

State of A.P.

Vs

S. Eshar Singh and others

Criminal Appeal No. 244 of 1992

(K. Jayachandra Reddy, G.N. Ray JJ)

11.11.1992

JUDGMENT

1. This appeal is filed by the State of Andhra Pradesh under S. 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA Act" for short). The five respondents herein were charge-sheeted under Ss. 120-B, 302 read with S. 120-B, I.P.C., Ss. 3 (iii) and 4(iii) of the TADA Act and S. 27 of Indian Arms Act read with Ss. 5 and 6 of the TADA Act. A petition was filed under S. 227, Cr. P.C. by Eshar Singh, A-1 and Nanak Singh, A-2 praying that they should be discharged of all the charges levelled against them. The Designated Court after hearing the counsel for both sides partly allowed the petition holding that there is no sufficient ground to proceed against A-1 and A-2 as well as other accused facing trial for offences under Ss. 3(iii) and 4(iii) read with Ss. 5 and 6 of the TADA Act and accordingly discharged them of the said offences and proceeded to frame charges only under the remaining sections of the Indian Penal Code and S. 27 of the Indian Arms Act. Questioning the same the present appeal is filed in this Court.

2. Learned counsel appearing for the State of Andhra Pradesh, the appellant submitted that there are number of allegations mentioned in the charge-sheet to the effect that the respondents accused have committed the offences punishable under TADA Act for which they are charge-sheeted and that the learned trial Judge grossly erred in holding that there is no prima facie case against the accused for the offences under TADA Act.

3. We find sufficient force in the submission of the learned counsel for the appellant. We have perused the entire charge-sheet and the material documents filed along with the charge-sheet and we find that there are number of allegations which prima facie attract the provisions of the TADA Act. It appears that the learned trial Judge inferred that the investigating agency had come to the conclusion that the accused had a personal grudge against the deceased but the allegations are to the effect that the main object underlying the alleged crime was to propagate pro-Khalistan cult among Sikh community and to organise a force threatening the Government with dire consequences under the pretext of championing the cause of Sikh community. Therefore, the finding of the trial Court that prima facie the provisions of TADA Act are not attracted, is clearly wrong. We do not want to go into further details and make any observations inasmuch as the trial is still pending and the learned counsel appearing for the respondents also requested us not to make any such observations which may tend to influence the trial Judge.

4. We are satisfied that the trial Court at this stage was not justified in discharging the accused of the offences under TADA Act in respect of which the accused are charge-sheeted. It is needless to say that the prosecution has to prove the said offences against the accused beyond all reasonable doubt. For these reasons the order under appeal is set aside and the Designated Court is directed to proceed

with the trial by framing charges under the provisions of TADA Act also in accordance with law.
The appeal is allowed accordingly. Appeal allowed.

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