

Order No.28 dt.20.01.14.

Record is put up for order in respect of prayer for discharge on behalf of accused Bulbul Halder and Subhankar Das.

In course of hearing on the point of charge, Ld. Lawyer appearing on behalf of the accused Bulbul Halder submitted that there is no direct allegation against Bulbul Halder as according to prosecution Bulbul Halder alleged to have delivered the bomb. It is submitted that Bulbul Halder is a businessman of crackers so he is no way connected with the explosion. That is why he prays for discharging the accused Bulbul Halder.

Besides, Ld. Lawyer on behalf of accused Subhankar Das stated the charge u/s 4(d) of the Explosive Act has no application in this case as nothing explosive substance within the meaning of Section 4(d) was ever recovered in connection with this case. He stressed on the items in section 4(d) for the purpose of supplying meaning of "explosive substance". But at the same time, he stated that substances alleged to have been recovered in connection with this case may come within the purview of section 9(b) of the Indian Explosive Act not under any provisions of Explosive Substance Act.

Per contra, Ld. Spl. PP on behalf of the prosecution submitted that there is sufficient material against accused Bulbul Halder and Subhankar Das and he referred to the materials in CD as well as forensic examination report in connection with the substance recovered in course of investigation. So, Ld. Spl. PP proposed for framing of charge u/s 302/120B IPC, 307/120B IPC, Section 3 ES Act read with Section 120B against all accused and separate charge u/s 4 of the Explosive Substance Act against accused Bulbul Halder and Biswajit Majhi.

According to prosecution case on 26.09.2012, all the accused made a conspiracy and committed murder of one Chaitali Santra by making an explosion with explosive substance at the premises no.87/2, South Baksara 1st Bye Lane under Shibpur PS and Himangshu Santra, husband of Chaitali Santra, sustained injury thereby. According to prosecution, explosive substance was recovered from the place of occurrence and also from the possession of Bulbul Halder and Biswajit Majhi. After the incident, Digbijoy Santra lodged written complaint leading to Shibpur PS Case 878/12. The case was investigated and charge sheet was submitted.

I have gone through the entire materials on record and that of the CD along with forensic examination report. After going through the provision of Section 2 and 4 of the Explosive Substance Act, I am unable to dislodge the opinion of forensic expert, at this stage, without evidence. That apart, I find sufficient materials in CD against both the accused Bulbul Halder and Subhankar Das.

In the cases reported in *(1977)4 SCC 39, (1980)1 SCr 323 and (2000)8 SCC 239*, Hon'ble Apex Court observed that at the time of framing charge court has to see whether the facts alleged and sought to be proved by the prosecution prima facie disclosed the commission of offence on general consideration of the materials placed before him by the investigating police officer.

So, at the time of framing charge, court is to see whether materials on record can light the lamp of the prosecution to a flicker so as to have sufficient fuel for the evening lamp and not to see as to whether there is sufficiency of fuel to greet the next dawn.

At this stage, I do not find anything to come to a conclusion that articles recovered and examined by the forensic expert are not explosive substance and any of the accused is not involved with the offence alleged. However, on careful scrutiny of the entire materials in CD and that of the record, a prima facie case u/s 302/307/120B IPC read with Section 3/4 Explosive Substance Act, is found to have been established against the accused as proposed by the prosecution, to proceed with the trial after framing of charge. Thus, the prayer for discharging accused stands considered and rejected.

Fix 05.03.2014 for framing charge.

Dictated & corrected by me.

ASJ

Addl. Sessions Judge, 2nd Court, Howrah.