

KARAN SINGH
v.
STATE (DELHI ADMN.)

OCTOBER 10, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987 :

S. 5—Accused found in possession of unauthorised countrymade pistol and three live cartridges within the notified area—Designated Court convicted and sentenced him to suffer R.I. for five years—Held, accused was found in conscious possession of unauthorised arms and ammunition within the notified area—Discrepancy in statement of witness with regard to description of specimen of the seal utilised in sealing the case property was typographical error—Conviction and sentence upheld.

S. 14(1)—Cognizance by Designated Court of an offence under the Act, upon receiving a 'complaint of facts'—Accused sent for trial u/ss. 25/54/59. Arms Act—Metropolitan Magistrate, finding that the matter was triable by the Designated Court, referred it to Sessions Judge who transferred the case to Designated Court—Designated Court took cognizance of the matter on 7.2.1991 and proceeded with the trial—Held, since the case was received by the Designated Court on assignment by order of Sessions Judge, the Designated Court did not take cognizance upon police report—After receipt of the case file from the Sessions Judge the Designated Court perused the material and prima facie found a case u/s. 5 to have been made out—Cognizance was thus taken by the Designated Court on basis of complaint of facts which disclosed the commission of an offence u/s. 5.

S. 20-A—Approval of Superintendent of Police for investigation into an offence under the Act and cognizance by the Court—Provisions whether perspective in operation—Held, since the occurrence in the case took place much before the insertion of the Section in the Act, it had no application to the facts of the case—The Provisions of the section can have retrospective operation w.e.f. the date the amendment came into force.

Sanjay Dutt v. The State, (1994) 5 JT, 540, followed.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 553 of 1996.

From the Judgment and Order dated 15.3.96 of the Additional Sessions Court, Delhi in Sessions Case No. 56 of 1995.

B Uma Datta and P.N. Gupta for the Appellant.

P.C. Choudhary, Hemant Sharma, Ashok Bhan and B.K. Prasad for the Respondents.

C : The following Order of the Court was delivered :

This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter called TADA) is directed against the order of the Designated Court dated 18.2.1996 by which the appellant has been convicted for an offence under Section 5 of TADA and sentenced to RI for five years and to pay a fine of Rs. 1,000 and in default to undergo RI for two months more.

According to the prosecution case on 1.5.1988 at about 11.30 a.m. while ASI Inder Singh PW-3 was on patrol duty along with Head Constable Satbir Singh and others, he received secret information to the effect that two boys were standing at the DTC bus stand at G.T. Road and had with them unauthorised arms and ammunitions. the police party, after unsuccessfully making efforts to include some passerbyes as witnesses, arrived at the spot and on being pointed out by the informer, apprehended the appellant. The appellant had a bag with him and from search of the bag, one country made pistol and three live cartridges were recovered. A sketch, Ex. PW2/A, of the pistol and Ex. PW2/B of the cartridges was prepared. The pistol and the cartridges were sealed into two separate parcels at the spot by PW-3 who also filled up the CFSL form and attached the specimen of the seal thereto. A rukka, Ex. PW3/A, was prepared and sent to the police station through Constable Vijender Singh for registration of the case. Formal FIR Ex. PW1/A was registered. The appellant was arrested. On return, to the police station, the case property was deposited in the Malkhana. The case property was later on sent to the CFSL through Head Constable Jagdish Singh, PW4. According to the report of the CFSL, Ex. PW3/D, the pistol recovered from the appellant was found to be in working order and answered to the description of an arm under the Arms Act. The

cartridges were also found to be in live and answered the description of ammunition under the Arms Act. After obtaining sanction under Section 39 of the Arms Act, the appellant was sent up for trial in the court of Metropolitan Magistrate for offences under Sections 25/54/59 Arms Act. Learned Metropolitan Magistrate framed charges against the appellant on 23.1.1991. The appellant pleaded not guilty and claimed trial. While the matter rested thus, the learned Metropolitan Magistrate realised that the case was triable by a Designated Court and the matter was referred to the Sessions Judge. The Sessions Judge, on 7.2.1991, transferred the case to Shri B.N. Chaturvedi, Additional Sessions Judge, Delhi, Presiding Officer of the Designated Court. At the trial before the Designated Court, the prosecution examined four witnesses and produced certain documents on the record, including the report of the CFSL Ex. PW3/D. The learned Designated Court took judicial notice of the notification dated 20.10.1987 and by the order impugned herein, convicted and sentenced the appellant after finding that the prosecution had successfully established the case against the appellant.

Mr. Uma Datta, learned counsel for the appellant firstly argued that the Designated Court could not have taken cognizance of the case merely on the case being transferred to it by Sessions Judge by his order dated 7.2.1991 and that even otherwise cognizance was taken by the Designated Court on 7.2.1991 without any application of mind only on the case being assigned to him. For what follows, there is no merit in this argument.

Section 14(1) of TADA *inter alia* provides that a Designated Court may take cognizance of an offence, upon (i) receiving a complaint of facts which constitute such offence or (ii) upon a police report of such facts.

Since, the case was received by the Designated Court on assignment by order of the Sessions Judge dated 7.2.1991, the Designated Court did not take cognizance upon a police report. Did the Designated court, take cognizance upon receiving the complaint of facts constituting such an offence?

The order of the Designated Court dated 7.2.1991 records "fresh case received by way of assignment. It be checked and registered. Put up on 21.3.1991 for hearing on charge." Subsequently, we find that on 18.7.1991, the Designated Court made the following order :

A "From a perusal of the material on record, a *prima-facie* case for charge under Section 5 of TADA Act 1987 is made out against the accused".

B Thereafter, charge under Section 5 of TADA was framed to which the appellant pleaded not guilty and claimed trial and the case was posted for 25.11.1996 and the prosecution witnesses were directed to be summoned for that day. It is thus seen that the order dated 18.7.1991 (*supra*) of the Designated Court unmistakably shows that after receipt of the case file on assignment from the Sessions Judge, the material was perused by the Designated Court itself and a *prima-facie* case under Section 5 of TADA was found to have been made out. The cognizance, was thus, taken by the Designated Court on the basis of a *complaint of facts*, which disclosed the commission of an offence under Section 5 TADA and the order dated 7.2.1991 read with order dated 18.7.1991 shows that the Designated Court applied its mind to the material on the record and then took cognizance.

D Learned counsel then submitted that the cognizance was even otherwise not sustainable in view of Section 20-A of TADA as the essential requirements prescribed thereunder had not been complied with. We cannot agree.

E Section 20-A of TADA requires prior approval of the Superintendent of Police for recording of an offence and lays down that the investigating machinery cannot spring into action without prior approval of the S.P. Sub-section 2 of Section 20-A prohibits the Designated court from taking cognizance of any TADA offence without the previous sanction of the Inspector General of police or the Commissioner of Police, as the case may be. Sanction, as envisaged by Section 20-A was not taken in this case. Section 20-A, it may be noticed, was brought on the Statute Book by the Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993, which came into force on 22.5.1993. The occurrence in this case took place on 1.5.1988 and cognizance was taken by the Designated Court as already notified in 1991, much before Section 20-A was brought on to the Statute Book. Section 20-A TADA, therefore, had no application to the facts of the case. The submission of the learned counsel, that since sanction is a part of procedural law, the provisions of Section 20-A would have retrospective operation, has no merit. The provisions of Section 20-A can

only have prospective application, with effect from the date the amendment came into force. They cannot effect the pending cases and cannot invalidate the investigation or legal proceedings which had been duly instituted and continued prior to the enactment of Section 20-A of the Act.

Mr. Dutta then made a submission that there was doubt about the identity of the case property. Learned counsel referred to the statement of PW-3 SI Inder Singh and in particular to the sentence that "thereafter I sealed them into two parcels with the seals of *LAS*" and submitted that the arms and ammunition which had been received by the CFSL were contained in two sealed parcels which were sealed with the seals of *'IS'* and not *'LAS'*. On this basis, it was argued that the parcels which had been sent to the CFSL were not the ones which had been sealed by PW-3 at the spot. It appears to us, however, that the use of the alphabets *'LAS'* in the statement of PW3, is a typographical error. A perusal of the statement of PW3 shows that according to him, after he sealed the two parcels with the seal of *'LAS'* he also filled up the CFSL form and attached thereto the specimen of the seal. According to the report of the Forensic Science Laboratory, Ex. PW3/D, the two sealed parcels, which were received were found to have intact seals of *'IS'* which "tallied with the specimen seal" as contained in the form. PW4, HC Jagjit Singh deposed that on 6.5.1988 he had taken two sealed parcels from the Malkhana alongwith the CFSL form pertaining to this case "duly sealed with the seal of *'IS'*" and had deposited the same in the CFSL office on the same date. There is, therefore, no manner of doubt that the seal with which the parcels had been sealed at the spot was *'IS'* and not *'LAS'* (*'IS'* presumably stands for PW3, Inder Singh). A reference to the seizure memo would also be of advantage. In the seizure memo, which was prepared by Inder Singh ASI at the spot in presence of Head Constable Satbir Singh and Constable Anang Pal Singh, it is recorded that the *Katta* and the *cartridges* were made into parcels and "duly sealed with the seal of *IS*". We, therefore, do not have any doubt about the identity of the case property and are of the considered opinion that the use of the expression *'LAS'* in the statement of PW3 is a typographical error.

The last submission made by Mr. Dutta is that there is no allegation in the prosecution case that the arms and ammunition had been kept by the appellant for use in any *terrorist activities* and, therefore, the conviction

- A under Section 5 of TADA is untenable. This argument again is fallacious. It has been held by the Constitution Bench of this Court in *Sanjay Dutt's v. The State*, (1994) 5 JT, 540 that to sustain a conviction for an offence under Section 5 of TADA, the prosecution should establish (a) the possession of the arm which answers to the description contained in the Schedule to the Arms Act (b) the possession to be *conscious possession* and (c) the possession to be in the *notified area*. All the three conditions are fully satisfied in the present case. The conviction of the appellant for an offence under Section 5 of TADA, thus, suffers from no infirmity whatsoever.
- B

- C For what has been said above, there is not merit in this appeal, which fails and is hereby dismissed.

R.P.

Appeal dismissed.