

NAZIR AHMAD BHATT

v.

STATE OF DELHI

NOVEMBER 2, 2001

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987:

Section 15(1)—Confession—Caution—Administering of—Held: The accused should be cautioned that he is not bound to make the confession and that, if he does so, it may be used as evidence against him—There is no requirement that such a caution has to be administered to the accused on each day the Officer meets him—It is enough if the caution is administered before the accused makes the confessional statement—Terrorist and Disruptive Activities (Prevention) Rules.

The appellant-accused was convicted under Section 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and sentenced to rigorous imprisonment for 5 years. Hence this appeal.

According to the prosecution, on a raid being conducted at the appellant's residence an audio cassette, some stickers and two floppies were recovered. The appellant made a confessional statement under Section 151(1) of the TADA before the Deputy Commissioner of Police (PW-4), which showed that the appellant was involved in disruptive activities against the sovereignty and territorial integrity of India.

On behalf of the appellant it was contended that PW-4 did not administer a caution to the appellant that he was not bound to make a confession and that, if he did so, it could be used against him; that mere appendage of a memorandum to this effect was insufficient.

Dismissing the appeal, the Court

HELD : 1.1. The Deputy Commissioner of Police (PW-4) recorded in the minutes that he cautioned the appellant that the confession could be used against him during trial and that the appellant replied that he fully understood the consequence of making a confession. PW-4 asked the ap-

A **pellant the question whether he was aware that he was not bound to make a confession to which the appellant answered in the affirmative, then only he proceeded further and recorded the confession. [5-C-D]**

B **1.2. There is no requirement that the confessor should be administered with such caution on each day the officer meets him. It is enough that the caution is administered before the accused made the confessional statement. [5-G]**

Kartar Singh v. State of Punjab, [1994] 3 SCC 569, referred to.

C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 371 of 2001.**

From the Judgment and Order dated 22.2.2001 of the Additional Sessions Judge Court, New Delhi in S.C. No. 2 of 2000.

D **Sushil Kumar, R.P. Wadhvani for Varinder Kumar Sharma for the Appellant.**

Anoop Choudhary, D.S. Mehra and K.L. Janjani for the Respondent.

E **The Judgment of the Court was delivered by**

F **THOMAS, J.** The manager of a bank had undergone the entire term of imprisonment to which he was sentenced by a designated judge under the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short). He still persists in challenging the conviction and sentence presumably because the consequence of it would entail dislodgment from his office in the bank. He was found having involved in disruptive activities ranging to defying the sovereignty and territorial integrity of India. On the strength of the aforesaid finding the designated judge convicted him under Section 4 of TADA and sentenced him to rigorous imprisonment for 5 years besides a fine of Rs.5,000.

G He was also convicted on other counts of offences such as Sections 120B, 419, 468 and 471 of the Indian Penal Code, for which he was sentenced to imprisonment for lesser terms. As he completed his sentence by undergoing the term of imprisonment imposed under Section 4 of TADA he is deemed to have undergone the sentences imposed under the other counts as well because of the direction that the sentence of imprisonment under all the different counts shall

H **run concurrently.**

This appeal under Section 19 of TADA is, therefore, as of his statutory right and his senior counsel (Shri Sushil Kumar) has tenaciously pursued it despite the advantage that he need not now go back to jail. But as the fall out of the conviction would visit him with dire consequences for his service tenure, learned senior counsel did not spare any effort to get him exonerated. We heard the arguments with all seriousness with which learned counsel projected them.

Appellant belonged to the State of Jammu & Kashmir. Though he joined Jammu & Kashmir Bank at the lower tier he was able to reach the position of manager of the bank. During the relevant period he was manager of the Delhi Branch (Connaught Place) of the aforesaid bank. A raid was conducted by the police at his residence on 12.4.1995, as a sequel to some sleuth information which the police succeeded in extracting from one Mohd. Yakub who was arrested at Srinagar on 2.1.1995. In the raid, police recovered an audio cassette, some stickers and two floppies. According to the prosecution those materials contained exhortations made by leaders of secessionists organisations for liberation of Kashmir from India. They are produced before us for our scrutiny. We have noticed that the stickers contained such exhortations inscribed in English. The writings in other materials are in Urdu but we did not have the advantage of getting the authenticated translation of them. Nonetheless, we are not disposed to convict a person merely because some stickers and leaflets etc., containing exhortations for liberation of Kashmir, were found in his house unless it is shown that he had a part in making or using such materials.

The prosecution, however, relied on a confession attributed to the appellant as recorded by a Deputy Commissioner of Police (PW-4). That confession is sought to be admitted under Section 15 of TADA. If the contents of the documents styled as confession can be acted on as voluntary and genuine it would provide evidence for the disruptive activities said to have been perpetrated by the appellant. According to the appellant he was picked up by the police on 8th April, 1995 and was detained in illegal custody and the statement attributed to him was not in fact made by him. He was made to sign some documents the contents of which were not even read out to him, according to the appellant.

Ext.P-25 is the document containing the confessional statement of the appellant. The relevant portions of it are the following: Appellant was told by one Maulana Masood Azhar that his house at Srinagar was raided by security forces because of his links with Harkat-ul-Ansar (a terrorist organisation) and he escaped from being caught. Later, one Mohd. Asraf Dhar told him that he

A was a worker of the terrorist organisation and he was assigned the task of raising funds for carrying out the activities connected with the liberation of Kashmir. It was the said Mohd. Asraf Dhar who gave him audio cassette containing inflammatory speeches of Maulana Masood Azhar exhorting the Muslims to fight against Indian people for separating Jammu and Kashmir from the rest of India. After hearing the speeches from the cassette appellant B agreed to work for Harkat-ul-Ansar. A code name was given to the appellant as "Abid". Money would be despatched to him through "Hawala", for the various operations planned by Harkat-ul-Ansar. He was to exchange messages with Mohd. Asraf Dhar. A total of Rs.25 lakhs was received by him from Sharjah in about seven instalments through Hawala for being used in connection with terrorist activities. He was allowed to take Rs.25 thousand for his personal expenses. He also got other floppies as well as literature of Harkat-ul-Ansar containing anti-India propaganda. The confession further narrates some more activities involving money transactions for the use of the same disruptive activities. C

D If one reads Ext.P-25 he cannot but form the irresistible impression that activities were targeted against the sovereignty and territorial integrity of India *vis-a-vis* the State of Jammu and Kashmir. Hence it is unnecessary to ponder over the question whether Ext.P25 would really amount to disruptive activities. None can even doubt, reading Ext.P-25, that it amounts to disruptive activities E as defined in Section 4 of TADA. It is not necessary to cogitate over the question whether Ext.P-25 is admissible in evidence as Section 15 of TADA has removed the lid of inadmissibility, if the confession was made to a police officer not lower in rank than a Superintendent of Police. There is no dispute that PW-4 was holding such a rank during April 1995.

F Therefore, Shri Sushil Kumar learned senior counsel, focussed on the reliability of the said confession. The first point raised against the confession is that when appellant was produced before PW-4 on 18.4.1995, he did not administer a caution to him that he was not bound to make any such confession. Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules (for short G 'the Rules') was cited before us which contained regulations for recording confession under Section 15 of TADA. Sub-rule (3) of the Rules says, *inter alia*, that the police officer who records the confession shall make a memorandum at the end of the confession to the following effect:

H "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make maybe used as

evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.”

There is no dispute that a memorandum to the above effect has been appended to the confession signed by PW-4. But learned senior counsel submitted that mere appendage of such a memorandum is insufficient, as the caution envisaged in the rule should really have been administered to the appellant, i.e. he was not bound to make a confession and that if he did so the confession could be used against him. Learned counsel pointed out that in the minutes recorded by PW-4 on 18.4.1995 there was no mention about administering a caution to the appellant that he was not bound to make a confession. Nonetheless, PW-4 recorded in the said minutes that he cautioned the appellant that the confession could be used against him during trial and that the appellant replied that he fully understood the consequence of making a confession. On 19.4.1995 PW-4 asked him the question whether he was aware that he was not bound to make a confession to which the appellant answered in the affirmative, then only he proceeded further and recorded the confession.

Thus, it is clear that what was required by law for compliance with as precautionary measures have been complied with by PW-4. Of course, the witness PW-4 has deposed in court that he explained to the confessor even on 18th itself that he was not bound to make such a confession. Learned senior counsel for the State contended that the court can regard the said evidence for satisfying itself that there was no such non-compliance. Section 463 of the Code of Criminal Procedure enables the court to take evidence in regard to any non-compliance and to act on such evidence if the court is satisfied that such non-compliance has not injured the accused in his defence on the merits. In our view, resort to Section 463 of the Code is unnecessary on the facts of this case because PW-4 had administered the caution to the confessor on 19.4.1995, before proceeding to record the confession, that the confessor is not bound to make such a confession. There is no requirement that the confessor should be administered with such caution on every day the officer meets him. It is enough that the caution is administered before the accused made the confessional statement.

Learned senior counsel then adopted an alternative attack on the confessional statement basing on a guideline laid down by this Court in *Kartar Singh*

A v. *State of Punjab*, [1994] 3 SCC 569. A Constitution Bench of this Court was considering the constitutional validity of Section 15 of TADA and learned judges of the Bench upheld its validity in the aforesaid decision. However, certain guidelines were formulated for compliance by the officers to ensure that confession is not tainted with any vice. Guideline No.2, to which focus is made by the senior counsel, reads thus:

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“The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.”

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In order to drive his point home learned senior counsel contended that it is for the prosecution to show that everyone of the guidelines has been complied with by the police officer. Learned senior counsel for the State submitted that it is open to the court to presume that official acts have been regularly performed and hence it is for the party who wants to show non-compliance of any official duty, to satisfy the court about the lapse. In the present case we do not propose to enter on a discussion regarding the aforesaid question of burden of proof because there is material on record to show that appellant was produced before the Additional Chief Metropolitan Magistrate for the purpose of verification of the statement attributed to the appellant. PW-38 the Investigating Officer said so in his evidence. Nothing has been shown to us for disbelieving the aforesaid evidence.

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Learned senior counsel for the appellant then made an endeavour to show that PW-4 had only copied the statement prepared by the Investigating Officer under Section 161 of the Code of Criminal Procedure and secured the signature of the appellant thereon. We do not have any material to think that PW-4 did so as contended by the learned counsel. In this context we may point out that appellant did not make a mention to the Additional Chief Metropolitan Magistrate before whom he was produced on 19.4.1995 that he was made to sign any document without his consent or that he did not make a confession as recorded by PW-4.

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We have to bear in mind the answer given by the appellant to a question put by the trial judge during examination under Section 313 of the Code after bringing his attention to Ext.PW-4/B. That document is dated 18.4.1995 and

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it shows that appellant gave his consent to make a confessional statement before the senior officer. Appellant owned Ext.PW-4/B though he explained that he signed it at the instance of the Investigating Officer. This means, appellant was told in advance about the possibility of recording his confession. He never had any complaint that he was physically or even mentally tortured by the police at any time. He thought of retracting from the confession only during trial of the case and not at any previous stage.

From all the above broad circumstances, we are inclined to believe that confession was voluntarily made by him. The seizure of the stickers and other materials from his house would only lend assurance to the court that the confession contained only the truth.

We do not find any good reason to upset the conviction passed by the designated court under TADA. We, therefore, confirm the conviction. We need not vex our mind about the quantum of sentence because, as pointed out earlier, appellant has already undergone the period of imprisonment covered by the sentence.

In the result, we dismiss this appeal.

V.S.S.

Appeal dismissed.