

CASE NO.:  
Appeal (crl.) 728 of 2007

PETITIONER:  
DAYA SINGH LAHORIYA @ RAJEEV SUDAN @ VINAY KUMAR

RESPONDENT:  
STATE OF RAJASTHAN

DATE OF JUDGMENT: 14/05/2007

BENCH:  
C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:  
J U D G M E N T

CRIMINAL APPEAL NO. 728 OF 2007  
ARISING OUT OF  
Special Leave Petition (Criminal) No. 4570 of 2006

Hon. C.K. Thakker, J.

1. Leave granted.

2. The present appeal is filed against the judgment and order dated December 6, 2005 passed by a Single Judge of the High Court of Judicature for Rajasthan (Jaipur Bench) in S.B. Criminal Appeal No. 332 of 2005. By the said order, a Single Judge of the High Court dismissed the appeal filed by the appellant herein who had been convicted by the Additional Sessions Judge (Fast Track Court) No.1, Jaipur City, Jaipur in Session Case No. 27 of 2003.

3. It is not necessary to set out facts in detail since we have stated all the facts in Criminal Appeal No. 867 of 2006 (Suman Sood @ Kamal Jeet Kaur v. State of Rajasthan) and a cognate matter which we have decided today. Suffice it to state that a complaint being First Information Report (FIR) No. 84 of 1995 was registered at Malviya Nagar Police Station, Jaipur on February 26, 1995 against Daya Singh, appellant herein, Suman Sood @ Kamal Jeet Kaur (accused No.2) and one Harnek Singh @ Surender Verma (absconding) for offences punishable under Sections 353, 420, 468, 471, 472, 473, 474 read with Section 120B Indian Penal Code ('IPC' for short), for offences punishable under Sections 4 and 5 of the Explosive Substances Act, 1908, Sections 7 and 25 of Arms Act, 1959 and Section 18 of TADA etc.

4. The case of the prosecution was that the appellant herein along with his wife Suman Sood @ Kamal Jeet Kaur fabricated Registration Certificate for purchasing several vehicles in order to carry out conspiracy of kidnapping and abducting one Rajender Mirdha, son of Shri Ram Niwas Mirdha to exert pressure on the Government of India to release one Devendra Singh Bhullar, an alleged Khalistani terrorist who was being held in custody by the police. It was also alleged that the appellant was found to be in possession of prohibited arms and ammunition allegedly recovered from House No. B-117, Model Town, Ashok Nagar during police raid where the appellant was staying.

5. Initially, prosecution was launched in the

Designated Court at Ajmer since the provisions of TADA were also invoked. The appellant herein, however, challenged his prosecution under TADA. In *Daya Singh Lahoria v. Union of India & Ors.*, (2001) 4 SCC 516, this Court upheld the challenge since the prosecution of the accused could only be maintained in accordance with the Extradition Treaty and the Decree of Extradition under which the accused were extradited by the United States of America to India.

6. Thereafter, the case was registered as Sessions Case No. 27 of 2003 under the Indian Penal Code and also under the Explosive Substances Act, 1908. The trial Court, after considering the evidence on record, convicted accused No.1 (appellant herein) as under:  
Under Section 420 IPC : to 7 years R.I. and a fine of Rs.500/-, in default of payment of fine, to further undergo 6 months S.I.

Under Section 468 IPC : to 7 years R.I. and a fine of Rs.500/-, in default of payment of fine, to further undergo 6 months S.I.

Under Section 471 IPC : to 2 years R.I.

Under Section 4 of the Explosive Substances Act: to 7 years R.I. and a fine of Rs.500/-, in default of payment of fine, to further undergo 6 months S.I.

7. So far as accused No.2 (Suman Sood) is concerned, she was acquitted by the Court observing that the prosecution was unable to prove the case beyond doubt against her.

8. The appellant, being aggrieved by the order of conviction and sentence, preferred an appeal in the High Court of Rajasthan. Likewise, the State of Rajasthan, being aggrieved by an order of acquittal passed by the trial Court against Suman Sood instituted an application for leave to appeal against acquittal.

9. A Single Judge of the High Court refused to grant leave against accused No.2 (Suman Sood) holding that the trial Court was right in recording an order of acquittal against her and no case had been made out to grant leave. Leave was accordingly refused.

10. So far as the appellant is concerned, at the time of hearing of appeal, it was stated by the learned counsel for the appellant that maximum sentence awarded to the appellant was of seven years and all sentences were ordered to run concurrently. The appellant had already remained in jail for seven years and thus he had already undergone the sentence of imprisonment. He, therefore, did not press the appeal. The High Court disposed of the appeal and observed;

"At the very outset, the learned counsel Mr. G.S. Fauzdar for the accused appellant Daya Singh contended that maximum sentence in the present case was seven years and all the sentences were ordered to run concurrently and appellant has already completed his sentence of imprisonment of seven years, therefore, in these circumstances, he does not press the appeal filed on behalf of Daya Singh, challenging his order of conviction and sentence passed by the trial Court as

mentioned above. In view of the above statement of the learned counsel for the appellant Daya Singh @ Vinay Kumar, the SB Cr. Appeal No. 332/05 filed by Daya Singh is hereby dismissed as not pressed".

11. Ms. Kamini Jaiswal, appearing for the appellant, challenged the order of conviction and sentence. When her attention was invited by the Court to the above paragraph, she submitted that she did not dispute that such a statement was made on behalf of the accused in the High Court, but submitted that, she be permitted to argue the appeal, particularly when in other Special Leave Petitions, leave was granted and appeals were heard on merits. She also submitted that the impugned judgment and order of conviction and sentence are ex facie, illegal, unlawful and liable to be set aside. She also submitted that considering the Extradition Treaty of 1931 between United States of America and Great Britain and the Extradition Order passed by the American Court on June 11, 1997, the appellant could not have been prosecuted in Indian Court and the trial of the appellant was without authority of law. On merits also, no case had been made out by the prosecution. The other accused (Suman Sood) was acquitted on the same evidence and leave to appeal against an order of acquittal was refused by the High Court. The conviction recorded by the trial Court against the appellant on the same evidence is also vitiated and deserves to be set aside.

12. We would have considered the prayer of the learned counsel particularly when the case relates to administration of criminal justice and other matters were pending. In the facts and circumstances, however, we are of the considered opinion that no useful purpose would be served in entering into the merits of the matter.

13. So far as extradition of the appellant is concerned, we have already dealt with all contentions relating to Extradition Treaty as well as Extradition Order exhaustively in the other matter. There we have noted that extradition of the appellant was also allowed for trial of offences punishable under the Explosive Substances Act, 1908.

14. In our opinion, therefore, prosecution, conviction and sentence of the appellant for offences punishable under Explosive Substances Act, 1908 cannot be said to be without jurisdiction or in excess of authority of law. The said contention, therefore, has no force and must be negatived.

15. So far as the other contention is concerned, we have dismissed the appeal filed by the appellant against his conviction for an offence punishable under Section 364A IPC wherein the appellant-accused has been ordered to undergo imprisonment for life. No useful purpose, therefore, will be served by entering into the merits of the matter as the maximum punishment awarded by the trial Court and confirmed by the High Court in the present appeal was of seven years for the offences said to have been committed by the appellant and the appellant had already undergone the said sentence. The counsel appearing for the appellant in the High Court appears to have kept in view the above position and did not press the appeal. In the light of the finding recorded by us in the cognate matter, this appeal is, more or less, academic and has become infructuous in

view of the following circumstances;

(i) the appellant has been convicted for an offence punishable under Section 364A, IPC and has been ordered to undergo sentence of imprisonment for life and we have upheld the said order; and  
(ii) in the present appeal, the appellant has challenged his conviction and sentence whereby he has been ordered to undergo imprisonment for seven years. The appellant has remained in jail for seven years and the said period is over.

16. For the foregoing reasons, the appeal deserves to be disposed of and is accordingly disposed of without entering into merits of the case.