

Ramesh Kumar Gupta Vs. the State, Rep. by Its Public Prosecutor

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Court : Andhra Pradesh

Decided On : Oct-21-2010

Judge : A.Gopal Reddy, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 482, 313, 209, ;
Explosives Substances Act, 1908 - Sections 5 r/w 6, 7; [General Clauses Act, 1897](#)
- Section 3(8)(d)

Appeal No. : Criminal Petition No.6316 of 2007

Appellant : Ramesh Kumar Gupta

Respondent : The State, Rep. by Its Public Prosecutor

Advocate for Pet/Ap. : N.Bharat Babu, Adv

Judgement :

ORDER:

This petition under Section 482 Cr.P.C., is filed to quash the proceedings in Sessions Case No.36 of 2006 on the file of Assistant Sessions Judge, Sompeta, Srikakulam District, in which the petitioner is arrayed as A1 for the offence punishable under Section 5 read with Section 6 of the Explosives Substances Act, 1908 (for short, "the Act"). Facts, which give rise to filing of this petition, are that the petitioner is one of the directors of a Granite leasing company viz., M/s.Gallop Granites Private Limited. The said company was granted lease in the year 1997 in respect of the land to an extent of 15 hectares in survey No.1 of Addukonda

Village, Tekkali Mandal, Srikakulam District, for the purpose of mining operations. When the Inspector of Police, Vigilance and Enforcement, and his staff visited M/s.Gallop Granites Ltd., Melisathiwadsa on 17.11.2000, he found no records at the site except one person K.V.Ramaiah and that A2 was coming with a plastic bag containing explosive substance and on their questioning, A2 and K.V.Ramaiah informed that no licence was obtained under the Act and hence the said two persons were arrested and a plastic bag containing explosive substance has been seized. Thereby, the Inspector of Police, vigilance and Enforcement lodged a complaint.

On the basis of the above complaint a case in crime No.139 of 2000 was registered against one K.V.Ramaiah and Gopinath Das/A2 for the offence under Section 5 of the Act. After due investigation, charge sheet has been filed on 31.10.2001 against the petitioner herein and A2. The Magistrate, who took cognizance of the case in C.C.No.5 of 2002, framed charges on 28.06.2002 and examined P.Ws.1 to 6. After examining the witnesses and when the accused were examined under Section 313 Cr.P.C., the Magistrate entertained a doubt as to whether the offences are triable by the Judicial Magistrate of First Class or by the Sessions Court. After obtaining clarification in that regard, he re- registered the case as P.R.C.No.2 of 2006 and committed the case to the Court of Sessions under Section 209 Cr.P.C. on 12.04.2006 and the matter was made over to the Assistant Sessions Judge, Sompeta. On such committal, the Sessions Judge framed necessary charges on 11.10.2007 in Sessions Case No.36 of 2006. To quash the same, the present petition has been filed. Sri P.Gangaiah Naidu, learned counsel for the petitioner contends that the entire allegations shows that the petitioner committed an offence under Section 5 r/w Section 6 of the Act, which are not sufficient to prosecute the accused, but under Section 7 of the Act, no Court shall proceed to trial of any person for an offence against this Act except with the consent of the Central Government. The Central Government has been substituted with the District Magistrate with effect from 01.02.2002, whereas the offence took place in the year 2001 and the trial was also commenced in October, 2001. Therefore, the proceedings are liable to be quashed in view of the illustration 6 enumerated in State of Haryana v. Bhajan Lal's¹ Case. He further contends that when necessary charge has been framed by the Judicial Magistrate

of First Class, who conducted trial by examining P.Ws.1 to 6 and when it was made over to the Assistant Sessions Judge, he has to proceed from that place, but cannot frame charges afresh and conduct the trial afresh into the matter. Section 7 of the Act provides that, no Court shall proceed to the trial of any person for the offence under this Act except with the consent of Central Government. According to Section 3(8)(d) of [General Clauses Act, 1897](#), Central Government in relation to anything done or to be done after the commencement of the Constitution shall mean President. Article 258(1) of the Constitution, provides that the President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or its officers functions in relation to any matter to which the executive power of the Union extends. In exercise of these powers the President by notification No.S.O.3583, dated 2nd December, 1978 issued by Ministry of Home Affairs, New Delhi with the consent of the Government of States of Andhra Pradesh, Assam, Bihar, Madhya Pradesh and Tamilnadu has entrusted all District Magistrates in the said States the functions of the Central Government under Section 7 of the Act.

In the present case before filing the charge sheet a letter has been forwarded to the District Collector, Srikakulam through the Superintendent of Police, Srikakulam for obtaining fresh prosecution orders against petitioner/A1 on 29.07.2001 and after obtaining the sanction from the District Collector to prosecute the petitioner in Dis.No.1475/2001/C5/11-09-2001 by the investigating agency on 26.10.2001, a charge sheet has been filed against the petitioner before the Judicial Magistrate of First Class, Tekkali as required under Section 7 of the Act.

Since the District Collector, who is the District Magistrate of Srikakulam, has been entrusted with the function of the Central Government under Section 7 of the Act, this Court does not find any merit in the contention advanced by the learned counsel for the petitioner that the District Magistrate is only competent to sanction for prosecution with effect from 01.02.2002, but not prior to the same.

Once the Magistrate committed the matter to the Court of Sessions after recording the evidence of P.Ws.1 to 6, as the case is exclusively triable by the court of Sessions, it is for the Court of Sessions to frame appropriate charge, but cannot

proceed on the charges so framed. Since the offence under Section 5 of the Act is made punishable with imprisonment for a term which may extend to ten years and shall also be liable to fine or in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine, it is for the Court of Sessions to frame appropriate charge on committal and proceed with the trial. Section 323 of Cr.P.C. deals with the procedure to be followed by the Magistrate after commencement of enquiry or trial when he finds that the case may be committed, which reads as under:

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

It is evident from the above section that on committal so made, the procedure contemplated under Chapter XVIII applies and necessary charges have to be framed afresh by the Sessions Judge, when it is exclusively triable by the Court of Sessions.

In view of the same, this Court does not find any merit in the submissions advanced by the learned counsel for the petitioner.

The Criminal Petition is, accordingly, dismissed.

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