

Sukhbir Singh & Ors.

Vs

State of Haryana

(G. N. Ray, G. B. Pattanaik JJ)

01.10.1997

ORDER

1. In this appeal the conviction and sentence passed against the appellant by the learned Designated Court Bhiwani at Hissar on 6.2.88 in Sessions Trial No.49/87 are under challenge.

2. Mrs. KTS Tulsi, learned senior counsel has appeared for appellant No.1 Sukhbir Singh and Mr. Som Raj Dutt, learned senior counsel has appeared for the remaining appellants. The appellant Sukhbir Singh has been convicted by the learned Designated Court under Section 302 and Section 307 read with Section 149 Indian Penal Code. The other appellants have also been convicted under Section 302 and Section 307 read with Section 149 IPC. Although the said appellants have been convicted under the Arms Act, but no separate sentence has been passed for such offence.

3. Mr. Tulsi has submitted that initially the appellants were also charged for the offence under Terrorist and Disruptive Activities Prevention Act, 1985 (hereinafter referred to as TADA). The learned Designated Court thereafter assumed jurisdiction and proceeded with the trial. Considering the materials on record, the learned Designated Judge inter alia came to the finding that no case for an offence under TADA had been made out. Therefore, an order was passed by the learned Designated Judge on 19.12.87 that the case should be transferred to the appropriate criminal court for the trial of the said criminal case. In basing the said order of 19th December, 1987, the learned Judge, Designated Court had relied on a Full Bench decision of the Punjab and Haryana High Court in Bimal Kaur Khalsa's case (AIR 1988 Punjab and Haryana page 95). It appears that an appeal was taken to this Court against the said Full Bench Decision of the Punjab and Haryana High Court in Bimal Khalsa's case and it appears that an interim order of stay was granted by this Court. In view of the said order of stay, the case was again referred back before the learned Designated Judge for trial on merits.

4. Mr. Tulsi has submitted that the principles indicated by the Full Bench of the Punjab and Haryana High Court as to what constitutes offence under TADA in Bimal Khalsa's case has been considered by the Constitution Bench of this Court in Kartar Singh's case (1994 (3) SCC page 569). Mr. Tulsi has submitted that in Hitendra Vishnu Thakur and Ors. (1994 (4) SCC 602) this court also considered what are the terrorist and disruptive activities under TADA. The decision of this Court in the said Constitution Bench decision approves the principle indicated in Bimal Khalsa's case. Therefore, the order passed by the learned Designated Judge that no case under TADA had been made out must be held to be fully justified. Therefore, on merits also, there was no occasion for the Designated Court to proceed with the trial of the said case when no offence under TADA was made out. Mr. Tulsi has further submitted that only because an appeal was pending before this Court against the judgment in Bimal Khalsa's case and an interim order of stay was passed in the said

appeal, there was no reason to retransfer the case before the learned Designated Court in the absence of any order passed by any competent court setting aside the order dated 19th December, 1987 passed by the learned Designated Judge by which it was decided that no case under TADA was made out and therefore, the case should be transferred before the regular criminal court.

5. Mr. Tulsi has, therefore, submitted that the learned Designated Judge, had no jurisdiction to proceed with the trial of the criminal case and pass the impugned order of conviction and sentence against the appellant for offences under Indian Penal Code and Arms Act. Mr. Tulsi has also submitted that in *Rambhai Nathubai Gadhvi and Ors. Vs. State of Gujarat* (1977 (5) Scale page 388) this Court has held that where for want of appropriate sanction, the Designated Court did not have jurisdiction to try the case, the entire trial was vitiated. It was submitted before this Court that in view of detention in prison for a long time during the pendency of the trial before the Designated Court, no further trial of the said criminal case by the regular criminal court should be allowed. It has been observed by this Court that the question of proceeding further of the said criminal case before the regular criminal court will be taken into consideration by the State on being alive to the said fact of suffering long detention by the accused during the pendency of the trial before the Designated Court. Mr. Tulsi has submitted that in the instant case long time has elapsed since the institution of the case before the Designated Court. The case can only be tried by the regular court and such trial is likely to consume long time. The delay in proceeding with the trial before the designated court is not attributable to the accused. Therefore, the said criminal trial deemed to be pending before the regular criminal Bench should be quashed by this Court because of the long delay involved in completing the trial thereby creating serious prejudice against the appellants. In the facts of the case, Mr. Tulsi has rightly contended that the order of the designated Judge dated 19.12.1987 releasing the case for being tried by regular criminal Bench was fully justified. There was no occasion to retransfer the said criminal before the designated court when the order dated 19.12.1987 was not set aside by any competent authority. Such subsequent retransfer of the case before the designated court and decision rendered by the designated court therefore cannot be sustained and the same therefore are set aside by allowing this appeal. We are however not inclined to quash the criminal case which must be deemed to be pending before regular criminal Bench. It will be open to the accused to make appropriate application for quashing the criminal trial before the appropriate court if they so desire. We make it clear that we have not expressed any opinion in this regard. The interim order of bail granted by this Court will continue for a period of six weeks from today so that appropriate application for interim bail may be made before the Court where the trial will commence. The appeal is disposed of accordingly.