

Shamsher Singh v. The State (Union Territory of Chandigarh)
(Surinder Singh, J.)

patent appeal and the writ petitions can straightaway be allowed on the basis of the finding recorded on the first contention.

(15) Consequently, we allow L.P.A. No. 306 of 1978 and Civil Writ Petitions Nos. 3065 of 1978 and 1816, 1897, 1904, 1911 and 1918 of 1979, and strike down sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1978 and sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1979, being *ultra vires* of Article 14 of the Constitution. It may be made clear that the judgment of the learned Single Judge in L.P.A. No. 306 of 1978 has been set aside only with respect to the contention raised before us. On other matters, on which the learned Single Judge has given his findings, we do not propose to express any opinion as it is not necessary to do so. In the circumstances of the case, we make no order as to costs.

D. S. Tewatia, J.—I agree.

S.C.K.

Before Surinder Singh, J.

SHAMSHER SINGH,—*Appellant.*

versus

THE STATE (UNION TERRITORY OF CHANDIGARH),—*Respondent.*

Criminal Appeal No. 490 of 1976

July 31, 1979.

Explosive Substances Act (VI of 1908)—Section 7—Consent of Central Government for prosecution of an accused—Objective assessment before grant of such consent—Whether necessary—‘Consent’ under the Act—Whether to be equated with ‘sanction’ under the Prevention of Corruption Act.

Held, that section 7 of the Explosive Substances Act 1908 provides that the trial of a person for an offence punishable under the Act shall not proceed except with the consent of the Government.

It is obvious that the Legislature while making the above provision had used the word 'consent' instead of sanction with a purpose and that purpose is nothing but a purely subjective appreciation of the matter before giving the necessary consent for the prosecution of the accused. A serious application of mind to the facts of the case is more appropriately called for where the law postulates the issue of sanction as in the Prevention of Corruption Act. The word 'consent' is not to be equated with the word sanction as used in the Prevention of Corruption Act where the issue of such a sanction is mandatory under the law. Moreover, section 465 of the Code of Criminal Procedure 1973 makes it abundantly clear that no order passed by a court of competent jurisdiction shall be reversed or altered in appeal etc. merely on the ground of an irregularity in the sanction for the prosecution unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. (Para 4).

Appeal from the order of the Court of Shri H. L. Randev, Additional Sessions Judge, Chandigarh, dated the 31st March, 1976 convicting the appellant.

Harinder Singh, Advocate, for the Appellant.

M. M. Punchhi, Advocate, for the Respondent.

JUDGMENT

Surinder Singh, J.

(1) The appellant Shamsheer Singh, son of Roop Singh was convicted by the Additional Sessions Judge, Chandigarh, under sections 4 and 5 of the Explosive Substances Act, and was sentenced to three years Rigorous Imprisonment on both these counts. The two sentences to run concurrently. He has appealed.

(2) The allegation is that on October 20, 1974, at about 1.30 p.m. Assistant Sub-Inspector Sadhu Singh (P.W. 7) who was then posted at Police Station East, Chandigarh, was present in Sector 47 Chandigarh, with a Police pose Rann Singh (P.W. 2) and Ram Parkash (P.W. 3) were also with him at that time. The appellant was found coming from the side of Punjab boundary towards Sector 47 and on seeing the police party, he tried to retrace his steps. This aroused suspicion. The police party went towards the appellant who started running. The party, however, pursued him and were able to intercept him in a *kacha* field. He was overpowered and as a result of his search, he was found to be carrying *Jhola* Exhibit P 1 which contained four hand-grenades and four igniter-sets separately wrapped

Shamsher Singh v. The State (Union Territory of Chandigarh)
(Surinder Singh, J.)

in a glazed paper bag. The appellant could not produce any authority to possess these explosives. The articles were taken into possession and a case was registered against the appellant. The recovered articles were sent to the office of the Controller of Explosives, North Circle, Agra, for examination and according to the report of the Deputy Controller, the articles were found to be four hand-grenades of Mills type and four igniter-sets, i.e., devices for initiating explosion in the hand-grenades. It was opined that all the four hand-grenades were capable of being exploded and endangering life after being initiated with the igniter-sets. The report of the Expert is Exhibit PG. The Chief Commissioner, Chandigarh Administration, granted his consent for the prosecution of the appellant, and after his trial, the appellant was convicted and sentenced, as stated above.

(3) The learned counsel for the appellant, throughout the course of his lengthy address, has mainly contended that the sanction issued by the Chief Commissioner in the present case, has not been duly proved. The contention is that the Notification Exhibit PC was under the signatures of the Home Secretary of the Chandigarh Administration in which it was mentioned that the Chief Commissioner had granted the necessary consent for the prosecution of the appellant. The objection to this document is that the original sanction granted by the Chief Commissioner has not been produced. In order to appreciate the soundness of the argument, it was ordered that the original record containing the sanction granted by the Chief Commissioner be requisitioned from his office. When the record was received, the learned counsel for the appellant stressed that the original sanction granted by the Chief Commissioner should be formally proved and a copy of the same be placed on the record through the agency of the witness who had brought the file. The prayer was allowed and the statement of Shri Sohinder Singh, Assistant of the Chief Commissioner, Chandigarh was recorded. In this statement, the witness reproduced the exact wording of the sanction issued by the Chief Commissioner. The witness was allowed to be cross-examined by both the counsel for the parties.

(4) In the wake of the above additional material which was brought on the record during appeal, the learned counsel then took the next step by raising two more points. His first argument is that

the sanction of the Chief Commissioner did not indicate the application of mind to the facts of the case, nor were the facts mentioned in the order of the Chief Commissioner itself. The learned counsel relying upon the observations in *Mohd. Iqbal Ahmed v. State of Andhra Pradesh* (1), and *Major Som Nath v. Union of India and another* (2), urged that the sanction was void *ab initio* and hence the entire trial of the appellant was vitiated. The argument is, however, fallacious. Both the cases mentioned above pertain to an offence committed under the Prevention of Corruption Act, where the issue of such a sanction is mandatory under the law. In so far as the offence in the present case is concerned, section 7 of the Explosive Substances Act provides that the trial of a person for an offence punishable under the Act shall not proceed except with the *consent* (emphasis mine) of the Government. There is no doubt that the Chief Commissioner, Union Territory, Chandigarh, was exercising the functions of the Central Government for this purpose. It is obvious that the Legislature while making the above provision had used the word "consent" instead of sanction with a purpose and that purpose is nothing but a purely subjective appreciation of the matter before giving the necessary consent for the prosecution of the accused. A serious application of mind to the facts of the case is more appropriately called for where the law postulates the issue of sanction as in the Prevention of Corruption Act. Apart from this, section 465 of the Code of Criminal Procedure, makes it abundantly clear that no order passed by a Court of competent jurisdiction, shall be reversed or altered in appeal etc., merely on the ground of an irregularity in the sanction for the prosecution, unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. The learned counsel for the appellant is unable to indicate the nature of the failure of justice which may have been occasioned in the present case, even if the aforesaid consent of the Chief Commissioner is found to be irregular. It is also material to note that at the time when the necessary document, i.e., Exhibit PC was produced and proved at the trial, no such objection was raised on behalf of the appellant and this not having been done, such an objection cannot be allowed to be raised now at the appellate stage.

(1) A.I.R. 1979 S.C. 677.

(2) A.I.R. 1971 S.C. 1910.

Sham Singh (Convict) *v.* State of Punjab through Secretary, Home Department, Punjab (J. M. Tandon, J.)

(5) Another half-hearted objection raised in the appeal is that for an offence under section 5 of the Explosive Substances Act, it is necessary for the prosecution to prove that the explosive substance was found to be in possession of the accused under such circumstances as to give rise to a reasonable suspicion that he has not possessed the same for a lawful object. The contention is to be merely heard and repelled. Four hand-grenades recovered in the present case could not possibly be meant for a lawful object unless of course the appellant was fighting a battle with an enemy in war.

(6) No other argument has been addressed in regard to the merits of the case, nor can anything be said in this behalf. The testimony of numerous witnesses produced at the trial, clearly establishes the guilt of the appellant. The appeal is dismissed. His conviction and the sentence imposed upon him by the trial Court, are maintained. The appellant is on bail. He shall be taken into custody to undergo the unexpired portion of his sentence.

H.S.B.

Before J. M. Tandon, J.

SHAM SINGH (CONVICT),—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Writ Petition No. 48 of 1979.

July 31, 1979.

Indian Penal Code (XLV of 1860)—Sections 68 to 70—Limitation for recovery of fine imposed, expired—Convict—Whether still liable to suffer imprisonment in default of payment of fine—Sections 68 and 69—Whether independent of Section 70.

Held, that section 68 and 69 of the Indian Penal Code are independent of Section 70. The expiry of limitation for levy of fine imposed under section 70 would in no way affect the liability of the