

SUPREME COURT OF INDIA

Hirabhai Chhibabhai Tandel

Vs.

State of Gujarat

CrI.A.Nos.557-58 of 2004

(R. C. Lahoti, Ashok Bhan and D. M. Dharmadhikari JJ.)

30.04.2004

JUDGMENT

1. Leave granted.

2. In Special Case No. 2 of 2001, the learned Designated Judge has framed a charge against the appellant under sub-sections (3) and (4) of Section 3 of the *Terrorist and Disruptive Activities (Prevention) Act, 1987* (for short "the TADA Act") and under Section 212 of the Indian Penal Code. The principal accused is one Haji Haji Ismail against whom the challan has been filed. Though the accused is absconding and has not been apprehended and put up for trial so far, the appellant was impleaded by way of a supplementary challan filed by the police. The two provisions of the TADA Act under which the appellant has been charged read as under:

"3. Punishment for terrorist actt. - (1)-(2) * * *

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."
*

3. A perusal of the challan papers shows that there is no material available against the appellant based on which he could be charged under sub-section (3) Section 3 of the TADA Act. The only allegation made against the appellant is that the appellant harboured the principal accused Haji Haji Ismail on or about 12-4-2001.

4. It is submitted by the learned counsel for the appellant that the TADA Act stood repealed on 24-5-1995 and an act done after the repeal of the Act cannot be held punishable by reference to that Act. There is merit in the submission of the learned counsel for the appellant. The learned counsel for the State has in her opposition to the appeal and in her effort at supporting the impugned judgment of the Designated Court, carried us through the averments made in the charge-sheet as also to the contents of the confessional statement of the appellant. Nothing can be found out therein to hold the involvement of the appellant in any criminal activity punishable under the TADA Act and relatable to a date prior to its repeal i.e. during the period the Act was in force. The appellant cannot, therefore, be tried by the Designated Judge under the TADA Act.

5. The appeals are allowed. The charge framed by the learned Designated Judge against the appellant under Sections 3(3) and 3(4) of the TADA Act is directed to be quashed. However, we clarify that the appellant is not absolved of the liability for being proceeded against under any law under which his act may be punishable excepting under the TADA Act.