

Jaloba

Vs

State of Haryana

Criminal Appeal No. 142 of 1987

(S. Natarajan, Kuldip Singh JJ)

29.03.1989

ORDER

1. This appeal under Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as 'the Act') has been preferred by the appellant to challenge his conviction under Section 25 of the Arms Act read with Section 6 of the Act and the sentence of RI for two years and fine of Rs. 500 awarded therefore.
2. The prosecution case was that during the early hours of April 7, 1986 i.e at about 3.15 or 3.30 a.m. PW 4 Sub-Inspector Tika Ram along with Head Constable PW 3 Hans Raj and other policemen were doing Nakabandi near the culvert of a canal in village Ghudwali. At that time they saw the appellant coming along the road but when he tried to retrace his steps on seeing the police party, they gave chase to him and apprehended him. The appellant was having a M.L. Gun (Ex. P-1) and 6 topis (caps) Exs. P-3 to P-8 and a plastic vial (Ex. P-9) containing about 25 grams of gunpowder. He had no licence for carrying the firearm and could not offer any explanation for his possession of the firearm and the caps and gunpowder. He was, therefore arrested and later charged under Section 25 of the Arms Act read with Section 6 of the Act.
3. The prosecution examined four witnesses to prove the case against the appellant. PWs 3 and 4, as already stated, were the police officers who had apprehended the appellant and seized the incriminating articles from him. PW 1 Head Constable Charan Das was examined to prove that the gun was in a working condition and the caps and gunpowder were fit for use in the gun. PW 2 was a Reader attached to the Court of the District Magistrate, Faridabad.
4. The appellant, while denying the prosecution case and the recovery of the gun and other articles from him, set up a plea that he and his employer one Shaukat Ali, who has been examined as DW 1, had worked against a Member of the Legislative Assembly by name Mr. Azmat Khan in the elections held by the Land Mortgage Bank and on account of it the said Azmat Khan had prevailed upon the police to foist a false case on him.
5. The learned Designated Judge, after due consideration of the evidence and the plea put forth by the appellant, held the prosecution case proved against the appellant beyond reasonable doubt and convicted and sentenced the appellant as set out above.
6. The learned counsel for the appellant would contend that the Designated Court had no jurisdiction to try the appellant because he was not charged for having committed any offence under Section 3 of the Act. This argument is on the face of it untenable in the light of Sections 6 and 9 of the Act. Section 6 lays down that if in any area notified by the State Government under the Act a

person contravenes any provision or rule made under the Arms Act, the Explosives Substances Act, the Explosive Substances Act and the Inflammable Substances Act then he is liable to enhanced punishment as provided for in the section. Section 9 lays down that notwithstanding anything contained in the Code, every offence punishable under the Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed. It therefore follows that through the offence committed by the appellant was for contravention of Section 25 of the Arms Act, it became exclusively triable by the Designated Court because of notification made by the State Government and the operation of Section 6 of the Act. It is common ground in this case that the State has notified the area for the purposes of the Act by means of Gazette Notification No. S.O./56/CA-31/85/86/85 dated May 28, 1985. It is, therefore, futile for the appellant to contend that the Presiding Officer of the Designated Court did not have jurisdiction to try the appellant for the offence for which he stood charged.

7. Learned counsel for the appellant then contended that based on the evidence of the police officers alone a conviction ought not to have been awarded to the appellant. This contention overlooks the fact that the appellant was apprehended in the early hours of the morning in a lonely road and in such circumstances it is not possible for independent witnesses to have been present there or to have witnessed the arrest of the appellant. As regards the appellant's plea that the case has been foisted on him at the instance of an MLA by name Azmat Khan, it is inconceivable that the police officers would have obliged Azmat Khan by foisting a false case against the appellant.

8. Lastly, the appellant's counsel submitted that in any event the appellant may be shown some leniency in the matter sentence. He stated the appellant is an aged person and has a large family to support. Taking into consideration these factors, we think that the ends of justice would be met if the substantive sentence of RI for two years awarded to the appellant is reduced to a period of RI for one year. The sentence of fine of Rs. 500 is confirmed.

9. In the result, the appeal is partly allowed to the extent the substantive sentence is modified from RI for two years to RI for one year.

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