

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Revision Case No.556 OF 2023

Between:

Siddi Neelam Goud

... Petitioner/A1

And

The State of Telangana

Through Public Prosecutor and another. ..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 10.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | |
|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRIMINAL REVISION CASE No.556 of 2023

% Dated 10.01.2024

Siddi Neelam Goud

... Petitioner/A1

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! Counsel for the Petitioner: Sri K.Kiran Kumar

^ Counsel for the Respondent: Addl. Public Prosecutor Sri Sudershan

>HEAD NOTE:

? Cases referred

1. (2019)EWCA Crim 36 dated 11.03.2020.

2. SLP (Criminal) No.4599 of 2021

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL REVISION CASE No.556 of 2023****ORDER:**

1. This Criminal Revision Case is filed against order dated 13.07.2023 passed in CrI.M.P.No.164 of 2021 in S.C.No.317 of 2019 on the file of Principal District and Sessions Judge at Wanaparthy, dismissing the discharge petition filed by the petitioner, who is A1 in S.C.No.317 of 2019,.

2. Brief facts of the case are that on 21.02.2017 at 16.30 hours, officer-L.W.9 received credible information about the illegal possession of explosive substances at Thatipamulla village. L.W.9 along with police constables LWs 1 to 3 rushed to Sy.No.481/U, 481/R in the limits of Thatipamulla village and searched at quarry of M/s.Neelam Goud Builders and Developers. In one room, the police found ideal power 90 company gelatin sticks 280, busters-36, detonators 162. Meggar box batters-3,

ammonium nitrate-180 kgs and ideal cord fuse-03 kept in stock without taking any precautionary measures and that it may endanger human life. L.W.9 seized the property in the presence of mediators LWs 5 & 6 and affixed the panch chits to the property after sealing the property. The scene of offence is located in Thatipamula village outskirts in the premises of M/s.Neelam Goud Builders and Developers Crusher Machine located in Sy.No.481/U, 481/R. On enquiry about the owner of the crusher it was revealed that the Revision Petitioner/Accused No.1 S.Neelam Goud, S/o.Narayan Goud, R/o.Takkasila village, Undavelli Mandal is the owner. On the basis of above search and seizure proceedings, SHO-L.W.10 registered Cr.No.34 of 2017 under Section 3, 4, 6 of Explosive Substances Act, 1908 (for short 'the Act of 1908') and took up investigation.

3. The case against the revision petitioner in the charge sheet is that he is the owner of Neelam Goud Stone

Crusher, having purchased the property eight months ago from one Pulla Reddy R/o.Banaganapally village of Kurnool District. A2 is the supervisor of the same crusher and A3 is the supplier of explosive substances.

4. It is alleged that the explosives storage place i.e. magazine of Crusher was not registered in the name of revision petitioner and continued on the name of said Pulla Reddy. A2 (supervisor of the crusher) did not know about the arrangement between the revision petitioner and Mr.Pulla Reddy and he was working as supervisor in the crusher. According to investigation, the business of revision petitioner was running in financial loss, due to which, A1 & A2 decided to blast more stones and boulders in order to get profits in their business. Accordingly, as per the instructions of revision petitioner, A2 purchased huge stock of explosive substances from A3 and kept in a room (magazine of the crusher) in the premises of crusher without taking any precautionary measures and that it

may endanger human lives. The said acts by petitioner and the others amount to offence under Sections 3, 4 & 5 of the Act of 1908.

5. Learned counsel appearing for the petitioner would submit that none of the allegations leveled in the charge sheet make out any of the offences under Sections 3, 4 and 5 of the Act. To attract an offence under Section 3 of the Act, a person has to cause explosion likely to endanger life or property, which is not attracted in the present circumstances. Likewise, Section 4 is also an attempt to cause explosion or for making or keeping explosives with intent to endanger life or property. Section 4 is also not attracted because the only reason stated by the investigating agency is that explosives were kept with an intention to cause more blasts of the rocks in order to overcome losses.

6. Learned counsel further submitted that in order to attract Section 5 of the Act, there must be allegation that

the accused should be in possession of the explosive substances and such possession should give rise to suspicion that it is in his possession or under his control, not for lawful object. The third limb of Section 5 of the Act that unless the accused can show that he had explosives in his possession for lawful object will not be attracted since there is no allegation in the charge sheet that it was made for unlawful object. In fact, the case of the police is that the petitioner was running stone crusher business and on account of loss in the business, petitioner and another decided to blast more stones in order to overcome the losses. For the said purpose, huge stock of explosive substances were purchased from A3 and kept in the premises.

7. Further, learned counsel submitted that blasting or crushing is not declared as unlawful by any statute. He relied on the judgment of the Hon'ble Supreme Court of

United Kingdom¹ and while considering the provision under Section 4(1) of Explosive Substances Act, 1883, the Hon'ble Supreme Court of UK held as follows:

“28. The object or purpose so identified by the accused under limb (2) has to be “lawful” in the place in which it is to be carried into effect: see R v Berry [1985] AC 246. In the present case, that was in England and “lawful” has the usual sense of that term in English law, namely that the object in question is not an object or purpose which is made unlawful by the common law or statute. As it was put by Sir Robert Megarry V-C in Malone v Metropolitan Police Comr [1979] Ch 344, 357: “England....is not a country where everything is forbidden except what is expressly permitted; it is a country where everything is permitted except what is expressly forbidden.” There is no other sensible criterion of lawfulness to be applied. Nothing said in any of the authorities referred to above suggests otherwise. Moreover, the general requirement that the criminal law should be clear and give fair notice to an individual of the boundaries of what he may do without attracting criminal liability supports this interpretation: “a person should not be penalized except under clear law”, sometimes called the “principle against doubtful penalization”: See Bennion on Statutory Interpretation, 7th ed (2019) D Bailey and L Norbury, eds), section 27.1. As explained in Fegan’s case and Attorney General’s Reference (No 2 of 1983), the fact that the making or possession of substance may involve the commission of regulatory offences does not prevent an accused who seeks to make out a defence under limb (2) of section 4(1) from relying on an object at a more general level which is lawful.”

¹ (2019)EWCA Crim 36 dated 11.03.2020.

8. Learned counsel further relied on the judgment of Hon'ble Supreme Court in Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & others² and argued that Court should not act as mere post office and frame charges for the offences as stated by the police. There is nothing in the case for which the accused is called upon to face during trial. The Magistrate Court had grossly erred in dismissing the discharge application.

9. According to the counsel, section 286 IPC is also not attracted since there is no specific act or negligent conduct on the part of the accused for storing the explosives. It cannot be said that stocking explosives in excess of the prescribed limit would fall within the ingredients of Section 286 of IPC.

10. On the other hand, it was argued on behalf of the respondents that the learned Magistrate has considered the evidence on record and passed appropriate orders. It is

² SLP (Criminal) No.4599 of 2021

for the trial Court to decide regarding complicity or otherwise of the petitioner and others after giving chance to the prosecution to adduce evidence.

11. It is not the case of the police that the explosives are kept for making an attempt to cause explosion or keeping explosives with an intention to endanger life or property. Accordingly, Section 3 of the Act of 1908 is not attracted since there is no explosion which was caused even according to the charge sheet. Section 4 punishes any attempt to cause explosion unlawfully and maliciously, further possessing any explosive substance to endanger life or to cause serious injury to property is made punishable. There is no such allegation in the charge sheet.

12. The allegation according to investigation is that the purpose or storing the explosives was to cause more blasts of rocks for monetary benefit.

13. Under Section 5 of the Explosive Substances Act, the punishment is prescribed for being in possession of the explosives under suspicious circumstances. Admittedly, explosives were found over and above the permitted limit. The petitioner does not possess any licence for carrying out the business by blasting rocks. However, it was argued by the learned counsel that one Pulla Reddy, resident of Banaganapally had the requisite licence and the licence was not in the name of the revision petitioner. But the petitioner was carrying on business in the name of said Pulla Reddy.

14. Not having licence to carry on the business of quarrying, however, procuring explosives gives rise to suspicious circumstances as contemplated under Section 5 of the Act of 1908. It is admitted by the petitioner that he was carrying on business without licence and procured explosives. The allegation in the charge sheet that the explosives were stored for the purpose of causing more

blasts to get more profits is on the basis of confession of the accused. Minus the confession, explosives were found without there being a valid licence with the petitioner. In the said circumstances, the burden is on the accused to show that he had the explosive substances in his possession for lawful object.

15. For the aforesaid reasons, the offences under Sections 3 & 4 of the Act are not attracted. However, the petitioner can only be tried under Section 5 of the Act of 1908.

16. Accordingly, the Criminal Revision Case is allowed in part. Consequently, miscellaneous applications, if any pending in this criminal petition, shall stand closed.

K.SURENDER, J

Date : 10.01.2024

Note: L.R.copy to be marked.

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