

**Avdhesh Kumar Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-05-1983

**Reported in :** 23(1983)DLT482

**Judge :** M.L. Jain, J.

**Acts :** [Evidence Act, 1872](#) - Sections 27; Explosives Substances Act - Sections 5

**Appeal No. :** Criminal Revision Appeal No. 224 of 1932

**Appellant :** Avdhesh Kumar

**Respondent :** The State

**Advocate for Pet/Ap. :** B.B. Lal,; Akshay Bipin and; P.R. Sethi, Advs

**Judgement :**

**M.L. Jain, J.**

(1) The brief facts are that on the night between 13th and 14th February, 1975 an explosion of high intensity took place in a Jhuggi of Mani Ram in Prem Nagar (Baljit Nagar) P.S. Patel Nagar in which three persons were injured. Investigation disclosed that a number of persons were engaged in the manufacture of bombs in Delhi. Some of the accused were disgruntled ex-employees of the Food Corporation of India and wanted to blow up its buildings. The ring leader Uttam Mandal made a disclosure statement that on 8-2-1975, 3 Kg. of Potash and 2 Kg.

of Mandal were purchased for Rs. 490.00 by him from the shop of accused Avdesh Kumar in Mirzapur, U.P. On 2-3-1975 Uttam Mandal led the police to his shop where Suresh Chand and Avdesh Kumar were found sitting. Nothing incriminating was recovered from him. However, by his order of 14-7-1982 the Additional Sessions Judge held that Avdesh Kumar was not in conspiracy but was prima facie guilty of an offence under Section 6 of the Indian Explosives Act, 1908. This order is challenged in the present petition. The charge was framed on 15-7-1982 against him under Section 6 read with Sections 3, 4 and 5 of the said Act.

(2) It was urged before the learned Addl. Sessions Judge that the statement of the co-accused against Avdesh Kumar was inadmissible in evidence as no explosive or any other thing was recovered from Avdesh Kumar. The learned Addl. Sessions Judge rejected this submission. He was of the view that there is ground for presuming that the accused had committed the offence he was being charged with.

(3) After hearing the arguments of the learned counsel for the petitioner and the learned Addl. Public Prosecutor, it appears to me that the order and the charge deserve to be set aside and the accused should not be permitted to be subjected to trial which seems to be ex facie unjustified. First reason is that a disclosure statement can at best be proved only against the maker under Section 27 of the Indian [Evidence Act, 1872](#) and his pointing out of the place or person can be used as an evidence of his conduct alone under Section 8 thereof: see *Prakash Chand v. State*, : 1979 CriLJ329 . As against the other co-accused, it can be taken into consideration as a statement of an accomplice under Section 30 thereof. The fact discovered under Section 27 embraces the object produced, the place from which the object is produced and the knowledge of the accused as to this. That is because fact means and includes anything capable of being perceived by the senses and any mental condition of which any person is conscious : vide *Pulukuri Kottaya and others v. Emperor* A.I.R. 1947 P.C. 67, *Jaffar Hussain Dustgir v. The State of Maharashtra* : 1970 CriLJ1659 , and *H.P Administration v. Om Prakash*, : 1972 CriLJ606 . The disclosure statement in this case was inadmissible in evidence as it only disclosed Avdesh Kumar. There was no further recovery from him. There was thus no material fact discovered. That is why the learned lower

court rightly excluded the petitioner out of the conspiracy.

(4) Second reason is that in *Bimal Pershad Jain v. Emperor* A.I.R. 1934 Lah. 583, it was held that for an offence under Section 5 of the Explosive Substances Act, 1908, the intention to procure, counsel, aid, abet or to be accessory to, the commission of the offence, is a necessary ingredient of the offence under that section and ordinarily, it is the primary intention of the accused that must be taken into consideration in determining his guilt. The accused in *Bimal Pershad* (supra) was acquitted even assuming that he personally arranged for the supply of Chemicals and at that time he suspected that they might be used for illegal purposes. The learned Additional Public Prosecutor referred to *State of Bihar v. Ramesh Singh*, : 1977 CriLJ1606 , that at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. But in this case, even if the facts given in the report under Section 173 Cr. P.O. are taken to be correct there is no reason to say that at the time of the sale of the Chemicals the accused even suspected or ought to have suspected that the Chemicals would be used for the manufacture of bombs and, therefore, no question of any strong suspicion as regards his intention to supply the substance so that an offence is committed, arises against him. The offences under Sections 3, 4 and 5 of the Explosives Act do not fall within the jurisdiction of Delhi courts.

(5) I, therefore, accept this petition and quash the charge leveled against the petitioner.

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