Chandrakant Patil

Vs

State Through Cbi

Shyam K. Garikapati

Vs

State Through Cbi

Subhash Singh Thakur

Vs

State Through Cbi

Jayendra Thakur

Vs

Govt. of National Capital Territory of Delhi

Criminal Appeals No. 438 of 1997 with Nos. 445, 447 and 486 of 1997

(M. K. Mukherjee, K. T. Thomas

02.02.1998

JUDGMENT

THOMAS, J. –

1. After concurring with the finding that first accused Subhash Singh Thakur, second accused Jayendra Thakur @ Bhai Thakur, third accused Shyam Kishore Garikapati and fourth accused Chandrakant Patil are guilty of the offence under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, for short "the TADA", and confirming the conviction of that offence we felt that the sentence of rigorous imprisonment for 5 years awarded by the trial court to each of them is inadequate. Hence we issued notice to them on the proposal to enhance the sentence. The said accused, in reply to the notice, filed detailed written submission. We heard the arguments addressed by the Senior Counsel on behalf of those accused and also Shri V. R. Reddy, Additional Solicitor General who argued for the Central Bureau of Investigation.

2. We may state at the outset that we would not, at this stage, review the finding regarding the conviction of the offence under Section 5 of TADA for the obvious reason that we confirmed the finding after considering in detail the contentions raised by the accused and the elaborate arguments addressed by the learned counsel. Further, we have already dismissed the petitions filed for review of the findings arrived at by us as adverse to those accused. Shri Ram Jethmalani, learned Senior Counsel made an endeavour to convince us that the accused have a right for recanvassing the

aforesaid finding on a parity of the principle envisaged in Section 377(3) of the Code of Criminal Procedure, 1973 (which may be referred to hereinafter as "the present Code"). According to the sub-section :

> "377. (3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

3. Under the Code of Criminal Procedure, 1898 (the old Code) the High Court had the power to enhance a sentence even on an appeal filed by the accused against his conviction. Section 423 of the old Code, while circumscribing the powers of the appellate court, made an addition through sub-section (1-A) like this :

> "423. (1-A) Where an appeal from a conviction lies to the High Court, it may enhance the sentence, notwithstanding anything inconsistent therewith contained in clause (b) of sub-section (1) :"

As against the said provision, the corresponding section in the present Code contains restrictions imposed on the appellate court for enhancing the sentence on an appeal filed from a conviction. The said restriction is incorporated in Section 386(b) of the present Code that in an appeal from conviction, the appellate court may reverse the finding and sentence and acquit or discharge the accused or alter the finding and maintain the sentence or with or without altering the finding alter the nature or the extent of the sentence "but not so as to enhance the same". While incorporating the said restriction the present Code conferred a new right on the State or Central Government by Section 377 to present an appeal through the Public Prosecutor on the ground of inadequacy of sentence. Such appellate powers of the High Court are subject to the rider that the accused should be given a reasonable opportunity of showing cause against such enhancement and while showing such cause the accused has the right to plead for acquittal or for reduction of sentence.

4. On the strength of the principle so adumbrated in the present Code learned counsel contended first that this Court has no power to enhance the sentence as the present appeal has been filed from a conviction, and second, that the accused would get a right when there is a proposal to enhance the sentence, to plead for his acquittal by reviewing the finding already made.

5. We are unable to agree with the learned counsel that the accused has a further right in this case to canvass for reviewing the finding arrived at by this Court over again. The right envisaged in Section 377(3) of the present Code shall be confined to appeals presented by the Government to the High Court against sentence on the ground of its inadequacy. There is no scope to afford a further opportunity in the appeal, at this stage, since the finding of the trial court has already been considered elaborately by re-evaluating the entire evidence in the light of the elaborate arguments canvassed on behalf of the parties. A repetition of the whole process over again is, apart from waste of time of this Court, unnecessary and unwarranted by law.

6. Shri Ram Jethmalani, learned Senior Counsel next contended that the Supreme Court has no power to enhance sentence in the absence of an appeal by the Government presented specifically for that purpose more so because the Supreme Court has no revisional powers which the High Court and Court of Session are conferred with by the present Code.

7. Powers of the Supreme Court in appeals filed under Article 136 of the Constitution are not restricted by the appellate provisions enumerated under the Code of Criminal Procedure or any other statute. When exercising appellate jurisdiction, the Supreme Court has power to pass any order.The aforesaid legal position has been recognized by a Constitution Bench of this Court in Durga Shankar Mehta v. Raghuraj Singh (AIR 1954 SC 520 : (1955) 1 SCR 267) and later followed in a series of decisions (vide Arunachalam v. P. S. R. Sadhanantham,((1979) 2 SCC 297 : 1979 SCC (Cri) 454), Delhi Judicial Service Assn. v. State of Gujarat ((1991) 4 SCC 406).

8. The present appeals have not been filed under Article 136 of the Constitution, but under Section 19 of TADA. Hence it was contended that while dealing with a statutory appeal, plenary powers of the Supreme Court cannot be exercised. Accepting the said contention we may point out that even otherwise this Court has wide and residual powers to deal with a situation like this, which are well enclosed in Article 142 of the Constitution.

9. It is now well nigh settled that Supreme Court's powers under Article 142 of the Constitution are vastly broad-based. That power in its exercise is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it. The first condition is satisfied here as the appellate jurisdiction of the Supreme Court is exercisable by virtue of Section 19 of TADA.

10. In Delhi Judicial Service Assn. v. State of Gujarat ((1991) 4 SCC 406) as also in Union Carbide Corpn. v. Union of India ((1991) 4 SCC 584), this Court made the position clear that power under Article 142 of the Constitution is entirely of different level and is of a different quality which cannot be limited or restricted by provisions contained in statutory law. No enactment made by the Central or State Legislature can limit or restrict the power of this Court under Article 142, though while exercising it the Court may have regard to statutory provisions. In Mohd. Anis v. Union of India (1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251), Ahmadi, J. (as the learned Chief Justice then was) by following the dictum in the above-mentioned decisions has observed in para 6, as follows : (SCC p. 149)

> "This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the Apex Court is to ensure due and proper administration of justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation."

11. In E. K. Chandrasenan v. State of Kerala ((1995) 2 SCC 99 : 1995 SCC (Cri) 329) this Court has traced its power in Article 142 for the purpose of enhancing the sentence awarded to the accused who filed the appeal challenging the conviction passed by the High Court. The following observations in the said decision are apposite : (SCC p. 113, para 40)

> "40. What is contained in Article 142 would in any case provide a sufficient power to this Court to pass an order like the one at hand, if this Court were to be of the view that the same is necessary for doing complete justice."

12. Shri Ram Jethmalani, learned Senior Counsel, cautioned us by reminding that recourse to Article 142 should not be made far too often since those powers are specifically reserved for using in exceptional exigencies. According to him the instances when resort was made to Article 142 by the Court in the past were far and few between and that too in cases of very rare eventualities.

13. We are aware that powers under Article 142 are not to be exercised frequently but only sparingly. The occurrence described in this case is not the usual type of crimes reaching this Court. When all the four accused were caught red-handed while making nocturnal movements towards some targeted destination, in the densely crowded city with highly lethal and quickly explosive articles, it is a matter of reasonable imagination that, had they not been timely intercepted by the alert and vigilant police force, the consequences would have been disastrous and calamitous. We have no manner of doubt that the sentence of imprisonment of five years for the offence under Section 5 of the TADA in the circumstances of this case is too inadequate and it warrants enhancement.

14. The next question to be considered is, what should be the extent of the sentence. Section 5 of TADA prescribes punishment of "imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life" besides fine. When we found that the minimum sentence prescribed is too inadequate, we have to consider whether the maximum prescribed is attracted.

15. Christopher J. Emmins, M. A., in his A Practical Approach to Sentencing, has suggested that the maximum sentence should be reserved for the gravest instances of offence likely to occur as a principle of common sense (vide p.110). We do not think that the maximum sentence prescribed in the section need be awarded in this case since on a consideration of all aspects of the case we feel that the said upper limit is on the higher side. Nevertheless, after bestowing our serious consideration in the matter we are of the definite opinion that imprisonment for a period of at least 10 years would be necessary to meet the ends of justice looking at the manner in which the offence was perpetrated by the four accused persons.

16. In the result, we enhance the sentence of imprisonment from 5 years, as awarded by the Designated Court, to 10 years for all the four accused, A-1 Subbash Singh Thakur, A-2 Jayendra Thakur @ Bhai Thakur, A-3 Shyam Kishore Garikapati, and A-4 Chandrakant Patil. Ordered accordingly.

17. All the appeals would stand thus disposed of.