

Bharat Singh v. State of Haryana (A. S. Bains, J.)

who was driving the offending vehicle. The conviction thus seems to be well based and it is held accordingly.

(5) It was then contended that the sentence of the accused-petitioner tends to be severe. Some precedents were cited to suggest the discretion exercised one way or the other. They do not appear to be noteworthy, for there can be no precedent on a discretion. The concept of punishment is multifaced. What can suit one situation may wholly be unsuitable to another. The accused-petitioner was 22 years of age at the time of the commission of the offence. The sentence of fine of Rs. 2,000 with no substantive imprisonment imposed cannot be said to be harsh by any measure. There is no scope for interference in the matter. Criminal Revision No. 350 of 1977 has thus to fail and is hereby dismissed.

(6) As a corollary, and there cannot be any escape from it, the foodgrains in respect of which the offence was committed have got to be confiscated. Discretion of the Court does not figure there; it pertains to receptacles and vehicles and not to the articles, the export of which was prohibited by the Control Order. On the offence being proved, the State gets them by confiscation. In the result, Criminal Revision No. 375 of 1977 too fails and it is so ordered.

N. K. S.

Before A. S. Bains, J.

BHARAT SINGH,—*Appellant.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 278 of 1978.

November 30, 1979.

Explosive Substances Act (VI of 1908)—Section 5—Possession of explosive substance (grenades)—No evidence to show that the possession was for an unlawful purpose—Mere possession—Whether an offence.

Held, that from a plain reading of section 5 of the Explosive Substances Act 1908, it is clear that to substantiate a charge under this section two things must be proved. Firstly, that the explosive substance was in conscious possession and secondly that the possession or control was to give rise to a reasonable suspicion that the accused is not making it or does not have it for lawful object. Where the prosecution only proved that the accused was keeping grenades in his possession but the second ingredient had not been proved to show that he was keeping them for using the same for an unlawful purpose, it had failed to bring home the guilt to the accused beyond any reasonable doubt. (Para 6).

Appeal from the order of Shri A. N. Aggarwal, Sessions Judge, Rohtak, dated 6th March, 1978, convicting the appellant.

S. C. Goyal, Advocate, for the Appellant.

R. K. Jhingan, Advocate, for the State.

JUDGMENT

A. S. Bains, J. (Oral) :

(1) Bharat Singh appellant was convicted and sentenced under section 5 of the Explosive Substances Act, to undergo rigorous imprisonment for four years by the learned Sessions Judge, Rohtak. He has challenged his conviction and sentence.

(2) The prosecution case as unfolded by Raghbir Singh, A.S.I., P.W. 5 is as under:—

(3) Raghbir Singh, A.S.I., S.H.O. Police Station Meham, accompanied by some police officials Basti Ram, Head Constable and others, Ram Phal, P.W. 3 and Maha Singh, P.W. 4 went to the village of the appellant. When they reached near the house of the appellant in village Bhaini Surjan, a person was seen coming out of the house of Bharat Singh appellant who was intercepted and he gave his name as Bharta, son of Sundu. The appellant was apprehended and was interrogated by Raghbir Singh, A.S.I. He made the disclosure statement which is Ex. PD that he had kept concealed one Dabba containing hand grenades near the beams in the wall

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of the Northern-Eastern Kotha of his residential house and could get the same recovered. A statement was recorded which was attested by Ram Phal, P.W. 3 and Maha Singh, P.W. 4. The appellant then led the police party to the place of concealment and got recovered three hand grenades and three fuses which were taken into possession,—*vide* Memo Ex. PE. A case was registered against the appellant at Police Station, Meham. The incriminating material was sent to the Deputy Controller of Explosives, North Circle, Agra and on a report it was found that these were hand grenades. The appellant was prosecuted and convicted as aforesaid.

(4) The appellant was examined under section 313 of the Code of Criminal Procedure and denied his complicity in the crime and pleaded innocence. However, he also produced seven witnesses in defence.

(5) The learned trial Court convicted the appellant on the testimony of A.S.I. Raghbir Singh, P.W. 5, Ram Phal, P.W. 3, Maha Singh, P.W. 4 and Mr. P. N. Agnihotri, Deputy Controller Explosives, P.W. 1. Mr. Goyal, learned counsel for the appellant urged that the ingredients of section 5 of the Explosive Substances Act are not proved in the present case as there is no evidence on the record to show that the appellant had these hand grenades in his possession or under his control for a purpose other than the lawful object. The evidence produced by the prosecution was that the incriminating material was found in his possession and the recovery was made at his instance from his house. Section 5 of the Explosive Substances Act is in the following terms:—

“Any person who makes or knowingly has in his possession or under his control any 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 punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.”

(6) From the plain reading of this section, it is clear that to substantiate the charge under this section two things must be proved. Firstly that the explosive substance was in conscious possession and secondly that the possession or control was as to give rise to a reasonable suspicion that he is not making it or does not have it for a lawful object. In the present case, the prosecution has only proved that he was keeping grenades in his possession, but the second ingredient has not been proved that he was keeping it for using the same for an unlawful purpose. Even A.S.I. Raghbir Singh, P.W. 5 has not stated that the appellant was keeping it for an unlawful purpose. In similar circumstances Patna High Court in *Rajani Kanta Mandal v. The State of Bihar* (1), relying on a judgment of House of Lords in *R. v. Hallam* (2), observed as under:—

“To substantiate a charge under S. 5, Explosive Substances Act, it is not sufficient to prove merely that the accused was in conscious possession of an explosive substance. The prosecution has further to prove that the incriminating objects were recovered from the possession of the accused in circumstances giving rise to a reasonable suspicion that he had them in his possession not for a lawful object. If there is no evidence to prove this the charge under S. 5 is not sustainable against him.”

The provision of section 4(1) of the Explosive Substances Act, 1883, of England is in the following terms:—

“Any person who knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he does not have it in this possession or under his control for a lawful object shall, unless he can show that he does not have it in his possession or under for a lawful object, be guilty of felony.....”

(7) Section 5 of the Explosive Substances Act, is *pari materia* in the same words.

(1) A.I.R. 1959 Patna 314.

(2) (1957) 1 All E.L.R. 665.

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(8) Otherwise also the evidence in the case produced by the prosecution does not inspire confidence. Ram Phal, P.W. 3 is a stock witness of the police. He denied to have appeared in any case when a suggestion was put to him, but the appellant has placed on the record documents Exs. DC to DG showing that he had appeared as a police witness in five cases. No reliance can be placed on the evidence of such a witness. P.W. 4 Maha Singh is a witness of another village. No reason is shown by the A.S.I. Raghbir Singh, P.W. 5 as to why he did not associate any of the witnesses of the village of the appellant.

(9) For the reasons recorded above, I am of the view that the prosecution has failed to bring home guilt to the appellant beyond any reasonable doubt. His appeal is allowed. His conviction and sentence recorded by the trial Court is set aside. He is on bail, his bail bonds shall stand discharged.

N.K.S.

Before Gokal Chand Mital, J.

RAJINDER WEAVING FACTORY,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT and another,—*Respondents.*

Civil Writ Petition No. 1151 of 1974.

December 7, 1979.

Industrial Disputes Act (XIV of 1947)—Section 10—Industrial Employee on probation—Services of such employee terminated during the probationary period—No show-cause notice to the employee nor any enquiry held—Such termination—Whether justified.

Held, that even if a workman was serving on probation, his services could not be terminated without giving him an opportunity to show cause and after due enquiry. (Para 6).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted:—

- (i) *A Writ in the nature of a Writ of Certiorari be issued calling for the records of respondent No. 1 relating to the impugned Award, Annexure 'P/6' be quashed;*