

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF FEBRUARY, 2024

CRIMINAL REVISION No. 3839 of 2022

BETWEEN:-

**LALIT S/O SHRI SHYAMLAL SUWALKA, AGED
ABOUT 48 YEARS, OCCUPATION:
AGRICULTURIST NEAR HOSPITAL BAGOD,
TAHSIL BARWAH, DISTRICT KHARGONE
(MADHYA PRADESH)**

.....PETITIONER

(SHRI HARSHWARDHAN SHARMA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
BALWADA, DISTRICT KHARGONE (MADHYA
PRADESH)**

.....RESPONDENT

(MS. HARSHLATA SONI, PANEL LAWYER)

*This criminal revision coming on for order this day, the court
passed the following:*

ORDER

1. This Criminal Revision under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 (hereinafter to be referred to as "CRPC") has been filed by the petitioner against the order of framing charges dated 1.8.2022, passed by the III Additional Sessions

Judge, Barwah District Mandleshwar in Session Trial No.15/2022; whereby, the charges under Section 5 of the Explosive Substance Act, 1908 (hereinafter to be referred to as “Act of 1908”), has been framed against the petitioner.

2. In brief facts of the case are that on an intimation received by the concerned police Station Balwada, 25 numbers of *Solar AED Detonator* were recovered from the shop of the petitioner. The FIR was lodged under Section 5 of the Act of 1908, and subsequently the charge sheet has also been filed, and the charges have been framed under Section 5 of the Act of 1908.

3. The grievance of the petitioner is that his case does not fall under the provisions of Act of 1908, in fact if at all any case is made out against the petitioner, it would fall under Section 9(b) of the Explosives Act, 1884 (hereinafter to be referred to as “Act of 1884”).

4. Counsel for the petitioner has submitted that the aforesaid explosive was obtained by the petitioner from M/S. Vikas Explosives for digging well in his agricultural field. Counsel for the petitioner has drawn the attention of this Court to the memo dated 27.2.2021, issued by the Controller, Bomb Detection and Disposal Squads, (BD&DS), Khargone in which it is stated that the explosive is used to dig bore and excavating from quarry, however, its use in the public may cause damage.

5. Counsel for the petitioner has further drawn the attention of this Court to the opinion of Deputy Controller of Explosives, Bhopal in

which it is stated that the licence is obligatory to possess, use, sale and transport of explosives seized as required under Rule 7 of Explosive Rules, 2008. It is further submitted that the Explosive Rules, 2008 have been framed under the provisions of the Explosive Act, 1884 wherein the maximum sentence provided under Section 9B(b) provides that whoever possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both.

6. Counsel for the petitioner has also drawn attention of this Court to the definitions of explosive substance as provided under Section 2 of the Act of 1908 which reads as under:-

“2. Definition.—In this Act— (a) the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

(b) the expression “special category explosive substance” shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate (PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee -1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other

substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify or the purposes of this Act.”

7. Whereas Section 4(d) of the Act of 1884 the definition of Explosive reads as under:-

“4.....

(a) to (c)

xxxxxxx

(d) “explosive” means gunpowder, nitoglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trime- thylene-trinitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, leadazide, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartidgcs, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;

(e).....

(f).....”

8. Counsel for the petitioner has drawn attention of this Court to the report of Deputy Controller of Explosives, Bhopal wherein it is mentioned that from the petitioner's possession identical cylindrical objects viz., cartridges of an explosive of Class 2 as defined under Rule 4 (Schedule I) of Explosive Rules, 2008 for which a licence is obligatory, have been recovered.

9. Counsel for the petitioner has submitted that under Section 5 of Act of 1908 the punishment may extend to ten years which is far more serious offence, and considering the fact that the petitioner has no criminal antecedents, and he is an agriculturist, and is also having a shot firer certificate dated 10.7.2023 which has been obtained by him for the purpose of carrying out blasting at his agricultural land, and he had procured the aforesaid contraband by valid procedure, the documents regarding which are also placed on record. Thus, it is submitted that under no circumstances a case under Section 5 of the Act of 1908 is made out.

10. Counsel for the respondent/State on the other hand has opposed the prayer. However, it is not denied that none of the ingredient as provided in the definition of Explosive Substance Act, 1908 are available in the present case, and it is also not denied that as per the analyst's report, a licence is required to obtain the explosive substance which were seized from the possession of the petitioner.

11. Heard. Having considered the rival submissions, on perusal of the record filed on record, and also the provisions of Act of 1908 as well as Act of 1884, this Court finds force in the submissions advanced by counsel for the petitioner, and is of the opinion that the respondents have erred in filing the charge sheet against the petitioner under Section 5 of the Act of 1908 despite the fact that the case squarely falls under Section 9(b) of the Act of 1984 which is apparent from the analyst's report filed along with the chargesheet and at the most it can be said to be a case of possession of the explosives

without licence

12. In view of the same, the learned judge of the trial Court has erred in framing the charge against the petitioner under Section 5 of the Act of 1908 and the order dated 1.8.2022 passed by the III Additional Sessions Judge, Barwah District Mandleshwar in Session Trial No.15/2022, thus, the order **is hereby set aside**. The learned judge of the trial Court is directed to frame the charges under the provisions of the Act of 1884.

13. It is made clear, that this Court has not reflected upon the merits of the matter and the trial court shall be guided solely by the evidence adduced by the parties

14. Accordingly, **the criminal revision stands allowed and disposed of.**

(SUBODH ABHYANKAR)

JUDGE

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