

CASE NO.:
Appeal (crl.) 602 of 2004

PETITIONER:
Vijaykumar Baldev Mishra @ Sharma

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 18/05/2007

BENCH:
Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

1. I have perused the judgment of my learned brother Hon'ble S.B. Sinha, J. in this case. The facts of the case have been narrated in the judgment of my learned brother and hence I am not repeating the same. I entirely agree with the reasoning and conclusion of my learned brother.
2. However, there is an important constitutional point which though not taken in the Criminal Appeal before us, is of such great importance that I wish to express my opinion on the same.
3. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "The Act") stated initially in Section 1(4) thereof that the said Act will remain in operation for a period of two years from 24.5.1987, but thereafter by amendments from time to time the period of two years was extended to four years, then six years and lastly for eight years.
4. Thus Section 1(4) of the Act as it stood ultimately read as follows :
"It shall remain in force for a period of [eight years] from the 24th day of May, 1987, but its expiry under the operation of this sub-section shall not affect \026
(a) the previous operation of, or anything duly done or suffered under this Act or any rule made thereunder or any order made under any such rule, or
(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or
(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or
(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid
and any such investigation, legal proceeding or remedy

may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired."

5. There was no further extension of the period for which the Act remained in force, and hence the Act automatically came to an end on 24.5.1995.

6. However, Section 1(4) of the Act also stated that the expiry of the aforesaid period of the Act would not affect any right or liability incurred when the Act was in force, and legal proceedings can be instituted or continued as if the Act has not expired, provided the act in question was committed when the Act was in force. It is under this provision that prosecutions under TADA have been continued although the life of the Act has expired.

7. In my opinion the provision that legal proceedings can be instituted or continued even after the Act has expired, is clearly violative of Article 14 of the Constitution of India. We may test the constitutional position by taking a hypothetical case. Supposing a law is made which makes an act committed by a person a crime on one day, but the same law says that the same act will not be a crime if committed on the next day. Surely such a law will be violative of Article 14 unless there is very strong and rational basis for such classification and differentiation.

8. From the common sense point of view too, it does not stand to reason that a certain act will be treated as a crime if committed within one time period, but it will not be a crime if it is committed thereafter.

9. Of course, if there is good rational ground for making such a differentiation, Article 14 may not be violated but then it will be for the State Authorities to justify such a classification on some reasonable and rational basis, failing which it will clearly violate Article 14 of the Constitution.

10. In the present case, Section 1(4) of the Act says that the offence created by Section 3 of the Act will be punishable as a crime if the act was committed on or before 24.5.1995, but if the same act was committed after 24.5.1995, it will not be a crime. To my mind this is ex facie violation of Article 14 of the Constitution and hence Section 1(4) of Act to the extent it says that acts mentioned in Section 3 committed on or before 24.5.1995 can still be treated as a crime and punished under the TADA, though the same act committed after 24.5.1995 cannot, is in my opinion clearly ultra vires Article 14 and hence is liable to be struck down as unconstitutional.

11. Since this point has not been raised in the appeal I am not giving any final opinion in the matter, but the point, to my mind, is of such a vital and wide constitutional importance that I thought it fit to express my opinion on the same, so that this opinion can be considered in other cases where prosecutions under TADA are going on or where convictions have been made in relation to the offences under Section 3 alleged to have been committed before 24.5.1995.

12. As regards those who have already undergone the entire sentence for which they were convicted under TADA obviously nothing can be done, but regarding those who have undergone only part of the sentence or regarding those who are facing prosecution or investigation under TADA such prosecution or investigation are liable to be quashed in view of the opinion expressed above.

13. It is of course made clear that the above opinion has nothing to do with Article 20(1) of the Constitution, which deals with ex post facto laws.

14. With the above observation the appeal is allowed and the impugned order is set aside. The appellant is directed to be released forthwith unless

required in some other case.

JUDIS