

Dhirendra Bodo Vs. State of Sikkim

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Court : Sikkim

Decided On : Jul-26-2010

Judge : The Honourable Chief Justice Mr. Barin Ghosh & S.P. Wangdi

Appeal No. : Criminal Appeal No. 11 of 2008

Appellant : Dhirendra Bodo

Respondent : State of Sikkim

Judgement :

BARIN GHOSH, C.J.

(1.) By the judgment and sentence under appeal, the appellant has been convicted and sentenced by the Special Judge, Prevention of Terrorism Act (hereinafter referred to as 'POTA') for having committed offences punishable under Section 20 (1) of POTA and Section 5 of Explosive Substances Act (hereinafter referred to as 'ESA'). The appellant, according to the arrest Memo, was arrested on 1st January, 2003. Since then he remained in custody. The judgment was rendered on 14th October, 2008 and the sentence was ordered on 18th October, 2008. The appellant was sentenced to undergo simple imprisonment for a period of 5 years for having committed offence punishable under Section 20(1) of POTA. He was also sentenced to undergo simple imprisonment for a period of 5 years with a fine of Rs.6000/- and in default of payment of fine to undergo further simple imprisonment for a period of one month for having committed offence punishable

under Section 5 of ESA and both the sentences were directed to run concurrently.

(2.) As on date the appeal was heard, the appellant had served the sentence.

(3.) The appellant has raised two technical contentions. The first of them is that the Designated Authority was not the Secretary to the Government of Sikkim. The second is that the consent of the District Magistrate was not obtained.

(4.) Clause (b) of Section 2 of POTA makes it clear that an officer of the State Government not below the rank of Secretary to the said Government can be the Designated Authority provided he is designated as such by a notification published in the Official Gazette. In this case, there is no dispute that the Government of Sikkim by a notification published in the Official Gazette designated the person concerned as the Designated Authority. The appellant contended that he was not a Secretary to the Government. Evidence on record suggests that at the relevant time the Chief Secretary to the Government of Sikkim was also the Home Secretary to the Government of Sikkim. At the same time, the Designated Authority was the Special Secretary to the Government of Sikkim in its Home Department. The notification in the Official Gazette was signed by the Additional Secretary (II), Home Department, who was junior to the Special Secretary and the Chief Secretary cum Home Secretary was senior to the Special Secretary. It was contended that a junior could not appoint a senior as the Designated Authority and at the same time it was contended that the Designated Authority was not the Secretary to the Government. Words used in the Statute makes it clear that the person to be designated as Designated Authority should not be below the rank of Secretary. The Special Secretary to the Government was apparently a Secretary to the Government and it was not brought on record that he was not in the rank of Secretary to the Government. It is true that the Additional Secretary, who was admittedly junior to the Special Secretary, signed the notification published in the Official Gazette, but the fact remains that he was only signatory to the Gazette but not the publisher thereof. The State Government published the notification and thereby designated the person concerned. The Additional Secretary was a mere signatory thereto.

(5.) It was contended that in the year 2002, the words "Central Government" were replaced by the words "District Magistrate" in Section 7 of ESA. It was also contended that admittedly no consent of the District Magistrate was available in the instant case. The fact remains that originally consent under Section 7 of ESA could be given by the Local Government or by the Governor-General in Council. In 1937 through an amendment Central Government alone became the Authority under Section 7 of ESA. Subsequently, Central Government by virtue of power conferred by Section. 124 of the Government of India Act, 1935 delegated its authority under Section 7 of ESA to State, Governments. Courts have held that such delegation was perfectly legal and valid even after the Constitution came into force by virtue of the effect of the Article 73(2) of the Constitution of India. In the instant case, admittedly, consent of the State Government was available. It was contended that since the consent was not of the District Magistrate but was of the State Government, no consent under Section 7 was available and since no Court could proceed to the trial of any person for an offence under ESA except with such consent, the trial is vitiated. The fact remains that the State Government is an authority superior to the District Magistrate. The function which can be discharged by an inferior authority can always be discharged by its superior authority.

(6.) While the appellant was arrested on 1st January, 2003, in course of search and seizure of the residence of the appellant, which was also conducted on 1st January, 2003, amongst others, letter-heads of National Democratic Front of Boroland was seized. Those were four in number. Those letter-heads, which were tendered in evidence, show not only the name of National Democratic Front of Boroland printed thereon but the emblem and the flags of National Democratic Front of Boroland were also printed thereon. There is no dispute that the National Democratic Front of Boroland has been declared unlawful by Government of India by issuing a notification under Section 3 of the Unlawful Activities (Prevention) Act, 1967. In course of his examination under Section 313 of Code of Criminal Procedure, the appellant said that those four letter-heads were not with him.

(7.) In course of search and seizure, amongst others, two hand-grenades were also seized. Those two handgrenades were exhibited. The seizure list too was exhibited. Two independent civilian witnesses proved the seizure of those two

hand-grenades. However, there was some discrepancy in the evidence pertaining to one of those seized and exhibited hand-grenades, but there appears to be no discrepancy in the evidence pertaining to other hand-grenade. The independent civilian witnesses deposed that at or before seizure of the hand-grenades and other items, the room as well as the house from where the materials were seized were lying locked up and under police guards for about 3 days. At the time of seizure appellant was not present. It was thus urged that 3 days before the search and seizure, the appellant was arrested. Because the house and the room were locked up and were under police guard for 3 days prior to seizure of materials, do not suggest arrest of the appellant 3 days before. There is no other independent evidence to suggest that the appellant was arrested prior to the date and time shown in the arrest memo. It was suggested that the letter-heads and the hand-grenades were planted by the police. Purpose thereof was not, however, highlighted, except contending that the instant case was the first and last case under POTA in this State and the Police in order to earn name and fame made out, a story by planting those letter-heads and grenades. Submissions to that by the evidence tendered. It was contended that the army person, whose report too was tendered in evidence, could not recognize one of the two hand-grenades exhibited. It was suggested that numbers assigned to the hand-grenades mentioned by the said army person do not match the number of hand- grenades mentioned by other witnesses. It was also conended that while one of the civilian witnesses said that defused hand-grenades were seized, the other witnesses including the army person said that the grenades were with trigger. The fact remains that the seized grenades were exhibited in Court. The report of the army personnel, which too was exhibited, mentioned the number of the hand-grenades. It was not suggested to the said army person, while he was deposing, that the exhibited hand- grenades do not bear the number of the hand-grenades mentioned in his report. Similarly, exhibited hand-grenades were not shown to the army person to confirm whether they were defused or had triggers.

(8.) Strong reliance was placed by the prosecution on the purported statement given by the appellant under Section 32 of POTA, which was not accepted by the Special Judge. The Special, Judge concluded the matter by holding that those letter-heads and hand-grenades were found in possession of the appellant and

accordingly; convicted and sentenced him.

(9.) When letter-heads of a banned terrorist outfit was found in possession of the appellant, in the absence of any other evidence to the contrary, the Court could logically deduce that the appellant belong to such banned terrorist organization, resulting in commission of offence punishable under sub-Section. (1) of Section 20 of POTA. Similarly, possession of hand-grenades from the appellant did attract the provision of Section 5 of the ESA.

(10.) We accordingly find no reason to interfere and the appeal fails and the same is dismissed. Appeal dismissed.

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