APHC010788412014

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3560]**
(Special Original Jurisdiction)

WEDNESDAY,THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1432/2014

Between:

1. TAVVA SUDHAKAR, GUNTUR DIST., S/O. VENKATA SUBBA RAO R/O. NEAR SAHEB VEEDHI D.NO. 15, 143 CHILAKALURIPET GUNTUR DISTRICT

...PETITIONER

AND

1. P P HYD, Rep. by its Public Prosecutor High Court of Judicature at Hyderabad For the State of Telangana & the state of Andhra Pradesh

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to file under Section 397 & 401 of Cr.P.C., against the judgment dated 09.07.52014 made in Crl.A.No.178 of 2010 on the file of the XIII Additional District and Sessions Judge, NArasaraopet, Guntur District preferred against the judgment in C.C.no.60/2009 (old No.C.C.No.401/2008) dated 06.4.2010 on the file of the Principal Junior Civil Judge, Chilakaluripet

IA NO: 1 OF 2014(CRLRCMP 2329 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence and release the petitioner on bail pending disposal of the criminal revision case preferred against the Judgment in Crl.A.No.178/2010 dated 09.07.2014 on the file of the XIII Additional District

and Sessions Judge, Narasaraopet, Guntur District preferred against the judgment in C.C.no.60/2009 (old No.C.C.No.401/2008) dated 06.4.2010 on the file of the Principal Junior Civil Judge, Chilakaluripet, Guntur dist.

Counsel for the Petitioner:

1. RAMAKRISHNA AKURATHI

Counsel for the Respondent:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO:1432/2014

ORDER:

The instant Criminal Revision Case has been preferred against the order of conviction passed by the learned trial Court and confirmed by the learned Appellate Court for the offences punishable under Section 9(B)(1)(b) of the Explosives Act, 1884[1](For brevity, the Act, 1884) & under Section 286 of the Indian Penal Code, 1860[2] (for brevity the I.P.C). Admittedly, the petitioner is a licence holder for selling firecrackers, and his licence was valid up to 10.08.2009. The alleged seizure was effected on 28.07.2008.

2. It is the sole contention of the learned counsel for the petitioner that the prosecution has miserably failed to bring home the charges against the present petitioner under Section 9(B)(1)(b) of the Explosives Act, 1884 and Section 286 of the I.P.C.

3. It is further submitted that the petitioner was a licence holder and was selling firecrackers at the place for which licence had been granted as warehouse. The seizure conducted by the police is fabricated. He further submits that there is no evidence before the learned Courts below to prove that any seizure was in fact effected. PWs 1 to 4, who are mediators, turned hostile. PW.5, who is the Municipal Commissioner, has not produced any document regarding ownership of the stock room, from where the alleged

[1]The Explosive Act, 1884
[2]The I.P.C, 1860

seizure was made. There are no other witnesses except the investigating officer. Hence, the order of the learned trial Court is liable to be set aside.

4. He further submits that, in similar circumstances, this Court in Crl.R.C. No.685 of 2014 had categorically taken a similar view and observed that since the prosecution failed to prove the seizure, the case against the petitioner cannot be said to have been proved. He further submits that the petitioner had obtained interim custody of the firecrackers through an order of this Court, but that itself does not establish that the seizure was effected from the place as alleged in the prosecution case.

5. Learned Assistant Public Prosecutor submits that PW.5, who is the Municipal Commissioner, during his examination-in-chief specifically stated that he signed the mediatornama at the place of seizure. However, during cross-examination, he stated otherwise, namely that he signed the mediatornama at the police station. The learned Trial Court as well as the learned Appellate Court have correctly taken the view that PW.5, PW.8, and PW.10 intentionally suppressed true facts.

6. It is further contended by the learned Assistant Public Prosecutor that the seizure has been sufficiently proved. On the particular date, i.e., 28.07.2008, the police conducted seizures in four stock rooms, and therefore the mediators might have been confused while deposing, as their evidence was recorded long time after the date of seizure. He further submits that though the learned Trial Court had taken note some discrepancies in the

evidence of the prosecution witnesses, it has correctly opined that lapses in investigation and preparation of the mediatornama by themselves would not vitiate the prosecution case.

7. He further submits that the observations of the learned Trial Court are well reasoned and that the prosecution has successfully proved the case. Hence, the instant Criminal Revision Case has got no merits.

8. Having heard the parties and upon perusal of the entire order of conviction recorded by the learned Trial Court, this Court finds that, on a thorough reading of the observations made by the learned Trial Court, particularly in paragraph No.14, it appears learned Trial Court had taken note of the demeanour and conduct of the prosecution witnesses. It had time and again questioned to the prosecution as to why photographs and videographs allegedly collected at the time of seizure were not produced before the Court. However, the prosecution failed to produce such videographs, CDs, or photographs.

9. It further appears that the mediators cited by the prosecution did not support the prosecution case. PW.5, the Municipal Commissioner, though deposed that the stock room from where the seizure was effected does not belong to the petitioner, but prosecution could not produce any document to show who actually possesses the stock room.

10. In a nutshell, to prove the case, prosecution ought to have placed sufficient convincing evidence to establish that seizure was effected in a

particular place which is not a licensed premises. In the present case, to prove seizure, prosecution examined several witnesses; however, none of them appears to be convincing, and there are contradictory statements from the police officials. Moreover, the mediators did not support the prosecution case. Ordinarily, seizure witnesses are sufficient to prove the factum of seizure, but in the present case, no such witness has supported the prosecution version before the Court. In the absence of proof of the factum of seizure by the prosecution, it is not a reliable finding that conviction under Section 9(B)(1)(b) of the Explosives Act is maintainable.

11. Moreover, it has been alleged by the prosecution that the petitioner has taken interim custody of the seized articles. Admittedly, the petitioner is a license holder; thus, the seized articles, which he claims to have purchased and was selling, cannot by that itself be taken to mean that the seizure stands automatically proved. If the stand of the prosecution is taken to be proved, then the prosecution agency may be given a clean chit or an unbridled authority to implicate any person or any license holder in a case under Section 9(B) (1) (b) of the Explosives Act, 1884

12. With the above observations conviction recorded by learned Trail Court which was confirmed by learned Appellate Court appears to me illegal and improper. Accordingly, the instant Criminal Revision Case is hereby set aside. Petitioner set at liberty. Sureties also released.

13. Since petitioner proved to be not guilty for the offence punishable under section 9 (B) (1) (b) of Explosive Act, 1884, the order of confiscation, if any passed by State is hereby set aside.

14. Under the above observations, the Criminal Revision Case is disposed of.

Consequently, pending miscellaneous applications, if any, shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dated:06.05.2026.
SSA