

STATE OF MAHARASHTRA
v.
ABDUL HAMID HAJI MOHAMMED

FEBRUARY 21, 1994

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[KULDIP SINGH AND J.S. VERMA, JJ.]

C *Constitution of India, 1950 : Article 226—Proceedings before Designated Court under TADA Act—Quashing of—High Court's jurisdiction—Held, power of High Court is not exercisable where it may be debatable whether accusation made with attendant circumstances, if proved to be true, is likely to result in conviction for an offence under TADA Act.*

D *Terrorist and Disruptive Activities (Prevention) Act, 1987—Sections 2(1)(d), 2(1)(h), 3, 5, 6, 19—'Terrorist Act', 'Disruptive activity'—Bomb blasts in series in Bombay—Investigation into—Arrest of respondent—Recovery of 6 Chinese AK-56 rifles and 12 empty magazines at the instance of respondent—Refusal of bail by Designated Court holding that provisions of Act prima facie were attracted—Charge-sheet filed in Designated Court showing respondent as one of several accused—High Court in writ jurisdiction examining matter on merits and quashed proceedings before Designated Court holding that provisions of TADA Act were not attracted to respondent's case—Held, in view of express provision of appeal to Supreme Court against any judgment, sentence or order, not being an interlocutory order, of a Designated Court, there is no occasion for High Court to examine merits of order of Designated Court taking cognizance under the Act.*

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G *The respondent was arrested under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 during the investigation into the crimes relating to the series of bomb blasts in the city of Bombay on 12.3.1993. Six Chinese AK-56 rifles and 12 empty magazines were recovered at the instance of the respondent. An application for his release on bail was filed in the Designated Court. Meanwhile a writ petition was also filed in the High Court challenging the prosecution of the respondent under the TADA Act. The High Court directed the Designated Court to dispose of the bail application. The Designated Court refused bail holding that the allegations against the respondent indicated prima facie the applicability of provisions of the TADA Act. Subsequently, the charge-sheet showing the*

and malacious.

Under these circumstances, we feel appropriate to adopt the procedure indicated in *In Re Reference under Article 317(1) of the Constitution of India*, [1983] 4 SCC 258. The inquiry contemplated under Article 317 is into the facts themselves so as to enable this Court to pronounce upon the question whether the allegations made against the Chairman of Manipur Public Service Commission are proved. Therefore, we direct evidence in relation to the reference will be recorded by a sitting Judge of the High Court of Guwahati who will be nominated by the learned Chief Justice of High Court of Gauhati. The nomination may be made within four weeks from the date of this order.

In recording the evidence, the learned Judge may adopt the following guidelines:

(i) The affidavits filed in this Court will be treated as the examination-in-chief of the respective witnesses.

(ii) The evidence to be recorded by the learned Judge will be limited to the cross-examination of witnesses who have filed affidavits before us. In other words, no person who has not filed an affidavit in this Court will be examined or cross-examined as a witness, except with the leave of this Court.

(iii) Witnesses who have filed affidavits in this Court may be summoned or requested by the learned Judge to attend his Court for the purpose of cross-examination. The proceedings will normally be held in Guwahati. Evidence may, however, be recorded at any other place if the learned Judge considers it necessary or convenient."

The question relating to the admissibility and relevance of a particular evidence will be decided by this Court.

The first date of hearing is fixed on Monday, the 4th April, 1994 at 11 A.M. Thereafter, it will proceed from day to day till the completion of evidence.

G.N.

Petition disposed of.

name of the respondent as one of the several accused, was filed in the Designated Court. Thereafter the High Court disposed of the writ petition holding that the provisions of the TADA Act were not attracted to the case of the respondent and he was liable to be prosecuted only under the Arms Act. It quashed the prosecution against the respondent in the Designated Court and directed that the respondent be released on bail and the case be transferred to the Court of Sessions for taking cognizance of the offence under the Arms Act. However, the High Court certified that the case was a fit one for appeal to the Supreme Court. Hence the appeal by the State.

It was contended on behalf of the appellant-State that the High Court was not empowered to exercise its extraordinary jurisdiction under Article 226 of the Constitution to quash a prosecution launched for punishment of offences under the TADA Act; and as the accusation against the respondent and the material on which it was based, attracted the provisions of the TADA Act, it was not open to the High Court to interfere with the order of the Designated Court refusing bail to the respondent.

Allowing the appeal, this Court

HELD : 1.1. There was no justification for the High Court to exercise its jurisdiction under Article 226 of the Constitution for examining the merit of the case much less for quashing the prosecution of the respondent in the Designated Court for offences punishable under TADA Act. The prosecution of the respondent in the Designated Court shall continue in accordance with the provisions of TADA Act. [48-F; 49-A]

1.2. The power of the High Court under Article 226 is not exercisable in cases like the instant one where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances, if proved to be true, is likely to result in conviction for an offence under TADA Act. The High Court performed the laboured exercise of scrutinising the material containing the accusation made against the respondent and the merits of the findings recorded by the Designated Court holding that the provisions of TADA Act were attracted. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction and the gamut of the procedure prescribed under TADA Act must be followed, namely, raising the objection before the Designated Court and, if necessary, challenging the order of the Designated Court by appeal in the Supreme Court as provided in s.19 of TADA Act. [48-B-C]

A *R.P. Kapur v. The State of Punjab*, [1960] 3 S.C.R. 388 and *State of Haryana and Ors. v. Bhajanlal and Ors.*, [1992] Supp. 1 S.C.C. 335, held inapplicable.

B 2. In an extreme case, if the only accusation against a person prosecuted in the Designated Court in accordance with the provisions of TADA Act is such that *ex facie* it cannot constitute an offence punishable under that Act, the High Court may be justified in invoking the power under Article 226 of the Constitution on the ground that the detention of the accused is not under the provisions of TADA Act. This can happen only in extreme cases which would be rare. [47-H; 48-A]

C 3. It is not correct to say that in the charge-sheet the only accusation against the respondent is merely of discovery of six Chinese AK-56 rifles and twelve empty magazines. Besides, a Chinese AK-56 rifle is not to be equated with a country-made pistol and the number of rifles along with the several magazines concealed in the manner alleged, if proved, may also D have significance together with the other circumstances alleged against the respondent relating to terrorist activities. This is, however, a matter of appreciation of evidence at the trial and it cannot be said that the allegations made against the respondent in the charge-sheet can constitute merely an offence punishable under the Arms Act and not under TADA E Act. The view taken by the High Court on this aspect is contrary to law apart from being unjustified and impermissible in exercise of its jurisdiction under Article 226 of the Constitution. [50-C, D]

Paras Ram v. State of Haryana, [1992] 4 S.C.C. 662, distinguished.

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 62 of 1994.

From the Judgment and Order dated 14/17 and 18.1.94 of the Bombay High Court in W.P. No. 902 of 1993.

G K.T.S. Tulsi, Additional Solicitor General and A.S. Bhasme for the Appellants.

Ram Jethmalani, G. Ramaswamy, Ms. Lata Krishnamurti and A.K. Sahu for the Respondent.

H The Judgment of the Court was delivered by

VERMA, J. This appeal is by a certificate under Article 134A of the Constitution of India granted by the Bombay High Court to appeal against its judgment dated 18.1.1994 in Criminal Writ Petition No. 902 of 1993 quashing the proceedings under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the "TADA Act") against respondent Abdul Hamid Haji Mohammed on the ground that the provisions of TADA Act are not attracted to the allegations against him. In the chargesheet dated 4.11.1993 filed in the Designated Court, Greater Bombay alleging the commission of offences punishable under the TADA Act by the 189 accused named therein, respondent Abdul Hamid is shown as accused No. 61. In the impugned judgment dated 18.1.1994 the High Court has held that the provisions of TADA Act are not attracted to the case against the respondent and consequently the proceedings against him before the Designated Court under the TADA Act have been quashed. Consequently, the High Court has directed the release of the petitioner on bail on terms mentioned in its judgment.

The city of Bombay was rocked by a series of bomb blasts on 12.3.1993 which killed 257 persons, maimed another more than 700 persons and destroyed property worth about Rs. 27 crores. These bomb blasts occurred in important government and public sector buildings of stock exchange, Air India, Sahar International Airport, several five star hotels and busy commercial localities such as Zavery Bazar, Katha Bazar and Century Bazar. Petrol pumps adjoining important locations were also the target of these blasts. The bomb blasts were accompanied by explosion of hand grenades in sensitive areas intended to incite communal violence which caused riot in certain areas. These incidents were a part of carefully planned strategy calculated to terrorise the governments in the State as well as at the Centre and to incite communal violences.

It was during the investigation into these crimes that respondent Abdul Hamid was arrested on 18.4.1993. It is alleged that on the same day soon after his arrest, the respondent gave information which led to discovery of six Chinese Ak-56 rifles and twelve magazines kept concealed in a gunny bag buried three-and-a-half feet deep in the compound of Picnic Guest House behind New Juhu Grand Hotel, Bombay, which the respondent dug out from that place and handed over to the police. It is alleged that a large number of such rifles were smuggled into the country through

- A the Porbunder Port along with other explosives, arms and ammunition, as a part of the conspiracy to create countrywide unrest and terror of which the Bombay bomb blasts were a part. In substance, this is the allegation against the persons named as accused, including respondent Abdul Hamid, in the chargesheet dated 4.11.1993 filed in the Designated Court for trial
- B of the accused persons for commission of offences under the TADA Act.

After arrest of the accused as aforesaid on 18.4.1993 alleging commission of offences under the TADA Act, an application for his release on bail was filed in the Designated Court on 24.5.1993. During the pendency of that bail application, the said Writ Petition (Criminal) No. 902 of 1993 was filed in the Bombay High Court under Article 226 of the Constitution challenging the resort to TADA Act for prosecution of the respondent. The High Court made a direction on 14.7.1993 to the Designated Court to dispose of respondent's bail application. On 7.8.1993, the Designated Court made the order rejecting respondent's bail application, taking the view that

C the allegations against the respondent indicated *prima facie* the applicability of provisions of TADA Act. Thereafter on 4.11.1993, the chargesheet was filed in the Designated Court. The High Court then heard the writ petition and by the impugned judgment dated 18.1.1994 came to the conclusion as aforesaid that the provisions of TADA Act are not attracted

D to the case of the respondent and accordingly the prosecution against the respondent in the Designated Court under TADA Act was quashed. The High Court, however, held that the respondent is liable to be prosecuted under the Arms Act, 1959 and, therefore, the case against him be transferred to the Court of Sessions for taking cognizance of the offence

E punishable under the Arms Act. On this view, the High Court also directed release of the respondent on bail on terms indicated in its judgment. However, the High Court accepted the submission made on behalf of the State that important questions of law were involved for decision relating to the High Court's jurisdiction in such a matter and, therefore, it certified that the case is a fit one for appeal to the Supreme Court. This is how this

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G appeal arises.

The learned Additional Solicitor General submitted that the High Court was not empowered in exercise of its extraordinary jurisdiction under Article 226 of the Constitution to quash a prosecution launched for

H punishment of offences under the TADA Act and, therefore, the impugned

judgment is liable to be set aside for this reason alone. He further submitted that even on merits the order of the Designated Court refusing bail to the respondent is not open to interference and if the matter is examined afresh, the nature of accusation against the respondent and the material on which it is based clearly attracts the provisions of TADA Act justifying refusal of bail to the respondent.

In reply, Shri Ram Jethmalani for the respondent first submitted that the certificate granted by the High Court is liable to be revoked since there is no important question of law needing decision of this Court involved in the case; and without such a certificate, the impugned judgment of the High Court which merely grants bail is not liable to interference by this Court under Article 136 of the Constitution. Shri Jethmalani further submitted that on merits, the only material against the respondent, placing the prosecution case at the highest, is the alleged discovery of six AK-56 rifles and twelve empty magazines in the manner alleged, which without anything more, can constitute only an offence punishable under the Arms Act and no more. Shri Jethmalani submitted that the further material necessary to constitute the offence of conspiracy or the offences punishable under Sections 3 and/or 5 or 6 TADA Act is totally absent even if the allegations made in the chargesheet are accepted at their face value. On this basis, it was submitted by Shri Jathmalani that the provisions of TADA Act cannot be invoked and the only offence which can be made out against the respondent on these allegations is that punishable under the Arms Act. The impugned judgment of the High Court is justified by him on this basis.

The first question is : Whether the High Court was empowered in the present case to invoke its jurisdiction under Article 226 of the Constitution to examine the correctness of the view taken by the Designated Court and to quash the prosecution of the respondent under the TADA Act? Shri Jethmalani contended, placing reliance on the decisions in *R.P. Kapur v. The State of Punjab*, [1960] 3 S.C.R. 388 and *State of Haryana and Others v. Bajanlal and Others*, [1992] Supp. 1 S.C.C. 335, that in the facts of this case, the High Court had such a jurisdiction since there is no accusation against the respondent in the chargesheet filed in the Designated Court which, if believed, must result in his conviction for an offence punishable under TADA Act. We are not impressed by this argument of Shri Jethmalani. It is no doubt true that in an extreme case if the only accusation against the respondent prosecuted in the Designated Court in

- A accordance with the provisions of TADA Act is such that *ex facie* it cannot constitute an offence punishable under TADA Act, then the High Court may be justified in invoking the power under Article 226 of the Constitution on the ground that the detention of the accused is not under the provisions of TADA Act. We may hasten to add that this can happen only in extreme cases which would be rare and that power of the High Court is not exercisable in cases like the present where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances, if proved to be true, is likely to result in conviction for an offence under TADA Act. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution and the gamut of the procedure prescribed under TADA Act must be followed, namely, raising the objection before the Designated Court and, if necessary, challenging the order of the Designated Court by appeal in the Supreme Court as provided in Section 19 of TADA Act. In view of the express provision of appeal to the Supreme Court against any judgment, sentence or order, not being an interlocutory order of a Designated Court there is no occasion for the High Court to examine merits of the order made by the Designated Court that the Act applies. We have no doubt that in the present case wherein the High Court had to perform the laboured exercise of scrutinising the material containing the accusation made against the respondent and the merits of the findings recorded by the Designated Court holding that the provisions of TADA Act were attracted, there was sufficient indication that the writ jurisdiction of the High Court under Article 226 of the Constitution was not available. The ratio of the decisions of this Court in *R.P. Kapur* and *Bhajan Lal* on which reliance is placed by Shri Jathmalani, has no application to the facts of the present case. There was thus no justification for the High Court in the present case to exercise its jurisdiction under Article 226 of the Constitution for examining the merits of the controversy much less for quashing the prosecution of respondent Abdul Hamid in the Designated Court for offences punishable under TADA Act.
- G The above conclusion alone is sufficient to set aside the impugned order made by the High Court. However, elaborate arguments were advanced by Shri Jethmalani on behalf of the respondent relating to the nature of accusation made against the respondent to support the High Court's view on merits. He contended that the provisions of TADA Act are not attracted in this case and that the respondent is triable only for
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commission of offences under the Arms Act. On this basis, Shri Jethmalani further contended that no interference with the ultimate order made by the High Court is called for. We are unable to accept even this contention. However, as a result of the view taken by us, the trial of the respondent in accordance with the provisions of TADA Act in the Designated Court has to continue and, therefore, we are confining our observations to the minimum necessary for dealing with this contention to avoid any possible prejudice to either side during the trial.

As noticed earlier, the submission of Shri Jethmalani is that except for the bare fact of the discovery of six Chinese AK-56 rifles and twelve empty magazines thereof as a result of the information given by the respondent in the manner already indicated, there is no other material against the respondent even in the chargesheet dated 4.11.1993 filed in the Designated Court after the order dated 7.8.1993 made by the Designated Court dismissing the respondent's bail application. Shri Jethmalani submitted that this accusation, if proved at the trial, can constitute only an offence under the Arms Act and not either under Section 3 or Section 5 of TADA Act much less under Section 6 thereof or the offence of conspiracy which has been alleged generally in the chargesheet. Shri Jethmalani placed reliance on the decision of this Court in *Paras Ram v. State of Haryana*, [1992] 4 S.C.C. 662, to support his submission that mere possession of AK-56 rifles without its ammunition cannot constitute the offence punishable under Section 5 of TADA Act. On the other hand, the learned Additional Solicitor General submitted that discovery of six rifles and twelve magazines by the respondent, is not the only accusation against the respondent. He also referred to certain circumstances indicating the close association of respondent Abdul Hamid with one Ijaz who is alleged to be a close associate of Dawood Ibrahim, one of the prime accused in the case and concealment of these rifles and magazines by the respondent in a part of the property in which the respondent and Ijaz have interest as well as the allegation of large scale smuggling of such rifles, ammunition and other explosives into the country with the complicity of custom officers who are all being prosecuted simultaneously, as some of the circumstances to be taken into account in conjunction with the discovery of these rifles and magazines to support the prosecution case of conspiracy etc. against all the accused including the respondent. The learned Additional Solicitor General referred to the definition of 'abet' in Section 2(1)(a) of TADA Act to contend that even some 'association' of the kind mentioned therein

A amounts to abetment in order to constitute the offence punishable under Section 3 of TADA Act. He also contended that the decision in *Paras Ram* is distinguishable since it related merely to possession of a country-made pistol in the notified area without any ammunition and with no other material against the accused to associate him with any terrorist or disruptive activity.

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C We do not propose to make any observation on the merits of the rival contentions except to say that, as we read the chargesheet, it is not correct to say that the only accusation therein against the respondent is merely discovery of six Chinese AK-56 rifles and twelve empty magazines made by him. We may also add that a Chinese AK-56 rifle is not to be equated with a country-made pistol and the number of rifles along with the several magazines concealed in the manner alleged, if proved, may also have significance together with the other circumstances alleged against the respondent relating to terrorist activities. This is, however, a matter of appreciation of evidence at the trial and it cannot be said that the allegations made against the respondent in the chargesheet can constitute merely an offence punishable under the Arms Act and not under TADA Act. The view taken by the High Court on this aspect is contrary to law apart from being unjustified and impermissible in exercise of its jurisdiction under Article 226 of the Constitution.

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F Consequently, this appeal is allowed. The impugned judgment dated 18.1.1994 of the Bombay High Court is set aside resulting in dismissal of Writ Petition (Criminal) No. 902 of 1993 filed by the respondent in the High Court. The result is that the prosecution of respondent Abdul Hamid Haji Mohammed in the Designated Court shall continue in accordance with the provisions of TADA Act and cancellation of his bail is confirmed.

R.P.

Appeal allowed.