

1 SCOB [2015] HCD 92**HIGH COURT DIVISION**

(Criminal Miscellaneous Jurisdiction)

Criminal Miscellaneous Case No.26782 of 2014

Mr. Mohammad Ali, Advocate

.... For the petitioner

Jalil

....Petitioner

Mr. Delowar Hossain Sommadar, D.A.G

... For the State

-Versus-

Heard and Judgment on:26.07.2015

The State

....

Respondent

Present:**Mr. Justice Bhabani Prasad Singha****And****Mr. Justice S.M. Mozibur Rahman****Code of Criminal Procedure, 1898****Section 561A****and****Explosive Substances Act, 1908****Sections 3/4:**

On perusal of the FIR of the case, it appears that there is no specific allegation or overt act against the accused-petitioner therein which shows that no prima-facie case is revealed against the accused-petitioner. The column no.5 of the charge-sheet of the case in respect of any seized articles shows that said column is blank meaning thereby that no incriminating articles although the case is under sections 3/4 of the Explosive Substances Act, 1908, has been recovered. It is also required to be mentioned that there is no seizure list in the record in respect of any seized article. So, there is no incriminating article with regard to the occurrence for connecting the accused petitioner in the case. ... (Para 9)

Judgment**Bhabani Prasad Singha, J:**

1. This Rule was issued calling upon the opposite party to show cause as to why the proceeding of Speedy Trial Tribunal Case No.5 of 2006, Barisal arising out of Kotwali P.S. Case No.1 dated 01.11.2001 under sections 3/4 of the Explosive Substances Act, 1908 now pending in the Court of Speedy Trial Tribunal, Barisal should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts of the case are that the opposite party Mujibar Rahman Sarwar filed a petition case before the court of learned Magistrate, 1st Class, Barisal on 04.09.2001 against the accused-petitioner and others alleging that since 29.12.1998 to 31.12.1999 the accused-persons created nuisance in his factory area and that behind those period the aforesaid accused-persons exploded explosives in the area making obstruction in the way of the Bidi materials supply to his factory. Therefore, production was disrupting in the factory. As per the order of the learned Magistrate, the case was registered as Kotwali P.S. Case No.1 dated 01.11.2001 under sections 3/4 of the Explosive Substances Act, 1908.

3. After investigation police submitted charge sheet no.267 dated 08.06.2002 under sections 3/4 of the Explosive Substances Act, 1908 against the accused-petitioner and others.

4. At the commencement of trial of the case, charge under sections 3/4 of the Explosive Substances Act, 1908 was framed against the accused-petitioner and others.

5. As against that the accused-petitioner moved this court and obtained the Rule.

6. Mr. Mohammad Ali, the learned Advocate appearing for the accused-petitioner submits that although allegedly the alleged occurrence of the case took place on 29.12.1998 to 03.01.1999, the FIR was lodged near

about 2 years and 11 months after the alleged occurrence; that there being no seizure list in the case and that no incriminating articles being seized in the case, the proceedings is not sustainable in the eye of law. The learned Advocate prays for quashment of the same.

7. On the other hand, Mr. Delowar Hossain Samaddar, the learned Deputy Attorney General(DAG) appearing for the State submits that the case was filed long about 3 years after the alleged occurrence; that no explosive substances in connection with the case was recovered; that two feed grudge the case was filed.

8. Heard the submissions of the learned Advocates representing the parties and perused the materials on record.

9. On perusal of the FIR of the case, it appears that there is no specific allegation or overt act against the accused-petitioner therein which shows that no prima-facie case is revealed against the accused-petitioner. The column no.5 of the charge-sheet of the case in respect of any seized articles shows that said column is blank meaning thereby that no incriminating articles although the case is under sections 3/4 of the Explosive Substances Act,1908 has been recovered. It is also required to be mentioned that there is no seizure list in the record in respect of any seized article. So, there is no incriminating article with regard to the occurrence for connecting the accused petitioner in the case. The Investigating Officer himself stated in the charge sheet that he could not recover any incriminating article during investigation of the case.

10. From the discussion made so far, we find that the proceedings of the Speedy Trial Tribunal Case no.05 of 2006 is nothing but the abuse of the process of the Court and the abuse of law.

11. Be it mentioned here that on 23.06.2014 the public prosecutor Barisal field an application under section 494 of the Code of Criminal Procedure annexing the Memo dated 01.09.2009 of the Home Ministry (Ain)-1 for withdrawal of the case.

12. In view of the discussion made here above, we find merit in the Criminal Miscellaneous Case and as such, the Rule deserves to be made absolute.

13. In the result, the Rule is made absolute.

14. The proceedings Speedy Trial Tribunal Case No.5 of 2006, Barisal arising out of Kotwali P.S. Case No.1 dated 01.11.2001 under sections 3/4 of the Explosive Substances Act, 1908 now pending in the Court of Speedy Trial Tribunal, Barisal is hereby quashed.

15. The accused-petitioner be discharged from his bail bond.

16. The interim order passed at the time of issuance of the Rule stands vacated.

17. Let a copy of this judgment be sent down to the concerned court below at once.