

THE HON'BLE MRS JUSTICE ANIS

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CRIMINAL REVISION CASE No.257 OF 2008

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ORDER:

This Criminal Revision Case, under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the revision petitioner/accused challenging the judgment, dated 19.02.2008, in Criminal Appeal No.61 of 2006 passed by the I Additional Sessions Judge, Anantapur, whereunder and whereby, the

conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 5 of the Explosive Substances Act, 1908 (for short, 'the Act') vide the judgment dated 07.08.2006 in Sessions Case No.926 of 2004 passed by the Assistant Sessions Judge, Anantapur at Gooty, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the State in S.C.No.926 of 2004 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to, as they are arrayed before the trial Court.

3. The case of the prosecution, in brief, is that the accused is a native of Aluru village of Tadipatri Mandal. On 31.01.2004 at about 2.45 P.M., the accused was found near Uruchinthala cross roads located near Sajjaladinne of Tadipatri Mandal carrying a plastic bucket. PW.2 Sub-Inspector of Police, Tadipatri Taluk Police Station and others arrested the accused in the presence of the mediators i.e., PW.1 Sadasiva, Panchayat Secretary, Gannevaripalli and LW.2 Mohan Babu, Venkatareddipalli village. The said plastic bucket contained 15 country made bombs. The accused was carrying the same to hand over to one Krishna Reddy of Pulivendala village. The said bombs and bucket were seized under the cover of a panchanama in the presence of PW.1 and LW.2 Mohan Babu. A panchanama was drafted in their presence and seized the country made bombs. Subsequently, the country made bombs were diffused by the

Diffusion Squad, Hyderabad. The samples were preserved and sent to R.F.S.L., Tirupathi for analysis. The report reveals about the presence of Potassium Chlorate, Arsenic, Sulphide and Sulphur, which are used in the manufacture of country made bombs of throw down type. The District Collector/District Magistrate, Anantapur, issued sanction orders for launching prosecution against the appellant/accused for the offence punishable under Section 5 of the Act. After completion of the investigation and after receiving the reports, Investigating Officer filed charge sheet into the Court.

4. The Charge sheet was taken on file as P.R.C.No.62 of 2004 by the learned Judicial Magistrate of First Class, Tadipatri. It was committed to the Court of Sessions, Anantapur Division and in turn the same was made over to the Assistant Sessions Judge, Gooty. On appearance of the accused and after due consideration, a charge for the offence punishable under Section 5 of the Act was framed, read over and explained to him. He pleaded not guilty of said charge and claimed trial. During trial, on behalf of the prosecution, PWs.1 and 2 were examined and Exs.P.1 to P.6 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. He denied the incriminatory material and reported no oral or documentary evidence on his behalf. After hearing the arguments and after perusing the record, the trial Court convicted the accused for the offence punishable under Section 5 of the Act and sentenced him to undergo imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, simple imprisonment for two months.

6. Aggrieved by the conviction and sentence imposed by the trial Court, the accused preferred an appeal vide Criminal Appeal No.61 of 2006 before the Additional Sessions Judge, Anantapur. The appellate Court after considering the oral and documentary evidence and after hearing both the sides, dismissed the appeal confirming the conviction and sentence passed by the trial Court.

7. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.61 of 2006, the accused preferred the present revision case.

8. Learned counsel for the revision petitioner argued that the Investigation

Officer has not taken the independent mediators while seizing the bombs from the possession of the accused; that the said bombs were not produced before the Court; that no Mahazarnama was conducted at the time of diffusing the bombs, therefore diffusion of the bombs is not proved; that there is no material to show that whether the material seized by the Investigation Officer is a bomb or not; that the person, who gave a complaint is the Investigation Officer in this case, therefore, it is fatal to the prosecution case; that there is discrepancy in the evidence of PWs.1 and 2; that the other mediator was not examined for the reasons better known to the prosecution, therefore, the benefit of doubt shall be extended to the petitioner/accused; that the Investigation Officer also not examined the person by name Buchaiah from whom the accused purchased the bombs and the person by name Krishna Reddy to whom the bombs were to be delivered, therefore, the revision petitioner is entitled for benefit of doubt and finally prayed to allow the revision.

9. On the other hand, learned Public Prosecutor argued that on 31.01.2004 at about 2.45 P.M., the accused was found in possession of country made bombs in order to hand over them at Pulivendula village and he was arrested by PW.2 in the presence of PW.1, who was Panchayat Secretary; that there are 15 country made bombs and the same were seized under the cover of panchanama-Ex.P.1; that there is no necessity for PW.1 to speak false against the petitioner/accused, who is a public servant and working as Panchayat Secretary; that the Investigation Officer, after arresting the accused, produced him before the Police Station, there is no investigation left over except sending the material, which was seized, to the R.F.S.L., and after receiving the report from R.F.S.L. and after perusing the opinion given by the R.F.S.L. that the material sent to R.F.S.L. was containing exposure mixture, which commonly used for preparing bombs of thrown down type, and after obtaining the sanction, charge sheet was filed, therefore, it is not fatal to the prosecution case; that the evidence of PWs.1 and 2 is sufficient; that both the Courts below concurrently held that the accused committed the offence punishable under Section 5 of the Act, therefore, the findings of both the Courts below needs no interference by this Court and prayed to dismiss the revision.

10. Now the point for consideration is whether the revision petitioner is entitled to acquittal by setting aside the judgment, dated 19.02.2008, of the appellate Court in CrI.A.No.61 of 2006, as prayed for?

POINT:

11. A perusal of the record shows that PW.1 is the Panchayat Secretary, Gannevaripalli village and PW.2 is the Sub-Inspector of Police, Tadipatri Taluk Police Station. As per the evidence of PWs.1 and 2, on 31.01.2004 at about 2.45 p.m., they noticed that the accused was carrying a plastic bucket near Uruchinthala cross roads near Sajjaladinne of Tadipatri Mandal and they have stopped the accused and found he was carrying 15 country made bombs in the said plastic bucket. The said bombs were seized under the cover of panchanama-Ex.P.1. PW.1 and the accused signed the said panchanama. After arresting the accused, the case was registered as Crime No.18 of 2004 for the offence punishable under Section 5 of the Act. When PW.2 questioned the accused, he informed that he purchased 15 country made bombs from Buchaiah, R/o. Tadipatri village and also informed that he was going to sell the same to one Krishna Reddy of Pulivendula village and he obtained Rs.200/- from him.

12. PW.2, Sub-Inspector of Police, in his evidence stated that when he enquired with said Buchaiah and Krishna Reddy, they denied the same. The main contention of the accused is that independent witnesses were not examined at the time of Ex.P.1 Mahazarnama when bombs were seized from the possession of the accused. PW.1 in his evidence clearly stated that he was present at the time of seizure of 15 country made bombs from the possession of the accused. PW.1 is a public servant, who was present when 15 country made bombs were seized from the possession of the accused. Therefore, non-examination of the independent witnesses is not fatal to the prosecution case. The evidence of PW.1- Panchayat Secretary and the evidence of PW.2-Sub-Inspector of Police is consistent on all material aspects. As per the evidence of PW.2, after diffusing the bombs, the sample material was sent to the R.F.S.L. and received the report, wherein it was stated that the material contains the

substance of explosives and after receiving the sanction order from the District Collector, Anantapur, he filed the charge sheet against the petitioner/accused.

Section 5 of the Act reads as follows:

“5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive a substance, with rigorous imprisonment for a life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

13. In the present case, as per the evidence of PWs.1 and 2, on 31.01.2004 at about 2.45 P.M., PW.2 Sub-Inspector of Police seized 15 country made bombs from the possession of the accused under the cover of Ex.P.1 panchanama in the presence of PW.1, who is the Panchayat Secretary and another, further the report of the R.F.S.L. also clearly shows that sample contains explosive substance. The evidence of PWs.1 and 2 is cogent in respect of seizure and arrest of the accused and obtaining sanction permission from the District Collector, Anantapur are concerned, and thereafter, the Investigation Officer filed charge sheet into the Court. A perusal of the evidence produced by the prosecution clearly establishes its case that the accused committed offence punishable under Section 5 of the Act and the findings of both the Courts below needs no interference by this Court.

14. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

Date:16.03.2015

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