

C. Ramaswamy Vs. State

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Court : Chennai

Decided On : Aug-03-1999

Reported in : 2000CriLJ770

Judge : A. Ramamurthi, J.

Acts : Explosive Substance Act, 1908 - Sections 5

Appeal No. : Cri. R.C. No. 451 of 1999 and Cri. M.P. No. 3741 of 1999 and Cri. R.P. No. 451 of 1999

Appellant : C. Ramaswamy

Respondent : State

Advocate for Def. : N.R. Elango, Govt. Adv. (Cri Side)

Advocate for Pet/Ap. : V. Kathiravan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Ramamurthi, J.

1. Petitioner has preferred the revision aggrieved against the order passed in Cri. M.P.No. 1069/99 dated 19-4-99 on the file of learned Judicial Magistrate VII,

Coimbatore.

2. The case in brief is as follows :

The explosive materials seized in Saibaba Colony Police Station in Crime No. 581/98 registered under Section 5 of the Explosive Substance Act, were ordered to be kept in the magazine of the petitioner for safe custody. The petitioner is having a valid licence to deal in explosive substance and he is also having a godown at Sippandikadu, Erode District, attached to Vellithiruppur Police Station. A communication was sent to the petitioner, calling upon him to handover the explosive materials kept in this godown for the purpose of keeping it in another godown named Ashok Explosives Godown at Avinashi Taluk. Now a communication has been sent to the petitioner considering the safety of the materials and also put safely. About 94000 explosive substances have been kept in the godown of the petitioner and in that, a communication was sent to the petitioner to hand over the same for the purpose of keeping it in another place for safety reasons. The communication is mainly based on the opinion of the Joint Controller of Explosive Substance pointing out the reasons. It is stated that there is no sufficient facility in the magazine of the petitioner for the purpose of retaining such a large quantity of explosive substance and further more, keeping the same in the said place will be dangerous not only to the public living nearby but also the property itself. The learned Judicial Magistrate sent a communication to the petitioner and thereupon only, the petitioner approached the learned Magistrate pointing out certain discrepancies with the other godown people and as such, he should be allowed to keep the explosive substance in his godown itself. According to the petitioner there was sufficient facility in his godown. The proprietor of Ashok Explosives was already involved in a case under Explosive Substance Act and as such, it is not safe and proper to entrust these explosive materials in the other godown.

3. The learned Magistrate after hearing the petitioner and also perusing the materials, dismissed the application and aggrieved against this, the present revision is filed by the petitioner.

4. Learned counsel for the petitioner contended that the only reason adduced by the Court below is that the Joint Controller of Explosives Substances recommended for transfer of storage to another explosive licence holder is not a sound reason. The contentions raised by the petitioner have not been properly considered. The revision petitioner is a licence holder under Explosive Substances Act and he has got valid licence upto 31-3-2000. He is holding two licences one at Sippandikadu and another at Nanjai Uthukuli Village, Erode District. In most of the criminal cases, he was entrusted with a duty of possessing the seized explosive substances. Similarly, the explosive substance seized in Crime No. 581 /98 on the file of the respondent police around 94000 detonators were entrusted to him for safe custody. He is a genuine dealer of explosive substance and because of that only, the Police Department deposited the seized explosive substances with him. The other dealer was already involved in a TADA case registered in Crime No. 429/94 registered in C.C.No. 12/95. The order to shift the explosive substance under the custody of the petitioner to the aforesaid place is not proper. It is supported by a mala fide intention. The said order is violative of the principles of natural justice. The learned Magistrate mechanically passed the order without any application of mind. 4A. Learned Government Advocate opposed the revision, stating that the revision, itself is not maintainable under law. The respondent alone obtained the order of the learned Magistrate and kept the explosive substance in the godown of the petitioner at Sippandikadu. Now, the Joint Controller of Explosive substance has sent a communication that it is not desirable and proper to retain in the same place because it will be dangerous not only to the public but also to the property itself. He further pointed out that recently the sandalwood smuggler Veerappan had attacked the Vellithirupoor Police Station, which is situate very near to the godown of the petitioner. Based on all the reasons only, the Officer has given instructions to shift these explosive materials to a different godown in Avinashi Taluk.

5. Heard the learned counsel of both sides.

6. There is no dispute that the explosive materials seized in Saibaba Colony Police Station in Crime No. 581 /98 were entrusted to be kept in the magazine of the petitioner for safe custody. Learned counsel for the petitioner stated that the

petitioner is having valid licence to deal with explosive substance till 31-3-2000 and this being so, a communication was received from the Court that the explosive materials entrusted to the petitioner for safe custody were ordered to be returned to another godown named Ashok Explosives at Avinashi Taluk. About 94000 explosive substances have been kept in the godown and there is sufficient precaution for safety and, as such, the communication sent by the Joint Controller of Explosive Substances cannot be acted upon.

7. Learned Government Advocate opposed the application on the ground that the present petition is not maintainable since the petitioner has failed to (implead) the owner of Ashok Explosives. However it may be, it is to be seen whether the petitioner is competent to file this application. The explosive substances were seized by the Investigating Agency and they have entrusted the same with the petitioner for safe custody. Now, for valid reason, the Joint Controller of Explosive Substances has sent a letter to the Court and from there, a communication was sent to the petitioner to deliver the explosive substances for the purpose of giving custody to another licence holder. Normally, the petitioner cannot have any grievance. He was only keeping custody of the explosive substance for safety purpose and now when the authorities want the same to be entrusted with any other agency, he cannot stand in the way. Now, certain allegations are levelled against the other licence holder on the ground that he is already involved in Explosive Substance Act; but as he has not been made a party, it is not proper to discuss the same and come to any conclusion.

8. There are also valid circumstances which prompted the authorities to give a direction to the petitioner to deliver these explosive substances for the purpose of handing over to some other licence holder. Now, the explosive substance is kept in the godown at Sippandikadu, Erode District and it is within the police limit of Vellithiruppur Police Station. It is also not in dispute that the sandalwood smuggler Veerappan recently attacked the said Police Station, Considering this background, it is quite probable that the authorities concerned might have taken this step and I am of the view that no mala fide can be attached. Further more, it is not necessary on the part of the authorities to give a valid reason for taking the explosive substance from the godown of the petitioner. The petitioner cannot have any legal

right to insist, that the explosive substance should be only in his godown. Under the circumstances, I am of the view that the order passed by the learned Magistrate is proper and correct and no interference is called for. In my view, it is only a vexatious litigation raised by the petitioner and as such, it has to be dismissed.

9. For the reasons mentioned above, the revision fails and is dismissed, Consequently, Crl. M.P.No. 3741/99 is also dismissed.

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