

Motilal Vs. State of Bihar

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Court : Jharkhand

Decided On : Feb-18-2015

Appellant : Motilal

Respondent : State of Bihar

Judgement :

In the High Court of Jharkhand at Ranchi Cr.Misc.No.8336 of 1998 (R) Motilal, son of Sri Mansha Ram, Prop.of M/s. Panan Das & Co. resident of Hinoo, P.S.Jagarnathpr, Dist - Ranchi.....Petitioner VERSUS State of Bihar now Jharkhand.....Opposite Party CORAM: HON'BLE MR. JUSTICE R.R.PRASAD HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioner: M/s.H.K.Mehta and Mrs.M.Patra For the State :A.P.P06 18.2.15. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. It is the case of the prosecution that the police in course of patrolling when did find a white Ambassador car parked at a place, the police asked form the driver and the two occupants about the reason for parking the car there. The driver informed the police that it has gone out of order. However, the police became suspicion that something is fishy. Thereupon the police asked the driver to open the dicky of the car. When it was opened search was made during which course 161 numbers of Jiletin weighing 22 kg. and two bags of Amonium Nitrate each weighing 50 kg. were found in the dicky. When the persons were asked as to from where they had brought it, they disclosed that they had purchased it from M/s Pawan Das & Company and were taking to some construction company. Both the

incriminating materials were seized and a FIR was lodged against those three persons as well as against the petitioner, who happens to be the owner of M/s. Pawan Das & Company and also against the caretaker of the said company. After completion of investigation charge sheet was submitted, upon which cognizance of the offence punishable under Section 4b/5 of the Explosive Substance Act and also under Sections 420, 414 and 120B of the Indian Penal Code was taken against the petitioner and others, vide order dated 13.11.1995. That order was challenged before this Court. Before the learned Single Judge, learned counsel appearing for the petitioner by placing reliance on a decision rendered in Cr.Misc.No.842 of 1995(R) submitted that though the provision as contained in Section 7 of the Explosive Substance Act does bar the trial but in absence of any sanction granted by the competent authority, the order taking cognizance shall be bad. However, the submission which was advanced on behalf of the petitioner was countered by the learned counsel appearing for the State by taking plea that objection in respect of bar under Section 7 of the Explosive Substance Act cannot be raised at the time of taking cognizance or at the stage of enquiry, i.e. prior to commencement of the trial. In support of the submission, a decision rendered in a case of Jagat Narayan Upadhaya vs.State of Bihar [1993(1) PLJR235 was relied upon. In that event, the case was referred to a Division Bench, vide order dated 6.1.2000. That is how the case has come up before the Division Bench. Mr.Mehta, learned counsel appearing for the petitioner submits that though the provision as contained in Section 7 of the Explosive Substance Act does stipulate that trial cannot proceed in absence of any sanction granted by the competent authority but the learned single Judge after taking into account several decisions including the decision rendered in a case of Gopal Krishna Pal vs. The State of Bihar (AIR1951 Pat

185) was pleased to hold in a case of S.M.Mazhar and another vs. State of Bihar [Cr.Misc.No.842 of 1995(R)] that the bar as stipulated under Section7 of the Explosive Substance Act would be operative also at the stage of taking cognizance but in another decision rendered in a case of Jagat Narayan Upadhaya vs.State of Bihar [1993(1) PLJR235 wherein it has been held that objection in respect of bar under Section 7 of the Explosive Substance Act cannot be raised at the stage of taking cognizance. His Lordship has never taken into

account the other decision upon which reliance had been made in Cr. Misc. No.842 of 1995(R) and thereby the law laid down in Cr.Misc. no.842 of 1995 (R) will hold the field. Respectfully, we are not in agreement with the submission advanced on behalf of the petitioner. Before we proceed further in the matter we need to take notice of the provision as contained in Section 7 of the Explosive Substance Act which reads as follows:

7. Restriction on trial of offence: No court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate. Earlier to the amendment made by the Act 54 of 2001, it was Central Government in case of District Magistrate. Thus, it is quite specific that the court shall not proceed with the trial if the sanction is not there against the person. In other words, Section 7 of the Explosive Substance Act merely restrains the Court from proceeding with the trial of any person for an offence under the Act except with the necessary consent. But lack of such consent did not invalidate order taking cognizance or the committal proceeding. The same proposition has been laid down by the Division of the Patna High Court rendered in a case of Gopal Krishna Pal vs. The State of Bihar (supra). Notice of the case though has been taken by learned Single Judge in Cr. Misc. No.842 of 1995 (R) but the ratio laid down in that case perhaps remained unnoticed as a result of which view taken by learned Single Judge in Cr. Misc. No.842 of 1995(R) is not in consonance with the ratio laid down by the Division Bench in the case referred to above and, therefore, law laid down in Cr. Misc. No.842 of 1995(R) can not be said to be a good law. Thus, keeping in view the provision as contained in Section 7 of the Explosive Substance Act and also the law laid down in case of Gopal Krishna Pal vs. The State of Bihar (supra) we are of the view that the court cannot proceed with the trial in absence of absence of sanction. But before the stage of the trial, there does not appear to be any bar. Accordingly, the order taking cognizance never suffers from any illegality so far it relates to the offence under the Explosive Substance Act. Hence, this application stands dismissed. However, it goes without saying that the petitioner would be at liberty to raise this issue at the stage of the trial if it is available to him. (R.R. Prasad, J.) (Ravi Nath Verma,J.) ND/