LOPCHAND NARUJI JAT AND ANR. A

v.

STATE OF GUJARAT

SEPTEMBER 10, 2004

[ARIJIT PASAYAT, PRAKASH PRABHAKAR NAOLEKAR, JJ.] B

Criminal trial:

Conviction based on evidence of investigating officer—held, sustainable.

Explosives Act, 1884: C

Sec. 9-B(i)(b)—Prior sanction of prosecution—Held, Not necessary.

Sec. 4(d)—Explosives Rules, 1983—Class 2 and Class 6—Schedule-I—Ammunition dynamites—Held, these are explosives. D

The appellants were charge sheeted for the offence punishable under Sections 9-B(i)(b) of the Explosives Act, 1884, and Section 5 of TADA 1985, for possession of 180 detonators (aluminium dynamites with ammonium tubes and electrical red wires). The trial court convicted the appellants under Section 9-B(i)(b) of the Act of 1884 and sentenced him to undergo imprisonment for one year and a fine of Rs. 1000 with default stipulation, but acquitted them of the charges under Section 5 of the TADA, 1985. High Court upheld the judgment of the Sessions Court. E

Before this Court the appellant contended that without prior sanction of prosecution by the Central Government the proceedings were illegal; that the articles recovered cannot be said to be explosives and the appellants could not have been convicted; that there was no independent evidence and conviction based on the evidence of investigating officer was not sustainable; and that since the appellants had faced trial for about 10 years they should not have been convicted with punishment of custodial sentence. F G

The Respondents contended that no sanction was necessary under the Explosives Act of 1884; that the report of the Controller of Explosives indicates the substance was an explosive of Class 2 and Class 6 under H

A **Schedule I to Explosives Rules 1983 and that the conviction and sentence are well merited.**

Dismissing the Appeal, the Court

HELD : 1. Prior sanction for prosecuting is not provided under the
B **Explosive Act, 1884 and therefore it is not required. [331-H]**

2. The evidence clearly shows that the substances recovered were explosives of Class 2 and Class 6 of Schedule-I. [332-B]

3. When the investigating officer was found to be trustful and in
C **spite of incisive cross-examination, nothing material has been brought to discredit his evidence, the Trial Court was justified in recording conviction on his evidence alone. [333-E]**

4. The custodial sentence and fine imposed do not warrant any
D **reduction. [333-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 580 of 1999.

From the Judgment and Order dated 1.12.98 of the Gujarat High Court
E in Crl. A. No. 998 of 1998.

Vimal Chandra and S. Dave for the Appellants.

Ms. Vibha Datta Makhija and Ms. Sadhna Sandhu for Mrs. H. Wahi for the Respondent.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appellants call in question legality of the judgment rendered by a learned Single Judge of the Gujarat High Court upholding their conviction for offence punishable under Section 9-B(i)(b) of
G the Explosives Act, 1884 (in short the 'Act'). The Trial Court sentenced each of the appellants to undergo imprisonment for one year and pay a fine of Rs.1,000 with default stipulation.

In a nutshell the background facts are as follows:

H On 20.4.1988, the appellants came to Surat from Indore and were

intercepted by the police at the bus stand. They were found to be in possession of 180 detonators. A criminal case no.4 of 1990 was registered against the appellants-accused. They were charge-sheeted for the offence punishable under Sections 9-B(i)(b) of the Act and Section 5 of the Terrorists & Disruptive Activities (Prevention) Act, 1985 (in short the 'TADA'). By judgment and order dated 12.10.1998 of the Trial Court, the accused were acquitted of the offence punishable under Section 5 of the TADA. However, they were convicted for the offence punishable under Section 9-B(i)(b) of the Act and were sentenced as aforesaid.

In the appeal before the High Court stand of the appellants was that without prior sanction of the Central Government for prosecution the proceedings were illegal. It was also submitted that articles recovered from the appellants cannot be said to be explosives and, therefore, also the appellants could not have been convicted. As there was no independent evidence and only the evidence of the investigating officer was relied upon, the conviction should not have been made. Residually it was submitted that the appellants had faced trial for about 10 years and should not have been convicted with punishment of custodial sentence as Section 9-B(i)(b) itself provides that fine only can be imposed. Respondent-State's stand was that no sanction was necessary under the Act. The report of the Controller of Explosive, Baroda, clearly indicated that the substance recovered from the appellants was explosive of Class 2 as prescribed in Schedule I to the Explosives Rules, 1983 (in short the 'Rules') as well as Explosive of Class 6 as defined in the said Schedule. A licence is obligatory for possession, transportation and use of the explosive. Since the substance recovered was an explosive as defined in Section 4(d) of the Act and no licence was detained, the conviction was well-merited. Learned Single Judge, held that no sanction was necessary under the Act for prosecution. The articles recovered were explosives and keeping in view the factual background the sentence as imposed was in order.

In support of the appeal, learned counsel for the appellants reiterated the points urged before the High Court. Learned counsel for the respondent-State in response supported the judgment of the courts below.

It is to be noted that the plea relating to sanction is based on confusion between two statutes i.e. The Act and the Explosive Substances Act, 1908 (in short the 'Explosive Substances Act'). Prior sanction for prosecuting any person is provided under the Explosive Substances Act and there is no

A corresponding provision in the Act. Therefore, the Trial Court and the High Court were justified in rejecting the plea. Coming to the question whether the seized articles were explosives, report of the Controller of Explosive which was produced as Exhibit-73 clearly discloses that the substances recovered were explosives of Class 2 and Class 6 of Schedule I. That being so, the plea that the articles were not explosives cannot be sustained.

B

The two classes are as follows:

"Class 2- Nitrate Mixture Class:

C "Nitrate-mixture" means any preparation, other than gunpowder, which is formed by the mechanical mixture of a nitrate with any form of carbon with any carbonaceous substance not possessed of explosive properties, whether sulphur be or be not added to such preparation, and whether such preparation be not mechanically mixed with any other non-explosive substance, and includes any D explosive containing a perchlorate and not being a chlorate mixture, fulminate or nitro-compound as defined in this Schedule.

Class 6- Ammunition Class:

(1) "Ammunition" means an explosive of any of the foregoing E classes when the same is enclosed in any case or contrivance, or is otherwise adapted or prepared so as to form:

(a) a cartridge or charge for small arms, cannon or any other weapon, or (b) a safety or other fuse for blasting or for shells, or (c) a tube for firing explosives, or (d) a percussion cap, detonator, fog signal, F shell, torpedo, war rocket or any other contrivance other than a firework.

(2) The ammunition class has three divisions, namely Division 1, Division 2 and Division 3.

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(3) Division 1 comprises exclusively of (i) Safety cartridges, (ii) Safety fuses for blasting, (iii) Railway for signal, and (iv) Percussion caps.

(4) Division 2, comprises any ammunition which does not contain H its own means of ignition and is not included in Division 1, such

as cartridges for small arms other than safety cartridges and charges for common shells and torpedoes containing any explosives, tubes for firing explosives, and war rocket, which do not contain their own means of ignition.

(5) Division 3, comprises any ammunition which contains its own means of ignition and is not included in Division 1, such as detonators, fuses for blasting which are not safety fuses, tubes for firing explosives, containing their own means of ignition.

Note—The expression "ammunition containing its own means of ignition" means ammunition having an arrangement, whether attached to or forming part of the ammunition which is adapted to explode or fire the ammunition by friction or percussion. "Percussion cap" does not include a detonator."

As per established prosecution version 180 nos. of ammunition dynamites were found in possession of the accused. Courts below have on evidence tendered found that Ammonium tubes with electrical red wire were recovered. These articles are undisputedly covered by class-6 as quoted above.

The substances recovered from the appellants clearly come within the definition of "explosive" as per Section 4(d) of the Act. When the investigating officer was found to be trustful and in spite of incisive cross-examination, nothing material has been brought to discredit his evidence, the Trial Court was justified in recording conviction on his evidence alone.

Coming to the plea about the sentence it would be relevant to note that 180 detonators were seized. The value thereof has been fixed by the prosecution as Rs. 900. The quantity seized clearly disproves the plea that the seized articles were intended to be used for digging wells. The detonators were found to be of a company at Rourkela in Orissa, and were seized far away at Surat. The fact that the accused persons tried to run away when police wanted to apprehend them is a significant factor.

In the aforesaid background the custodial sentence and fine imposed do not warrant any reduction.

The appeal is accordingly dismissed.

V.M. Appeal dismissed.