

A

STATE OF M.P.
v.
BHUPENDRA SINGH

JANUARY 7, 2000

B

[S.P. BHARUCHA AND
SYED SHAH MOHAMMED QUADRI, JJ.]

Explosive Substances Act, 1908 : Section 7.

C

Explosive Substances Act—Prosecution under—Consent required for—Need for obtaining the consent properly—Power to grant consent—Delegated by Central Government to the District Magistrate—Further delegation by State Government to Additional District Magistrate—Held not permissible—Delegation of Powers—Administrative Law.

D

Hari Chand Aggarwal v. The Batala Engineering Co. Ltd., AIR (1969) SC 483, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 21 of 2000.

E

From the Judgment and Order dated 21.5.98 of the Madhya Pradesh High Court in Crl.R. No. 199 of 1997.

K.N. Shukla, Prakash Jha, Randhir Jain and Uma Nath Singh for the Appellant.

F

Dr. T.N. Singh, B.C. Baruah and Avijit Bhattacharjee for the Respondent.

The following Order of the Court was delivered :

G

Leave granted.

H

The respondent was apprehended on 17th February, 1977 and it is the case of the appellant that detonators were found in his possession. A charge sheet was filed against him under the provisions of Sections 4 and 5 of the Explosive Substances Act, 1908 ('the said Act'). Cognizance was taken and the trial proceeded to some extent. The respondent then filed a

revision petition before the High Court of Madhya Pradesh contending that the consent of the Central Government which was requisite under Section 7 of the said Act had not been properly obtained. The High Court accepted the respondent's contention and quashed the proceedings against him. The State of Madhya Pradesh is in appeal.

For a prosecution under the said Act, the consent of the Central Government is requisite by virtue of the provisions of Section 7 thereof. By notification dated 2nd December, 1978 the Central Government entrusted to District Magistrates, *inter alia*, in the State of Madhya Pradesh its functions under Section 7 of the said Act.

The consent for the prosecution of the respondent was granted by the Additional District Magistrate of the district concerned and, in this behalf, reliance was placed, on behalf of the appellant, upon a notification dated 24th April, 1995 issued by the appellant whereunder it appointed the joint Collector and Executive Magistrate as Additional District Magistrate for the District of Gwalior and directed that he should "exercise powers of District Magistrate conferred under the said Code (Criminal Procedure Code) or under any other law for the time being in force." The submission on behalf of the appellant is that, by reason of the latter notification, the power under Section 7 of the said Act delegated by the Central Government to the District Magistrate had now been delegated to the Additional District Magistrate and that, accordingly, the consent that he granted for the prosecution of the respondent was valid.

It is difficult to accept the submission. The power of granting consent under Section 7 of the said Act rests with the Central Government. The Central Government has delegated it to the District Magistrate. It is, in our view, not competent for the State Government to further delegate to the Additional District, Magistrate a power of the Central Government which the Central Government has delegated to the District Magistrate.

The decision of this Court in *Hari Chand Aggarwal v. The Batala Engineering Co. Ltd.*, AIR (1969) SC 483 is also of some relevance. This Court said that where, by virtue of a notification under Section 20 of the Defence of India Act, the Central Government had delegated its powers under Section 29 to a District Magistrate, an Additional District

A Magistrate was not competent to requisition property under Section 29 simply because he had been invested with all powers of a District Magistrate under Section 10(2)

The appeal fails and is dismissed.

T.N.A.

Appeal dismissed.