

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 978 OF 2007**

The State of Maharashtra
(Brihan Mumbai Crime Branch
LAC No.103/1998)

....Appellant
(Orig. Complainant)

V/s.

Mohd. Zuber Mohd. Sharif Khan,
R/o. 1) 26, Shikari Galli
Ujjain, Madhya Pradesh.

2) Parpiya Bldg., 4th Floor,
Room No. 16, M.E. Sarang Marg,
Dongri, Mumbai – 400 009.

....Respondents
(Orig. Accused)

Ms. P.N. Dabholkar, APP for State.
None for Respondent/Accused.

**CORAM : K.R.SHRIRAM, J.
DATED : 12th MARCH, 2021.**

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 3rd May, 2006 passed by the Additional Sessions Judge, Greater Bombay acquitting the respondent (hereinafter referred as accused) of offence punishable under Section 4, 4 (a) (*Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property*), 5 (*Punishment for making or possessing explosives under suspicious circumstances*) of Explosive Substance Act and under Section 3 (*Licence for acquisition and possession of firearms and ammunition*), 25 (1-A) r/w 25 (1-B) (a) (*Punishment for certain offences*) of Indian Arms Act.

2. Though Ms. Dabholkar made an attempt to convince the court on the merits of the appeal, ultimately, in fairness to the court and as an officer of the court agreed that views expressed by the Trial Court cannot be faulted. This is because the prosecution has relied on seizure panchanama dated 16/11/1998 but the panch witness P.W. 2 – Mohammed Ayub Mohammed Umar was sighted as a panch witness in another case on the same date and same time. The other panch witness P.W. 3 for recovery turned hostile. Moreover, the car in which accused is supposed to have been carrying the weapons has not been produced on record. There is no evidence to show ownership of the car or the source of car or explosives. Investigating Officer P.W. 6 has admitted that in their investigation the connection of accused was not found with any other crime and procurement of alleged weapons mentioned in the incriminating seizure. P.W. 6 also does not state that he was present at the time of seizure panchanama. P.W. 3 panch witness does not even identify accused. Moreover, the co-accused who was separately charged and tried separately has been acquitted by an order dated 14th April, 2005. Therefore, the conclusion arrived at by the Trial Court cannot be faulted.

3. Appeal dismissed.

(K.R. SHRIRAM, J.)