mixture of potassium nitrate, Carbon and Sulphur could be detected in the contents of Glass phials marked A4 noted in item (4). These are constituent of gun powder.

(4) With the help of chemical and physical examination, it has been concluded that the exhibits kept in the Glass phial marked A5 and C2 noted in item (5) and (8) respectively are safety fuse commonly known as "Palita". These constituents gave positive test for the presence of Potassium Nitrate, Carbon and Sulphur. These were found to be effective."

Apparently, the definition of explosive in Section 4(d) clearly states that the gun powder lead azide, lead styphnate are all explosive substances. That being so, the plea of the learned counsel for the petitioner that the articles were not explosive cannot be sustained. The safety fuse, which is commonly known as "Palita" was also found in the seized material and this is a devise, which can be used to trigger the explosives. The Hon"ble supreme Court in the case of Lopchand Naruji Jat and Another Vs. State of Gujarat, (2004) CriLJ 4241 : (2004) 8 JT 226 : (2004) 7 SCALE 644 : (2004) 7 SCC 566 : (2005) 1 UJ 82 : (2004) AIRSCW 5267 : (2004) 6 Supreme 525 held that the Dynamites, which were recovered in that case from the possession of the appellants, clearly come within the definition of "explosive" as per the Section 4(d) of the Explosives Act. From the report, it is clear that the seized materials were detonators and "Palita" were also seized, which causes explosion and all come within the definition of Explosive Substance.

9. Being quite conscious of the fact that the trial would be at its very threshold and that in application filed under Section 227 of the Code, this Court is dealing with the limited aspect of the petitioners being charged or being discharged, I would like to examine the law at this point, which is succinctly analyzed by the Hon"ble Supreme Court in Sajjan Kumar Vs. Central Bureau of Investigation, (2010) 10 JT 413 : (2010) 10 SCALE 22 : (2010) 9 SCC 368 wherein the Hon"ble Court has observed in para 19 as under:

"19. It is clear that at the initial stage, if there is strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination

or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

10. The court below in the impugned order after elaborate discussions has rightly rejected the prayer of the petitioners for their discharge because from the ratio decided by the Hon'ble Supreme Court in the above case, it is clear that at the initial stage, if there is strong and grave suspicion for presuming that the accused has committed an offence, in that event, it is not open to the court to see that there is no sufficient ground for proceeding against the accused. At this stage, the evidences are not be weighed and appreciated in the same as is done at the trial. Hence, a strong and grave suspicion is sufficient for presuming that offence has been committed. After going through the case diary and the report, which clearly stipulates that the seized materials were explosives, I find that there is sufficiency of materials to frame charge against the petitioners.

11. Hence, in the light of observations made above, I see no good reason to interfere in the order impugned.

12. All the three revisions applications are, thus, dismissed.