
(2013) 04 MAD CK 0279
In the Madras High Court
Case No : Criminal R.C. No. 620 of 2012

V. Sekar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-04-2013

Acts Referred:

Explosives Act, 1884 — Section 9B

Citation : (2013) 2 LW(Cri) 554 : (2013) 3 MLJ(Cri) 80

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : V. Madhavan, for the Appellant; C. Emilias, Additional Public Prosecutor, for the Respondent

Judgement

S. Palanivelu, J.—This revision has been filed to set aside the order dated 16.3.2012 in C.M.P. No. 5722 of 2011 on the file of the Judicial Magistrate No. IV, Vellore, Vellore district and further order to return of 554 bags of Ammonium Nitrate to the petitioner. The respondent police seized Ammonium Nitrate from the shop of the petitioner on 1.7.2011, that only on 21.12.2012, the Petroleum and Explosives Safety Organisation, Nagpur, through Chief Controller of Explosives has passed a notification declaring that with effect from 21.7.2011, the Ammonium Nitrate shall be deemed to be an explosive. The said notification reads as follows:

C.II(I)77/VII/AN

Nagpur, dated 4.8.2011

MEMO

Sub: Notification on Ammonium Nitrate No. S.O.1678(E) dated 21.7.2011-Clarification Reg.

Government of India has issued Notification No. S.O.1678(E) dated 21.7.2011 declaring Ammonium Nitrate (AN) having the chemical formula NH_4NO_3 or any

combination containing more than 45% of AN by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates) shall be deemed to be an explosive within the meaning of Explosives Act, 1884.

Copy of the said Notification is made available in the PESO'S website under News Events for the information of all concerned. Copy of the Notification is enclosed for reference.

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

The rules related to manufacture, conversion, stevedoring & bagging, import, export, transport, possession for sale or use of 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.

2. Thereafter, on 21.12.2012, the above said authority issued circulars to (1) All Explosives Manufacturers, (2) Ammonium Nitrate Manufacturers and Stevedores and (3) All Stakeholders, which reads as follows:

C.II(1)77-VII

Nagpur, dated 21.12.2012

To,

- 1) All Explosives Manufacturers
- 2) Ammonium Nitrate Manufacturers and Stevedores
- 3) All Stakeholders

Sub: Compliance of Ammonium Nitrate Rules - regarding.

Dear Sir(s)

The Ammonium Nitrate Rules have been notified by Government of India vide GSR 553(E) dated 11.7.2012.

As per the said rules "No person shall undertake manufacture, conversion, stevedoring, import, export, transport or possess for sale or use Ammonium Nitrate except as authorised or licensed under these rules". All the existing manufacturers, converters, users, transporters, stevedores, sellers, possessors, importers and exporters shall apply for licence within six months and shall comply with the provisions of these rules within a period of one year from the date of publication of these rules.

On perusal of this office record, it is observed that very few applications have

been received by various officers of PESO for approval/grant of licence under Ammonium Nitrate Rules, 2012. This is being viewed with concern.

All persons undertaking manufacture, conversion, stevedoring, import, export, transport or possess for sale or use Ammonium Nitrate are advised to initiate necessary action for compliance of Ammonium Nitrate Rules. Non-compliance of Ammonium Nitrate Rules will attract strict action under the Explosives Act, 1884 and Ammonium Nitrate Rules, 2012.

Action taken report may be submitted to this office.

3. Hence, the learned counsel for the petitioner would submit that in as much as on 1.7.2011, there was no Government Order nor any notification from the Government declaring Ammonium Nitrate as an explosive substance for all practical purpose and that the above Ammonium Nitrate seized from the petitioner could not be construed to be explosive.

4. Heard the learned Additional Public Prosecutor.

5. The learned counsel for the petitioner also places reliance upon a judgment of the Hon'ble Apex Court O. Sudheer Reddy and Another v. State by Sub Inspector of Police CDJ 2010 APHC 279 in which it is observed as follows:

Now it is contended by the Additional Public Prosecutor that though Ammonium Nitrate is not an explosive, in this case, the said Ammonium Nitrate is meant for the purpose of using the same in blasting boulders in stone crushers. End user of Ammonium Nitrate is not material in this case. The only simple question here is whether possession of Ammonium Nitrate simplicitor without licence is an offence. Having regard to above discussion of the subject, inevitable answer for the said question is in the negative.

Hence, the petition is allowed quashing FIR in Crime No. 17 of 2010 of Talupula Police Station, Anantapur District relating to offence u/s 9-B of the Explosives Act, 1884.

6. This Court, with the assistance of the learned counsel for the petitioner has assessed the present value of the property at Rs. 1 lakh since the property has been kept without any protection in a closed godown and the major portion of the property has become liquid state and since Ammonium Nitrate is perishable in nature, it is the bounden duty of the Court to direct to deposit the value of portion of them, besides directing the applicant to execute a bond for the total value with one surety. A mahazar has to be prepared at the time of granting interim custody of the Ammonium Nitrate which are available in custody and the same ought to be marked before the Court at the time of trial as per the decision of the Hon'ble Supreme Court. Since the material objects in this case are in the nature of Ammonium Nitrate, it is not desirable to keep the article in custody either of the Court or of the police. If such properties are kept indefinitely or upto the period when the trial is completed, they may become useless by undergoing chemical reactions with the atmospheric components. Improper storage will lead

to havoc. If necessary, at the time of final hearing of the case, the trial Court may record necessary evidence as to the nature of the property in detail.

7. In view of the above decision, the petitioner is entitled to take custody of the Ammonium Nitrate subject to certain conditions. In the result, the Criminal Revision is allowed setting aside the order passed by the learned Judicial Magistrate No. IV, Vellore, Vellore District in C.M.P. No. 5722 of 2011 dated 16.3.2012 subject to the following conditions-

(i) the petitioner shall execute a bond for a sum of Rs. 3,00,000/- (Rupees Three Lakhs only) with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate No. IV, Vellore, Vellore District and

(ii) on further condition that the petitioner shall provide cash security to the tune of Rs. 1,00,000/- to the credit of Crime No. 364 of 2011 to the satisfaction of the learned Judicial Magistrate No. IV, Vellore, Vellore District.

The petitioner is directed to comply with the above said conditions within a period of six (6) weeks from the date of receipt of a copy of this order.