

CASE NO.:
Appeal (crl.) 548 of 2007

PETITIONER:
Harpal Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 04/12/2007

BENCH:
G.P. Mathur & G.S. Singhvi

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 548 OF 2007

G. P. MATHUR, J.

This Appeal has been preferred under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 against the judgment and order dated 16.3.2007 of Designated Court, Kapurthala at Jalandhar in TADA Sessions Case No. 4 of 2006 by which the appellant has been convicted under Section 5 of the Explosive Substances Act, 1908 and has been sentenced to 5 years R.I. and a fine of Rs.1,000/-.

2. The case of the prosecution, in brief, is that on 12.3.1992 Kamaljit Singh, SHO, Santokh Singh, SI and some other police personnel were going from village Kukar Pind to village Raipur in connection with investigation of a case bearing FIR No. 31 under Section 302/34 IPC, Section 25 Arms Act and Sections 3, 4 and 5 of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA'). When they reached on Byen Bridge in village Kukar Pind, they saw a person coming on foot. On seeing the police party he tried to run away but he was apprehended after a chase and on inquiry he disclosed his name as Harpal Singh (appellant in this appeal). On his personal search explosive powder wrapped in a glazed paper was recovered from the "jhola" (bag) which he was having in his right hand. The bag contained one kilogram explosive powder which was taken into possession. A ruka was sent to the police station on the basis of which FIR was registered against the appellant.

3. After investigation and receipt of the sanction and report of the Forensic Science Laboratory charge-sheet was submitted in the court on 24.2.1994 for prosecution of the appellant under Sections 4, 5, and 9B(b) of the Explosives Act, 1884. There was no mention of any offence under TADA or under the Explosive Substances Act, 1908. The charge-sheet was submitted in the Designated Court which took cognizance of the offence and proceeded with the trial of the appellant. Ultimately the Designated Court acquitted the appellant for the offences under TADA and the Explosives Act, 1884, but convicted him only under Section 5 of the Explosive Substances Act, 1908 and sentenced him to 5 years R.I. and a fine of Rs.1,000/-.

4. Shri Sushil Kumar, learned senior counsel for the appellant, has submitted that the case against the appellant is not established from the evidence adduced by the prosecution but instead of going into the facts and appraisal of evidence the appeal can be allowed on a legal ground.

5. Part III of TADA deals with Designated Courts. Sub-section

(1) of Section 9 of TADA provides that the Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Designated Courts for such area or areas, or for such case or class or group of case as may be specified in the notification. Sub-section (1) of Section 11 of TADA lays down that notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed or, as the case may be, by the Designated Court constituted for trying such offence under sub-section (1) of Section 9. Sections 12 and 18 of TADA read as under:-

"12. Power of Designated Courts with respect to other offences. - (1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act, of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

"18. Power to transfer cases to regular courts. - Where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, shall, notwithstanding that it had no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

By Act No. 43 of 1993 Section 20-A was introduced in TADA with effect from 22.5.1993 and the said section reads as under: -

"20-A. Cognizance of offence. - (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."

Therefore, with effect from 22.5.1993, in view of sub-section (1) of Section 20-A, no FIR about the commission of an offence under TADA can be recorded by the police without prior approval of the District Superintendent of Police. Similarly on account of sub-section (2) of Section 20-A no court can take cognizance of any offence under TADA without the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police. The effect of this amendment is that the Designated Court is debarred from taking cognizance of any offence under TADA without the previous sanction of the Inspector General of Police or, as the case may be, the Commissioner of Police.

6. As mentioned earlier, the alleged recovery of the incriminating article from the appellant took place on 12.3.1992 and the case was registered under Sections 4 and 5 of the Explosives Act, 1884. The police, after investigation, submitted charge-sheet before the

Designated Court on 24.2.1994. In the charge-sheet there was no reference to any case under TADA or under the Explosive Substances Act, 1908 against the appellant. The appellant was granted bail in the case under the Explosives Act on 1.7.1992. Thereafter he went away to USA and applied for political asylum. He was declared as absconder on 20.1.1995. The US authorities deported him to India in 2006. Thereafter the police submitted supplementary charge-sheet against the appellant on 29.5.2006 for his prosecution under TADA and the Explosive Substances Act. The Designated Court thereafter tried the appellant for offences under TADA besides Sections 4 and 5 of the Explosives Act and also under Sections 4 and 5 of the Explosive Substances Act.

7. The important feature which is to be noted is that the prosecution did not obtain sanction of the Inspector General of Police or of the Commissioner of Police for prosecution of the appellant under TADA at any stage as is required by Section 20-A(2) of TADA. The trial of the appellant before the Designated Court proceeded without the sanction of the Inspector General of Police or the Commissioner of Police. In absence of previous sanction the Designated Court had no jurisdiction to take cognizance of the offence or to proceed with the trial of the appellant under TADA.

8. The Designated Court, while trying an offence under TADA, is undoubtedly empowered to try any other offence with which the accused may, under the Code of Criminal Procedure, be charged at the same trial if the offence is connected with such other offence in view of Section 12 of TADA and may convict such person of such other offence and may pass any sentence authorized by TADA or by such other law for the punishment thereof. But for application of Section 12 it is absolutely essential that the Designated Court should be trying an offence under TADA. If the Designated Court is not trying an offence under TADA it will have no jurisdiction to try any other offence. Section 18 also points out the same situation which says that where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, shall, notwithstanding that it had no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code of Criminal Procedure. Thus the Designated Court gets the jurisdiction to try any other offence only if it has the jurisdiction and is trying an offence under TADA. In *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja and others* AIR 1990 SC 1962, it was observed as under: -

"Section 12(1) no doubt empowers the Designated Court to try any offence punishable under any other statute along with the offence punishable under the Act if the former is connected with the latter. That, however, does not mean that even when the Designated Court comes to the conclusion that there exists no sufficient ground for framing a charge against the accused under S.3(1) it must proceed to try the accused for the commission of offences under other statutes. That would tantamount to usurping jurisdiction. Section 18, therefore, in terms provides that where after taking cognizance of any offence the Designated Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any Court having jurisdiction under the Code."

9. At this stage it will be useful to refer to the dictionary meaning of the word 'Jurisdiction': -

Black's Law Dictionary : "Court's power to decide a case or issue a decree".

Words and Phrases \026 Legally defined \026 Third Edition (p.497) : "By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or

to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by similar means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction extends."

Law Lexicon by P. Ramanatha Aiyar \026 2nd Edn. Reprint 2000 : "An authority or power, which a man hath to do justice in causes of complaint brought before him (Tomlin's Law Dic.). The power to hear and determine the particular case involved; the power of a Court or a judge to entertain an action, petition, or other proceeding; the legal power of hearing and determining controversies. As applied to a particular claim or controversy, jurisdiction is the power to hear and determine the controversy."

Jurisdiction, therefore, means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the court has no power to hear and decide the matter and the order passed by it would be a nullity.

10. As mentioned earlier, in the first charge-sheet which was filed on 24.2.1994 there was no mention of TADA at all. It was in the supplementary charge-sheet filed on 29.5.2006 that the prosecution introduced the offence under TADA. But there was no sanction of the Inspector General of Police or of the Commissioner of Police as required under Section 20-A(2) of TADA and, therefore, the Designated Court had no jurisdiction to take cognizance of the offence. Since the Designated Court lacked inherent jurisdiction to try the offence under TADA it could not have tried the appellant even for offences under the Explosive Substances Act, 1908 or the Explosives Act, 1884. Thus the conviction of the appellant under Section 5 of the Explosive Substances Act, 1908 is illegal.

11. The aforesaid view has also been taken by this Court in *Rambhai Nathabhai Gadhvi and others vs. State of Gujarat* (1997) 7 SCC 744 and para 8 of the report is reproduced below: -

"8. Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular person for the offence or offences under TADA. Sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is *sine qua non* for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction."

12. In view of the discussion made above there cannot be any escape from the conclusion that the Designated Court had no

jurisdiction to try and convict the appellant under the Explosive Substances Act, 1908 in view of the fact that it could not have taken cognizance of the offence under TADA for lack of sanction by the competent authority under Section 20-A(2) of TADA. In view of the fact that the Designated Court could not try the offence under TADA being debarred from taking cognizance thereof on account of want of sanction by the competent authority under the mandatory provisions of Section 20-A(2), it could not try any offence under any other Act as well.

13. The appeal is accordingly allowed and the conviction of the appellant under Section 5 of the Explosive Substances Act and the sentence imposed thereunder are set aside. The appellant shall be released forthwith unless wanted in some other case.