

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Special Criminal Anti-Terrorism Jail Appeal No. 161 of 2023**

**Present:**

***Justice Zafar Ahmed Rajput.***

***Justice Mrs. Rashida Asad.***

**Appellant** : Ghulam Rabbani s/o. Abdul Kareem,  
through Mr. Ashraf Ali Shah, Advocate.

**Respondent** : The State, through Mr. Siraj Ali Khan  
Chandio, Additional Prosecutor General.

**Date of hearing** : 23.02.2024

**Date of order** : 23.02.2024

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** This Special Criminal Anti-Terrorism Jail Appeal is directed against the judgment dated 09.09.2023, passed by the learned Judge, Anti-Terrorism Court No. III, Karachi in Special Cases No. 216 of 2023, arising out of F.I.R. No. 144 of 2023, registered at P.S. Shahrah-e-Noor Jahan, Karachi under Section 4/5 of the Explosive Substance Act, 1908 (“**Act of 1908**”) r/w Section 7 of the Anti-Terrorism Act, 1997 (“**Act of 1997**”), whereby the appellant was convicted for offence punishable under Section 4 of the Act and sentenced to suffer R.I. for 10 years with fine of Rs.50,000/- or, in default thereof, to suffer S.I. for six (6) month more. The appellant was also convicted for an offence punishable under Section 419, P.P.C. and sentenced to suffer R.I. for three (3) years with fine of Rs.20,000/- or, in default thereof, to suffer S.I. for two (2) month more. Both the sentences were ordered to run concurrently. The appellant was, however, extended benefit of 382-B, Cr. P.C for the period, which he had remained in jail as under trial prisoner.

2. It is case of the prosecution that, on 11.03.2023 at about 0445 hours, inside road near Sakhi Hassan Graveyard, Sector 14-B, Shadman Town, Karachi the appellant was arrested by a police party headed by ASI Murtaza Zaidi of P.S. Shahrah-e-Noor Jehan on being found in possession and control of one Hand Grenade embossed on its lever ARGES-H-DGR.69-F/69. He was booked in the

aforesaid F.I.R. After usual investigation, police submitted the charge-sheet against the appellant, *inter-alia*, stating that during investigation it transpired that at the time of arrest the appellant disclosed his name as Muhammad Ali s/o. Muhammad Salman Khoso instead of his original name as per his CNIC; hence the Section 419, P.P.C. was also inserted in the charge-sheet.

3. At the trial, charge was framed against the appellant for the offences under Section 6 (2) (ee) of the Act of 1997, Sections 4/5 of the Act of 1908 read with Section 7 (1) (ff) of the Act of 1997 and Section 419, P.P.C. by the trial Court to which he pleaded not guilty. After recording evidence of the prosecution witnesses and statement of the appellant under Section 342, Cr. P.C., the trial Court convicted the appellant and awarded him sentence as mentioned above.

4. At the very outset, learned counsel for the appellant contends that under the instructions he does not press this appeal on merits; however, seeks reduction of sentence awarded to the appellant keeping in view the fact that the trial Court has convicted the appellant under Section 4 of the Act of 1908, which is not applicable under the circumstances of the case and at the most the guilt of the appellant falls under Section 5 of the Act of 1908, which carries punishment with imprisonment for a terms which may extend to fourteen years. He further contends that the appellant is not previously convicted of any offence and he is the only bread earner for his family; hence, he deserves leniency.

5. Learned Addl. Prosecutor General also concedes the fact that under the circumstances of the case not the Section 4 but Section 5 of the Act of 1908 attracts to the facts of the case and the guilt of the appellant.

6. We have heard the learned counsel for the appellant and learned Addl. Prosecutor General as well as perused the material available on the record.

7. Section 2 (f) of the Act of 1997 defines the term “explosives”, as under:

*“explosives” means any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substances defined in the Explosives Act, 1884.*

Section 4 (1) of the Explosives Act, 1884 (**“the Act of 1884”**) describes the term “explosives”, as under:

(a) *“explosives”— (a) means gunpowder, nitroglycerine, nitroglycol, gun cotton, dinitrotolouence, trinitro toluene, picric acid, dinitro-phenol, trinitro resorcinol (styphnic acid), cyclo trimethylenec trinitramine, penta erythritol tetranitrate, tetryl, nitroguanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo dinitro phenol, coloured fires or any other substances whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and*

(b) *includes,-*

(i) *chemical compounds, compositions or mixture of which will produce, upon release of its potential energy, a sudden outburst of gases, thereby exerting high pressures on its surroundings. Explosives may be solid, liquid or gas, nitro compound or in the form of water gel or slurry;*

(ii) *fog signals, firework, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosives as defined in this clause; and*

(iii) *such other substance as the Federal Government may, by notification in the official Gazette, specify for the purposes of this sub-section.*

Section 2 of the Act of 1908 classifies the term “explosives substance”, as under:

*“ 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.”*

(Emphasis supplied)

8. It appears from the perusal of the aforementioned provisions of the Statutes that under Section 2 (f) of the Act of 1997, the “explosives” should be capable of causing an injury to any person or damage to any property and includes any explosive substances defined in the Act of 1884. Section 4 (1) of the Act of 1884 includes in terms “explosives”, various kinds/forms of solitary materials- solid, liquid and gaseous-; chemical compounds, compositions or mixture; and preassembled firearm ammunition and devices, which produce a practical effect by explosion or pyrotechnic effect. Section 2 of the Act of 1908 classifies term “explosives substance”, include the materials for making any explosive substance; 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 and any part of any such apparatus, machine or implement.

9. In the instant case, it is a matter of record that the hand grenade allegedly recovered from possession of the appellant was without detonator; hence, the same was not capable of explosion causing an injury to any person or damage to any property to attract the definition of “explosive” provided under section 2 (f) of the Act of 1997. It also cannot produce a practical effect by explosion or pyrotechnic effect being incomplete preassembled firearm ammunition and device in terms of “explosives” as defined under Section 4 (1) of the Act of 1884. Hence, being a part of an apparatus, machine or implement, it falls within the definition of “explosives substance”, as explained under Section 2 of the Act of 1908, which is punishable under section 4 and 5 of the Act (*ibid*), which read as under:

**4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.**— Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in

*Pakistan of a nature likely to endanger life or to cause serious injury to property; or*

*(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in Pakistan, or to enable any other person by means thereof to endanger life or cause serious injury to property in Pakistan;*

*shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with imprisonment for life or any shorter term which shall not be less than seven years.*

**5. Punishment for making or possessing explosives under suspicious circumstances.**— *Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to fourteen years.*

**10.** It is an admitted position that in the instant case, the appellant has not done any act and/or made in his possession and under his control the alleged explosive substance with intent to cause by an explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, to attract the provisions of section 4 of the Act of 1908, as the alleged explosive substance- hand grenade without detonator- is having no characteristic of being explode to endanger life or to cause serious injury to property etc. Since only the possession of the alleged hand grenade without detonator with the appellant has been established, the alleged act squarely falls within the ambit of Section 5 of the Act of 1908, which carries punishment up to 14 years; hence, we alter the conviction under Section 4 to Section 5 of the Act of 1908. It lucidly summed up the principles to be considered by the Courts while doing so and held that the Section 4 of the Act of 1908 would apply when there is **‘an attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property,’**

whereas the Section 5 (ibid) would apply when there is no such attempt or intention, but there is *‘a possession or control of any explosive substance under suspicious circumstances to give rise to a reasonable suspicion that he is not having it in his possession or under his control for a lawful object,’*

11. We are also conscious of the fact that the punishment for any offence committed by a person is awarded for retribution, deterrence and in order to strengthen the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, which carry punishment with phrase *“not less than”* while there are also offence, which carry punishment with phrase *“may extend up-to”*. Such difference itself is indicative that the Courts have to appreciate certain circumstances before awarding quantum of punishment in later case which appear to be dealing with those offences; the guilty thereof may be given an opportunity of reformation by awarding less punishment.

12. Since the appellant is not previously convicted of any offence, we are inclined to give him an opportunity for reformation. We, therefore, deem it appropriate not to award him maximum punishment provided under Section 5 of the Act of 1908 and award him sentence to suffer R.I. for three (3) years. However, conviction and sentence awarded to the appellant under Section 419, P.P.C. by the trial Court is maintained. Both the sentences shall run concurrently. The appellant shall also be entitled for the benefit of section 382-B, Cr.P.C.

13. The appeal stands dismissed with above alteration/modification.

JUDGE

JUDGE