

Mamad Hassam Bhagad and Others

Vs

State of Gujarat and Others

Criminal Appeal No. 507 of 1994

(Dr. A. S. Anand, K. Venkataswami JJ)

09.05.1996

JUDGEMENT

K. VENKATASWAMI, J.:-

1. This appeal preferred under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA") challenge the judgment and order of the learned Designated Judge (TADA), Jamnagar Date July 1, 1994.

2. The learned Designated Judge confirmed an order of attachment of seven vessels/ship under Section 7-A of TADA pending further investigation in the matter.

3. At the outset we would like to make it clear that we do not propose to deal with the matter either in detail or to give a final decision in this matter in view of the fact that when the judgment under appeal was made the matter was under the investigation stage only. In our view any opinion expressed at this stage might cause prejudice to either party and that is the reason for not going into the matter in detail or giving final decision. Briefly stated the facts are as under :

4. In the Kalyanpur Police Station Crime Register No. 62/93 related to a case booked for the offences punishable under Sections 121, 121-A, 122, 34, I. P. C. and 25A (1) A (D), 25, (1) (A) (2), 25 (1) AA, 25 (A) (B), 25 (F) of the Arms Act, Section 20 of the Wireless Telegraph Act and Sections 3, 4 and 5 of TADA and Section 135 (1) of the Bombay Police Act. In the course of investigation one diary of Hamir Sajan was found and it contained certain financial transactions relating to one Haji Haji Ismail for purchasing the ships in question. The District Superintendent of Police attached those ships invoking powers under Section 7-A of TADA. A report application No. 1/93 was filed before the learned Designated Judge seeking confirmation of attachment.

5. The appellants claiming to be the owners of the ships in question object to the attachment and sought revocation of such attachment before the learned Designated Judge.

6. It was argued before the learned Designated Judge that Section 7-A of TADA came into force on and from 22-5-1993 and the purchases of all the ships having taken place well before that date, the provisions of TADA cannot be invoked. It was also contended that none of the persons objecting (claiming to be the owners) the attachment had ever been arrested either under the provisions of Customs or under TADA and hence prima facie Section 7-A of TADA has no application. It was further contended that to invoke Section 7-A of TADA there should be knowledge or reasons to

believe that properties attached are involved in terrorist activities and that requirement was not satisfied on the facts of the case.

7. Before the learned Designated Judge, the Designated Public Prosecutor after narrating the facts relating to the purchase of the seven ships in question contended that on prima facie case being made out and entertaining reason to believe that the property in question falls within the mischief of Section 7A attachment in question was made and that further inquiry/investigation was still going on regarding all the seven ships to conclusively find as to whether they were involved in smuggling activities or not. It was admitted that since some of the persons were absconding and some of others had left the district therefore, at that stage, attachment could not be revoked and he prayed for confirmation of the order of attachment.

8. The learned Designated Judge bearing in mind that the investigation was still going on has given only a prima facie finding and on being satisfied with the prima facie case confirmed the attachment by the judgment under appeal.

9. The learned Designated Judge found that the main accused was one Haji Haji Ismail and he was doing landing activities of gold and silver articles which are smuggled goods and in order to see that Government authorities do not cause any hurdles to him in carrying out such activities he was possessing automatic rifles, foreign made Pistols and other latest and scientific means of communications and they were already attached and Hamir Sajan and other three persons were arrested. Though they were released on bail, in the first instance on the ground that TADA does not apply to them, an appeal to this Court, the order granting bail to them was canceled and all the accused were taken into custody. The learned Designated Judge also found, prima facie, that there was no mention at all in Section 7-A that the property to be investigated must be the property of an offender against whom the offence under Section 7-A is to be registered. According to the learned Judge what was required to be established was that the property in relation to which the investigation was made must be having sources of purchase from the amount or proceeds of terrorism or by way of commission of terrorist activity. Therefore, the learned Judge found that it was not necessary or incumbent upon the Investigation Officer to attach only properties of the persons who were involved in the offence under TADA Act and that on the other hand, any property can be attached if it is reasonably believed that it was derived from the commission of any terrorist activity or was acquired by the proceeds of 'terrorism'. The learned Judge also found that 'the aforesaid party (namely the appellants herein) are related to the main smuggler Haji Haji Ismail' who is absconding and by using the funds provided by him the ships in question were purchased and so it can be said that

"prima facie, doing smuggling activity of keeping and possessing latest and modern foreign made arms and ammunitions in order to cause terrorism among the Customs and Police Officers would mean that by keeping the authority such as Custom Officer of Police Personnel in constant fear due to his terrorist activities, the amount is derived from that activity, it would mean that the fund is created by way of terrorist act, as Haji Haji Ismail has managed for the money to purchase seven ships to the opposite party members who have purchased the ships in their names only as a show and ostentation so that they can be safe from attachment or they can be safe from penal action and such other consequences."

10. Finally the learned Judge observed that :

"Therefore, at this juncture, it is established prima facie that ships mentioned in report Application No. 1/1993 are liable to be attached and they are attached rightly as stated by the authorities and they deserve to be confirmed."

11. Mr. Mehta, learned senior counsel reiterated the same arguments which were addressed before the learned Designated Judge. As we have observed at the outset it would not be advisable to give any definite opinion with regard to the 'involvement' of the attached ships at this stage except observing that from the materials on record we are satisfied that the Investigating Officer prima facie had reason to believe that there is basis for invoking Section 7-A of TADA. We may also add in fairness to senior counsel that he cited certain judgments to support his arguments, but for the very same reasons as given above we do not think it is necessary to quote and elaborate those citations.

12. After carefully going through all the relevant papers and the prima facie views expressed by the learned Designated Judge, we are of the opinion that at this stage we need not interfere with those conclusions reached by the learned Designated Judge. However, on the facts of this case, the ship bearing the name "Nabi Mahar", Registration No. B. D. I. 430 purchased on 10-12-1965, as per the case of the prosecution itself, cannot be kept under attachment, the reason being that this ship was purchased long before the passing of TADA. Therefore, the said ship has to be released from attachment. We make an order accordingly. Except for this modification, for obvious reason, we do not find any ground to interfere with the judgment and order of the learned Designated Judge in any other respect. Subject to the modification as above, the appeal stand disposed of.

Order accordingly.