

(2014) 07 MP CK 0170

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 3892/2010

Sharad Kumar Agrawal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

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

Citation : (2014) 4 MPHT 297 : (2014) 4 MPJR 40

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : Yogesh Chaturvedi, Advocate for the Appellant; J.M. Sahni, Panel Lawyer, Advocate for the Respondent

Judgement

B.D. Rathi, J.—This petition, under Section 482 of the Code of Criminal Procedure, has been preferred for quashment of entire proceedings pending in Session Trial No. 25/2010 in the Court of Sessions Judge, Mungaoli, District Ashok Nagar for the offence punishable under Sections 4 and 5 of the Explosive Substances Act, 1908, which has arisen out of the Crime No. 135/2009, dated 9-4-2009 registered at Police Station, Chanderi, District Ashok Nagar (M.P.). As per the prosecution case, on 9-4-2009 at about 8.05 p.m., a truck bearing No. MP09 KB 3627, was searched by the police. During search, 320 bags of Ammonium Nitrate were seized vide seizure memo, dated 9-4-09. Relevant documents of registration, permit, fitness etc. were also seized. Initially, crime was registered at Outpost Rajghat, District Ashok Nagar and thereafter, original F.I.R. was registered at Crime No. 135/2009 at Police Station, Chanderi, District Ashok Nagar (M.P.) for the offence punishable under Sections 4 and 5 of the Explosive Substances Act.

2. After completion of the investigation, charge sheet was filed and the case was committed to the Court of Session where Session Trial No. 25/2010 was registered.

3. It is submitted by Shri Chaturvedi, learned Counsel appearing on behalf of the petitioner that the substance, namely, Ammonium Nitrate was not the explosive substance on 9-4-2009 as defined under the Explosive Substances Act. In the Gazetted Notification of Government of India, dated 11-7-2012, Ammonium Nitrate Rules, 2012 were published and enforced from the date of its publication. Therefore, charges under Sections 4/ 5 of the Explosive Substances Act could not be framed against the petitioner on the ground that bags of Ammonium Nitrate were seized in the year 2009.

4. Prayer was opposed by the learned Panel Lawyer, appearing on behalf of the respondent/State.

5. Having regard to the arguments advanced by the learned Counsel for the parties, entire record has been perused.

6. Undisputedly, the rules namely Ammonium Nitrate Rules, 2012 came into force from the date of its publication, which is 11th July, 2012. The Gazette Notification of Government India is dated 11-7-2012 by which Rules have been published. Rule 3, which pertains to Ammonium Nitrate as an explosive substance would be deemed as explosive substance with effect from 11-7-2012 and not earlier to it.

7. As per the clarification issued by the Government of India on 18th March, 2009, Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908.

8. Since the Ammonium Nitrate Rules, 2012 came into force only on 11-7-2012, therefore, earlier to commencement of these rules, i.e., on 9-4-2009, if Ammonium Nitrate was found in the possession of the petitioner, no licence thereof was required since it was clarified by the Government of India, vide, its clarification, dated 18th March, 2009 wherein specifically it has been mentioned that Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908 at present.

9. Hence, this Court is of the view that because on 9-4-2009, no licence was required by the petitioner to carry on the trade of Ammonium Nitrate, therefore, he cannot be prosecuted and charged under Sections 4 and 5 of the Explosive Substances Act. Ab judicato, this petition succeeds and is hereby allowed. Charges framed under Sections 4 and 5 of the Explosive Substances Act are hereby quashed. Entire proceedings in regard to Sessions Trial No. 25/2010 are hereby dropped. Petitioner is discharged. He is entitled to get seized articles as per law.