

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO.36 OF 2016

(Against the judgment of the Lahore High Court, Lahore dated 15.12.2015 passed in Criminal Appeal No. 772/2013)

Muhammad Yaqoob

... **Petitioner**

Versus

The State

... **Respondent**

For the Petitioner : Mr. Saeed Khurshid Ahmed, ASC
Syed Rifaqat Hussain Shah, AOR

For the State : Mr. Muhammad Jaffar, Addl.P.G. Punjab

Date of Hearing : 21.04.2020

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI,J:- The petitioner was convicted in a case bearing FIR No. 10/2013 dated 16.01.2013 registered with police station Kallur Kot, District Bhakkar.

2. As per allegations contained in the crime report, it was alleged that the petitioner had connection with a terrorist organization and he is in possession of ammunition which can be recovered. Consequently, raiding party was constituted which raided the premises of the petitioner who led to recovery of four Russian made hand grenades and four detonators which were kept

in a bag and the same was concealed in an oven adjacent to eastern wall of the house. The petitioner was taken into custody and during the course of proceedings, the accusation against the petitioner was found to be correct and as such report in terms of section 173 Cr.P.C. was submitted in the court of competent jurisdiction. The petitioner was charge sheeted by the learned trial court vide order dated 04.04.2013. The petitioner denied the same and claimed trial. Prosecution led five prosecution witnesses to substantiate the allegation against the petitioner. After recording of the statements of prosecution witnesses, the petitioner made a statement in terms of section 342 Cr.P.C. During the statement made by the petitioner he opted not to appear under section 340 Cr.P.C. in disproof of the allegation levelled against him, however he produced defence evidence of one Maqbool son of Ahmad Din, who appeared as DW.1.

3. *The learned trial court after taking into consideration the statements of prosecution witnesses, statement of petitioner found the accusation coming through the source which is confidence inspiring and as such convicted the petitioner under section 4 of the Explosive Substance Act 1908, thereby sentenced him to imprisonment for life. The learned trial court further found that the petitioner has also committed an offence falling within the ambit of section 7(g) of the Anti-Terrorism Act, 1997, hence he was further convicted for five years Rigorous Imprisonment and fine to the tune of Rs.50,000/-, however, benefit of section 382-B Cr.P.C. was extended in favour of the petitioner.*

4. *The petitioner filed Criminal Appeal No. 772/2013 before the learned Lahore High Court Lahore which met the same*

fate vide judgment dated 15.12.2015 while maintaining the sentences inflicted upon by the learned trial court.

5. *The crux of the arguments advanced by the learned counsel for the petitioner is that the petitioner cannot be saddled with the responsibility of keeping explosive substance in his possession as at the time of raid he was empty handed and perhaps he was not in a constructive knowledge regarding the possession of explosive substance which ultimately was taken into consideration by both the learned courts and the petitioner was convicted. Further contends that perusal of the definition provided under section 3 sub-section 1 (a)(iv) of the Arms Ordinance 1965, the "grenade" is part of the Arms Ordinance and do not fall within the definition of Explosive Substance Act. Contends that the application of section 7(g) of Anti-Terrorism Act, 1997 is not substantiated from the facts and circumstances as it is not case of terrorism because for that it is mandatory that the petitioner must be having nexus with some proscribed religious organization. Learned counsel has further argued that in fact the prosecution has failed to substantiate the case against the petitioner as the witnesses of recovery are at variance regarding the place from where petitioner was arrested.*

6. *We have heard the learned counsel for the parties and gone through the record.*

7. *It is an admitted fact that the opening sentence of the crime report clearly reflects that the petitioner is active member of proscribed religious organization and as such in pursuance of information after constituting raiding party; the premises of*

petitioner were raided. During course of proceedings of the raiding party, the petitioner led to recovery of not only four grenades but also four detonators which is spelled out from the record especially when the Bomb Disposal Officer came there for defusing the aforesaid ammunition which was recovered and was found explosive in nature. The detail mentioned by the Bomb Disposal Unit reflects a lot regarding the genuineness of the raid and recovery effected from the premises owned by the petitioner. The arguments of the learned counsel that in fact the recovered articles do not comes within the ambit of Explosive Substance Act, is not of any avail, rather the same seems to be absurd in nature. The learned counsel while arguing the matter has only advanced the case up to the extent of recovery of "grenades". The other article in the shape of detonator was also recovered which ultimately if considered conjointly it comes within the definition of explosive substance. The definition of the same reflects that any material which if utilized results into explosion comes with the definition of explosive substance. Section 2 of Explosive Substance Act, 1908 is reproduced as under:-

"2. Definition of "explosive substance".--- In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement."

Bare perusal of the definition reflects that explosive substance shall be deemed to be any material which is used or attended to be used for causing any explosion which could endanger the life. There is no

second cavil to this proposition that the recovery of four grenades and detonators are material which could explode and utilized for the explosion so it comes within the definition of explosive substance. Otherwise, the nature of the ammunition recovered from the petitioner bring in the mind of a person of ordinary prudence that the utilization of such like articles cannot be retained except for only one purpose which is clearly alleged against the petitioner and same has been taken into consideration by the learned trial court as well as learned High Court. It is strange enough to mention here that the petitioner opted to adduce defence evidence during the course of trial before learned trial court but he did not opt to appear himself as a witness under section 340 Cr.P.C to disproof the allegation against him. A person who do not opt to appear for his own defence to brush aside the prosecution evidence while availing legal recourse in the shape of statement under section 340 Cr.P.C. rather produce a witness in his defence, the statement of such witness has been taken into consideration by us and found to be nothing but an afterthought reason being that this witness had never appeared before the investigating officer during the course of investigation of this case in the defence of the petitioner.

8. *In view of the facts and circumstances narrated above while analysing the evidence adduced by the prosecution witnesses and while evaluating the probative value of the same, if juxtaposed with the evidence adduced by the defence, we found that the evidence adduced by the prosecution is straight-forward, confidence inspiring and while satisfying all the legal requirements to prove the*

case to the hilt, resulting into dismissal of petition before this Court.

As a consequence, the same is dismissed.

9. *Leave to appeal is refused.*

Judge

Judge

Islamabad,
21.04.2020
Approved for reporting.
Athar