

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.376 OF 2008

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 24.10.2006, passed by the Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.379 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Section 9-B(b) of the Explosives Act, 1884, (for short 'the Explosives Act') and under Section 21 read with 76 of the City Police Act, vide the judgment dated 24.10.2005 in C.C.No.456 of 2003 by the VIII Additional Chief Metropolitan Magistrate, Hyderabad, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.456 of 2003 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that as per the instructions of the Assistant Commissioner of Police, Sultan Bazaar, PW.2 conducted raid on the shop of the accused by name 'Uma Fire Works', Shop No.19, Sri Krupa Market, Mahaboob Mansion, Malakpet, on 25.10.2002 at 2:30 p.m, as the accused was selling fire crackers without having any valid licence. In the presence of PW.1 and one Devender, the crackers worth Rs.99,000/- were seized under the cover of panchanama and accused was arrested. At the time of search and seizure, the accused failed to furnish the valid licence for selling fire crackers. Again on 01.11.2002, PW.2 visited the shop of the accused and then also, accused failed to furnish the valid licence and as such, the fire crackers were seized under the cover of panchanama in the

presence of same mediators. On receipt of the complaint, PW.3 registered the case in Cr.No.313 of 2002 for the offences punishable under Section 9-B(b) of the Explosives Act and under Section 21 read with 76 of the City Police Act. Further, as per the instructions of this Court in W.P.M.P.No.2197 of 2002 dated 01.11.2002, the accused was allowed to remove the stock of fire crackers and permitted to sell them if he obtains the licence, and also directed to produce the licence and furnish bank guarantee for the value of the stock seized and therefore, the seized property of fire crackers were handedover to the accused. After completion of all the legal formalities and after completion of investigation, PW.3 laid charge sheet against the accused.

4. The learned VIII Additional Chief Metropolitan Magistrate took cognizance of the case and framed a charge for the offence punishable under Section 9(B) of the Explosives Act against the accused. During trial, on behalf of the complainant, PWs.1 to 3 were examined and Exs.P1 to P14 were got marked.

Ex.D1 was got marked on behalf of the accused in the evidence of PW.2

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C and after hearing the arguments and after perusing the record, the learned VIII Additional Chief Metropolitan Magistrate convicted the accused for the offences punishable under Section 9-B(b) of the Explosives Act and under Section 21 read with 76 of the City Police Act and sentenced him to pay a fine of Rs.3,000/- and in default of payment, to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 9-B(b) of the Explosives Act and also to pay a fine of Rs.50/- and in default of payment, to undergo Simple Imprisonment for a period of one day for the offence punishable under Section 21 read with 76 of the City Police Act

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.379 of 2005 before the Metropolitan Sessions Judge, Hyderabad, where the Appellate Court after considering the evidence on record held that the accused does not have any valid licence to sell fire crackers and also not obtained permission from the Commissioner of Police to sell them and also did not produce any document to that effect. The Appellate Court also held that the accused was running the wholesale shop for sale of explosives without valid licence and confirmed the conviction and sentence passed by the learned VIII Additional Chief Metropolitan Magistrate and dismissed the appeal.

7. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.379 of 2005, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that the Fire Service Department granted licence to the accused and further, the independent witness PW.1 turned hostile and the evidence of PWs.2 & 3 is interested one. It is also argued that licence was granted prior to the search and seizure and under Ex.D1, the accused already applied for licence on 03.05.2002 to the Commissioner of Police and the said Ex.D1 clinchingly established that the accused is doing business after obtaining licence and the Appellate Court erred in confiscating the value of the crackers in favour of the Government and there is no other material to connect the accused with the alleged offences and when the accused applied for licence under Ex.D1, his application was not rejected and prosecution deliberately not chosen any information with respect to Ex.D1 and the Investigating Officer also failed to obtain any record, which was with them and finally prayed the Court to allow the revision case.

9. On the other hand, the learned Public Prosecutor for the State of

Telangana argued that at the time of search and seizure, the accused has not produced any evidence and he was possessing valid licence to conduct the business and fire works. Mere submitting the application to the Commissioner of Police i.e., Ex.D1 for issuance of no objection certificate will not give any right to the accused to sell fire crackers and further, if really the accused obtained valid licence and clearance of Fire Service Department, Madras and permission from the Commissioner of Police, Hyderabad, even prior to or after, he would have filed the same before the Court. There is no evidence on record to show that the accused was having valid licence to sell fire crackers and therefore, the concurrent findings of the learned VIII Additional Chief Metropolitan Magistrate in C.C.No.456 of 2003 and judgment dated 24.10.2006 passed by the Metropolitan Sessions Judge in Criminal Appeal No.379 of 2005 needs no interference of the Court and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offences punishable under Section 9-B(b) of the Explosives Act and under Section 21 read with 76 of the City Police Act, with which he is charged?

11. **P O I N T**: As per the evidence of PW.2, who was working as Sub-Inspector of Police, Chaderghat Police Station, he received the search proceedings from the Assistant Commissioner of Police, Sultan Bazar to conduct the search over the Shop No.19, Sri Krupa Market, Mahaboob Mansion, Malakpet, Hyderabad, belonging to the accused and in that said shop, accused was selling fire crackers without any valid licence. At the time of search, PW.1 and one Devender acted as mediators. During the search and seizure, the accused could not produce valid licence to run the business. PW.1 panch witness did not support the case of prosecution and he was declared as hostile. If the evidence of PW.2 is perused, on 25.10.2002 at 2:00 p.m, he received

search proceedings and conducted search in the shop of the accused and seized the fire crackers under the cover of panchanama Ex.P7 and seizure report Ex.P12. After receiving the complaint from PW.2, PW.3 Station House Officer, Chaderghat Police Station, registered the case in Cr.No.313 of 2002 for the offences punishable under Section 9-B(b) of the Explosives Act and under Section 21 read with 76 of the City Police Act against the accused.

12. The main contention of the accused is that he was having licence prior to submitting Ex.D1 and the office of the Commissioner of Police has not issued any orders after receiving Ex.D1. A perusal of the entire evidence shows that at the time of search and after the search, the accused has not produced the valid licence and clearance of the Fire Accident Department, Madras. Therefore, both the Courts clearly held that the accused had no valid licence to sell the fire crackers and not obtained any permission from the Commissioner of Police to sell the fire crackers. So far as the case of the accused that the evidence of PWs.2 & 3 is interested one, it cannot be accepted when it is proved that PW.2 visited the shop and seized the fire crackers and same were released by the orders of this Court in W.P.No.21974 of 2002. Merely submitting the copy of the application Ex.D1 does not give any right to the accused that he can do business of selling the fire crackers without obtaining permission from the Commissioner of police. Thus, from the evidence of PWs.2 & 3, it is clearly established that the accused opened the shop for sale of explosives i.e., fire crackers without valid licence and without obtaining permission from the Commissioner of Police, Hyderabad. Thus, the trial Court as well as the Appellate Court rightly observed and the findings of the Appellate Court vide judgment dated 24.10.2006 in Criminal Appeal No.379 of 2005 needs no interference.

13. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 24.10.2006, passed by the Metropolitan Sessions

Judge, Hyderabad, in Criminal Appeal No.379 of 2005.

14. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 28.01.2015
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