

The State of U.P. Vs. Ram Pal

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Court : Allahabad

Decided On : Apr-17-1964

Reported in : AIR1965All15; 1965CriLJ1

Judge : D.P. Uniyal and ;C.B. Capoor, JJ.

Acts : [Explosive Substances Act, 1908](#) - Sections 7; [Constitution of India](#) - Article 258(1)

Appeal No. : Criminal Govt. Appeal No. 2265 of 1962

Appellant : The State of U.P.

Respondent : Ram Pal

Advocate for Def. : A. Ralla Ram, Adv.

Advocate for Pet/Ap. : J.R. Bhatt, Deputy Govt. Adv.

Disposition : Appeal allowed

Judgement :

Uniyal, J.

1. This appeal is directed against an order dated 31-8-1962 passed by the Assistant Sessions Judge, Meerut, acquitting Ram Pal respondent under Section 5 or the Explosive Substances Act. The respondent was tried for offences under

Section 5 of the Explosive Substances Act as also under Sections 5 and 6 of the Explosives Act. He was convicted of the offence under Section 6 of the Explosives Act and sentenced to one year's rigorous imprisonment but was acquitted of the charges under Section 5 of the Explosive Substances Act as well as Section 5 of the Explosives Act. While the State has acquiesced in his acquittal under Section 5 of the Explosives Act it has challenged his acquittal under Section 5 of the Explosive Substances Act.

2. The facts relating to the recovery of country made bomb material from the possession of the respondent on the night of the 8th January, 1960 have not been disputed. The report of Sri B. N. Dey, Inspector of Explosives, proved that the explosive material recovered from the possession of the accused was explosive substance. In his statement he deposed that the material recovered from the respondent constituted country made bomb dangerous to life and property and that it was an orange coloured mixture having red arsenic sulphide and potassium chlorate. He opined that arsenic sulphide and potassium chlorate constituted very sensitive explosive mixture and was dangerous to life and property. It was thus clearly established that the recovery of the explosive material from the possession of the respondent was caught within the definition as given in Section 2 of the Explosive Substances Act (Act VI of 1908), hereinafter referred to as the Act.

3. The learned Assistant Sessions Judge acquitted the respondent of the charge under Section 5 of the Act on the ground that the notification No. 33/2/57-Police (IV) dated 14th May, 1957 issued by the Ministry of Home Affairs in exercise of powers conferred by Clause (1) of Article 258 of the Constitution was null and void and that the consent accorded by the State Government for the prosecution of the respondent under Section 7 of the Explosive Substances Act was invalid and ineffective. Relying on certain observations of a learned single Judge of this Court in *Chaitanya Prakash v. State*, AIR 1980 All 876 that:

A general direction by the Central Government that consent by a Governor to the prosecution of any offence committed in any circumstance at any time by anyone in future shall be deemed to be consented to by itself is inconsistent with the spirit of Section 7 of the Act, which contemplates that the Central Government shall

consider the facts of the particular offence before consenting to prosecution for it;' the learned Assistant Sessions Judge came to the conclusion that there was no valid consent to the prosecution of the respondent and accordingly acquitted him of the charge under Section 5 of the Explosive Substances Act.

4. In order to appreciate the controversy raised in this case it is necessary to refer to Section 7 of the Act which reads as follows :

Section 7 'No court shall proceed to the trial of any person for an offence against this Act except with the consent of the Central Government.'

'Central Government' has been defined in Section 3(8) of the General Clauses Act (X of 1897), which so far as is material runs as follows:

Section 3(8)(b) ' 'Central Government' shall in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,

(i) in relation to functions entrusted under Clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause.'

Article 258(1) of the Constitution provides:

'Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matters to which the executive power of the Union extends.'

5. Article 53(1), inter alia, defines the executive power of the Union In these terms:

'The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.'

It would appear that under Article 258(1) the functions exercisable by the President in relation to any matter to which the executive power of the Union

extends may be entrusted by him to the State Government with the latter's consent. Section 7 embodies one of the functions which may be performed by the President in exercise of his executive power, namely, the function of according consent in respect to an offence against the Act. It follows, therefore, that if the President makes a notification in terms of Clause (1) of Article 258 it would have the effect of delegating the functions of the President to the State Government. In the present case a notification No. 33/2/57-Police (IV) to this effect was issued by the Ministry of Home Affairs on the 14th May, 1957. By that notification the President entrusted to all State Governments with their consent the functions of the Central Government under Section 7 of the Explosive Substances Act. Consequently the State Government had jurisdiction to give consent in respect to an offence against the Act.

6. The notification which came up for consideration by the learned single Judge in Chaitanya Prakash's case, AIR 1960 All 376 was almost in identical terms to the one in question, but it seems to us clear that the observations made by the learned single Judge to the effect that:

'The Central Government has not delegated this power of giving consent to the Governor; what it has done is to give general consent to all prosecutions consented to by him.'

are not borne out by the terms of that notification and the provisions of the Constitution under which the said notification was issued. In our opinion the effect of the notification aforesaid was, as it were, to clothe the State Government with the powers vested in the Central Government under Section 7 of the Act and, as such, the consent accorded by the State Government was a valid and proper one. With respect to the learned single judge, we think that the opinion expressed in Chaitanya Prakash's case, AIR 1960 All 376 was not legally sound.

7. It is only necessary to point out here that the consent given by the State Government in the present case was not in the nature of a general direction but was specific and was accorded after due consideration of the facts forming the subject matter of the charge against the respondent. The consent accorded by the Governor by G. O. No. 3889D/VIII-B-129/60, dated Lucknow August 18, 1960 was

as follows:

'This consent has been accorded on the basis of the following facts reported to Government; 'On the night between January 8/9. 1960 at 11 p.m. the police arrested the accused Ram Pal near village Naurozpur under suspicious circumstances along with five other associates A countrymade bomb was recovered from his possession which he could not account for. Later on, the bomb, on examination by the Chief Inspector of Explosives, was found to contain orange coloured mixture of red arsenic sulphide and potassium chlorate mixed with glass pieces and lead pellets and papers and was said to be very sensitive to shock, blow or friction and capable of endangering life on explosion.'

8. It would thus appear that the consent accorded was not only clear and specific in terms but it also detailed all the facts which were fully considered by the Governor before according the necessary consent to the prosecution of the respondent. There can thus be no manner of doubt that the Governor had applied his mind to the facts of the case before according his consent. It would, therefore, be futile to say that the State Government had not applied its mind to the facts of the case before according consent to the prosecution of the respondent.

9. We are, therefore, of the view that the learned Assistant Sessions Judge was in error in acquitting the respondent under Section 5 of the Explosive Substances Act.

10. The result, therefore, is that this appeal succeeds. The order of acquittal under Section 5 of the Explosive Substances Act in favour of the respondent is set aside and he is convicted of that offence and is sentenced to two years' rigorous imprisonment. The sentence awarded to him shall run concurrently with the sentence he is undergoing under Section 6 of the Explosives Act.

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