

Akmal Ahmad

Vs

State of Delhi

Criminal Appeal Nos. 71-72 of 1999

(K. T. Thomas and D. P. Mohapatra JJ)

24.03.1999

JUDGMENT

K.T. Thomas, J.

1. Appellant has two passports, one issued by the authorities in India and the other by Pakistan authorities. When he was caught and searched at the New Delhi Railway Station a revolver studded with live cartridges was recovered from him. He was charged and tried for offences under Section 12 of the Passport Act, 1967 and under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act (for short 'the TADAA'). The Designated Court, before which he was tried, convicted him of the said offences and sentenced him to imprisonment for three months on the first count and for 5 years on the second count. This is his appeal under Section 19 of the TADAA.

2. Facts are too simple for narration. On 13.3.1990, the Sub-Inspector of Police, Sultanpuri (Delhi) had source information that two persons carrying lethal weapons were on the move towards New Delhi Railway Station. He immediately organised a raiding party and waited near the gate of the Railway Station. Around noon appellant was spotted as the suspected person while he was stepping out of Railway Station with a suit-case and a handbag. He was intercepted and on being questioned he revealed his name as Sheik Mohammad Irfan, resident at Karachi in Pakistan. When his handbag was searched a revolver (0.32) loaded with 6 live cartridges was found out. They were seized and sealed.

3. When he was asked to produce the travel documents he produced Ext. P-3 - Passport (issued by Pakistan authorities). The photo of the appellant was affixed in the passport as its holder and the name is shown as "S.M. Irfan". When he was subjected to further interrogation he brought out another passport from a coat which was kept in the suit-case. That passport showed that it was issued from New Delhi and the photo of the appellant was affixed therein. The name of the passport holder was shown as "K.M. Akmal Ahmad", resident of Kolar District in Karnataka. That passport was marked as Ext. P-4 in this case.

4. Appellant was arrested and the material articles were taken into custody under seizure memo prepared by the Sub-Inspector of Police. Appellant was later challaned for the two offences mentioned above and after trial he was convicted and sentenced as aforesaid.

5. The first contention raised was that the offence under Section 12 of the Passports Act is not sustainable as neither of the passports seized from his was shown to be forged. The charge made against him as for the said offence is that "he was found to be in unauthorized possession of a Pakistani passport and he failed to furnish the correct information at the time of issue of the said

passport." The finding of the Designated Court against him on that score is that since his name was shown as Akmal Ahmad in all other documents he obtained a passport describing himself as S.M. Irfan. The trial judge has stated the following while arriving at the finding against him :

"All these documents therefore, reveal that accused is known as Akmal Ahmad. Still he obtained Pakistani passport describing himself as S.M. Irfan. He also got the entry permit Ext. P8 of Attari Border on the strength of said passport. All these acts of accused clearly attracts Section 12 of the Passports Act read with Section 3 thereof inasmuch as he contravened clauses (a) and (b) of the said section. Section 12 also covers Passport and travel documents issued by or under the authority of the Government of foreign countries as per Section 3."

6. "Passport" is defined in Section 2(b) of the Passport Act as "a passport issued or deemed to have been issued under this Act". Section 12 deals with offences and penalties. Sub-section (1) alone is material in this case and it is extracted below :

"12. Offences and penalties -

(1) Whoever -

(A) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both."

7. The only clause in Section 12(1) which is said to be used against the appellant is clause (a) which refers to contravention of Section 3. Hence it is necessary to extract Section 3.

"3. Passport or travel document for departure from India - No person shall depart from, or attempt to depart from India unless he holds in this behalf a valid passport or travel document.

Explanation - For the purposes of this section, -

(a) "passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of

passports to which it belongs;

(b) 'travel document' includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed."

8. Departure from India is the point of time envisaged in Section 3. Unless there is departure or at least an attempt to depart from India, there is no question of invoking Section 3 of the Passports Act. It is nobody's case that appellant was trying to depart from India. On the contrary the prosecution case is that appellant had just entered the territory of India with Ext. P3-passport and Ext.P10 - visa. He obtained Ext.P3 - Pakistan passport describing himself as S.M. Irfan. But that is no concern under the Passports Act in force in India.

9. Shri Altaf Ahmad, learned Addl. Solicitor General contended that appellant could have applied for a passport in Pakistan only if he had showed himself as a citizen of Pakistan and in such a case he must be deemed to have ceased his citizenship of India. In support of his argument learned Addl. Solicitor General referred to Section 9 of the Citizenship Act, 1955.

10. It may be so and we do not think it necessary to advert to that aspect for considering whether he has contravened Section 3 of the Passports Act. By holding Ext.P3-passport, appellant has not committed any offence under Section 12 of the Passports Act. Hence the conviction of the appellant under the above count is unsustainable.

11. Shri Salman Khursheed, learned senior counsel assailed the conviction of the appellant under Section 5 of the TADAA from the two premise. First is that the evidence of the police officers that appellant was found in possession of the revolver is not corroborated by any independent witness. Second is that even if appellant was found in possession of the revolver he could have been convicted under the Arms Act for possession of a firearm without licence in which case the sentence could be reduced to the period he has already undergone.

12. Regarding the first point, it is true that evidence of PW-8 Sub Inspector of Police is not supported by any witness other than police personnel. It is now well settled that evidence of search or seizure made by the police will not become vitiated solely for the reason that the evidence is not supported by independent witness. PW-8 Sub Inspector of Police said that he, in fact, tried to get some person from the locality to remain present for witnessing the search but none obliged him to do so. PW-7 - a constable who assisted PW-8 in the search also said the same fact.

13. We have no reason to disbelieve the testimony of PW-8 and PW-7 regarding the factum of seizure of revolver loaded with live cartridges. The Forensic Sciences Laboratory, to which the said firearm and cartridges were sent for testing, sent the report after conducting necessary tests that the articles were in working condition.

14. On the second contention, three admitted factual features cannot be gainsaid. First is that New Delhi is a notified area as contemplated in Section 5 of the TADAA. Second is that the revolver and the cartridges seized from the appellant fall within the ambit of "arms and ammunitions" specified in Columns 2 and 3 of Category III of Schedule I to the Arms Rules, 1962. Third is that appellant had no licence or other authorisation for possessing them. Possession of such arms and ammunitions within the notified area attracts the offence under Section 5 of the TADAA.

15. The contention made is that when possession of such arms, without licence is punishable under

the Arms Act, the court shall not bypass Section 25 of the Arms Act in quest for a much more serious offence like Section 5 of the TADAA, particularly in view of Section 12(2) thereof.

16. The said contention cannot be accepted for two reasons. First is that possession of such arms would be punishable under Section 25 of the Arms Act without any reference to the area notified under Section 5 of the TADAA. Second is that, such possession shall be presumed to be for the purpose of perpetration of a terrorist or disruptive act. If the presumption is rebutted the accused cannot be convicted under Section 5 of the TADAA, though he may be convicted under Section 25 of the Arms Act. In other words, Section 5 of the TADAA is a more aggravated offence than Section 25 of the Arms Act.

17. In the above context reference to the decision of the Constitution Bench in *Sanjay Dutt v. State, 1994(5) SCC 410*, has to be made. The five- Judges Bench considered "the proper construction of Section 5 of the TADAA". In paragraph 25 of the judgment it has been observed thus :-

"The significance of unauthorised possession of any such arms and ammunition etc. in a notified area is that a statutory presumption arises that the weapon was meant to be used for a terrorist or disruptive act. This is so, because of the proneness of the area to terrorist and disruptive activities, the lethal and hazardous nature of the weapon and its unauthorised possession with this awareness, within a notified area. This statutory presumption is the essence of the third ingredient of the offence created by Section 5 of the TADA Act. The question now is about the nature of this statutory presumption."

18. While considering the nature and ambit of the presumption in TADAA the Constitution Bench made reference to Section 21 of the TADAA which speaks of presumption as to the offence under Section 3. The following observation made ♦ by the Bench is apposite in this context :

"On proof of possession alone and not also its use, the statutory presumption which arises is of the lesser offence under Section 5 and that too when the possession is unauthorised within notified area, which is more prone to terrorist or disruptive activities. The presumption arising of the commission of an offence under Section 3 by virtue of Section 21 is expressly made rebuttable and the accused can even then prove the non-existence of a fact essential to constitute an ingredient of the offence under Section 3. On the same principle, the statutory presumption arising of the lesser offence under Section 5 on proof of the fact of unauthorised possession in a notified area would be rebuttable presumption enabling the accused to prove that the weapon was not meant for use for any terrorist or disruptive act."

19. Hence, the offence is not merely that appellant possessed firearms which fall within the ambit of Schedule I to the Arms Rules, 1962, but that he possessed them within the notified area which raises a presumption that such possession was with the intention to use them for a terrorist or disruptive act. Appellant did not choose to rebut the said presumption, nor is there any material on record for such rebuttal. The corollary thereof is that appellant cannot escape from conviction under Section 5 of the TADAA.

20. In the result we partly allow this appeal by setting aside the conviction and sentence passed by the Designated Court on the appellant under Section 12 of the Passports Act, but confirm the conviction and sentence passed on him for the offence under Section 5 of the TADAA.

