

Before S. S. Dewan, J.

SURJA,—Petitioner.

*versus*

State of Haryana,—Respondent.

Criminal Revision No. 775 of 1979.

May 27, 1981.

*Code of Criminal Procedure (II of 1974)—Section 26(b) and Part II of First Schedule—Explosive Substances Act (VI of 1908)—Section 5—Offence under section 5 of the Act—Jurisdiction to try such an offence—Whether vests exclusively in the Court of Sessions.*

*Held*, that the provisions of section 26 (b) of the Code of Criminal Procedure 1978 read with Part II of the First Schedule make it clear that if the Explosive Substances Act, 1908 itself has not mentioned any particular court by which the offences under the said Act are triable, then in that event the offence under section 5 of the Act would be triable exclusively by the Court of Sessions since undisputedly the offence is punishable with imprisonment for more than seven years. The said Act in terms does not mention or specify any particular court for trying an offence under section 5 of the Act. The offence under section 5 being an offence under a law other than the Indian Penal Code comes under Part II of the First Schedule of the Code (which corresponds to 2nd Schedule of the old Code) and since such an offence is made punishable with imprisonment for a term of more than seven years it becomes triable by the Court of Sessions because of the entry in Part II of the First Schedule of the Code. (Paras 6 and 7).

*Petition for revision under section 401 of Criminal Procedure Code of the Order of Shri S. K. Jain, Additional Sessions Judge, Hissar, dated 28th May, 1979, affirming the judgment dated 23rd March, 1979 passed by Shri S. C. Jain, Additional C.J.M., Hissar in three separate cases, conviction and sentencing the petitioner.*

D. S. Bali, Advocate, for the Petitioner.

N. S. Ahlawat, Advocate, for the State.

## JUDGMENT

S. S. Dewan, J.

(1) Suraj petitioner was convicted by the trial Magistrate, Hissar, under section 5 of the Explosive Substances Act, 1908 and sentenced to one year's rigorous imprisonment and a fine of Rs. 500. On appeal, the learned Additional Sessions Judge, Hissar, not only upheld his conviction but affirmed his sentence and hence the present petition.

(2) The broad outline of the prosecution case is that on 21st October, 1976 at 11.55 a.m. Dalip Singh, Assistant Sub-Inspector alongwith other police officials was present at the bus stand of village Bandaheri when he received a secret information against the petitioner being in possession of a hand-grenade in his house. When the police party reached near the house of the petitioner, the latter tried to slip away, but he was apprehended. On his personal search hand-grenade-detonator fitted with a pin was recovered from his possession and the same was taken into possession. On the basis of the *ruqa* sent by the Investigating Officer, formal first information report was registered at the Police Station. The hand-grenade was sent to the Director, Forensic Science Laboratory, Madhuban, who vide his report Exhibit P.W. 5|E opined that the hand-grenade in question was an explosive substance and that it could cause damage to life and property. After obtaining the necessary sanction for the prosecution of the petitioner, he was sent up for trial.

(3) In support of its case the prosecution examined Manphul Singh, P.W. 1, Balbir Singh P.W. 2, Ramji Lal, P.W. 3, Ram Kumar, Assistant Sub-Inspector, P.W. 4, and Dalip Singh, Assistant Sub-Inspector, P.W. 5, the Investigating Officer. When examined under section 313, Criminal, Procedure Code, the accused denied the prosecution allegations and pleaded false complicity in the case. He examined Azad Singh, D.W. 1 in defence. The trial Magistrate convicted and sentenced the accused as indicated above.

(4) The main contention of the learned counsel for the petitioner is that the trial Magistrate had no jurisdiction to try the case, the offence being punishable with transportation for a term which may extend to fourteen years, to which fine may be added. He submits that the offence is exclusively triable by the Court of

Surja v. State of Haryana (S. S. Dewan, J.)

Session. Mr. Bhasin, learned counsel for the State has nothing to repel this contention. It is not disputed that the offence under section 5 of the Explosive Substances Act (hereinafter called the Act) is punishable with imprisonment up to fourteen years. Section 26(b) of the Code of Criminal Procedure 1973 (hereinafter referred to as the new code) corresponds to section 29 of the Criminal Procedure Code, 1898 (hereinafter referred to as the old Code) is as follows :

“26. Subject to the other provisions of this Code—

(a) \* \* \* \* \*

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned may be tried by—

(i) the High Court, or

(ii) any other Court by which such offence is shown in the first Schedule to be triable.”

(5) Part II of the first Schedule of the new Code (which corresponds to 2nd schedule of the old Code) prescribes that the offences if punishable with death, imprisonment for life or imprisonment for more than 7 years would be triable by the Court of Sessions while offences which are punishable with imprisonment for three years and upwards but not more than 7 years are triable by Magistrate Ist Class and those punishable with imprisonment for less than 3 years or with fine are triable by a Magistrate.

(6) On the provisions of section 26(b) of the new Code read with the said Schedule, of the said Act itself has not mentioned any particular Court by which the offences under the said Act or more precisely the offence under section 5 of the Act is triable then in that event the offence under section 5 would be triable exclusively by the Court of sessions since undisputedly the offence is punishable with imprisonment for more than seven years. The said Act, in my view, on its terms does not mention or specify any particular Court for trying an offence under section 5 of the Act.

(7) The trial Magistrate totally overlooked the fact that the offence under section 5 of the Explosive Substances Act being an offence under a law other than the Indian Penal Code comes under Part II of the First Schedule of the new Code (which corresponds to 2nd Schedule of the old Code) and since such an offence was made punishable with imprisonment for a term more than 7 years, it becomes triable by the Court of Session on the entry in Part II of the First Schedule of the new Code. Since I hold that the case is exclusively triable by the Court of Session and that the trial Magistrate was not competent to try this offence, I set aside the order of the Courts below in exercise of the *suo motu* powers of revision. The case being triable exclusively by the Court of Session, the trial Magistrate will have to follow the provisions regarding an enquiry into a case triable by the Court of Session and if he finds sufficient ground to commit the petitioner to the Court of Session at Hissar to stand his trial, he shall order accordingly. The petitioner to appear in the Court of the Magistrate concerned on 17th July, 1981.

N. K. S.

Before S. S. Sandhwalia C.J. and S. P. Goyal, J.

CHARANJIT LAL,—Appellant.

versus

RAM SARUP and others.—Respondents.

Civil Regular Second Appeal No. 738 of 1969

May 29, 1981.

*Punjab Security of Land Tenures Act (X of 1953)—Section 17-A—Sale of land pre-empted by a tenant of the vendor—Suit by the tenant pending when heirs of the vendor having preferential right also filed a suit to pre-empt the same sale—Tenant's suit decreed on compromise—Such acquisition of property by the tenant—Whether in recognition of his right of pre-emption and protected by Section 17-A as against the other pre-emptors—Doctrine of lis pendens—Whether applicable.*