SUPREME COURT OF INDIA

Balbir Singh

Vs

State of Delhi

Appeal (Crl.) 844 of 2002

(Arijit Pasayat and P. P. Naolekar, JJ)

21.06.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment rendered by a learned Judge, Designated Court II, Delhi, in Sessions Case No.48 of 2001 holding that the proceedings can be legally continued against the appellant and took cognizance of offence punishable under Sections 3, 4, 5 and 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the 'TADA Act') and Sections 25 and 26 of the Arms Act, 1959 (in short the 'Arms Act').

2. The controversy lies within a very narrow compass and a brief reference to the factual aspects would suffice.

The appellant and one Paljit Kaur @ Richpal Kaur @ Pali wife of Paramjit Singh had allegedly committed offence punishable under Sections 3, 4, 5 and 6 of TADA Act and Sections 25 and 26 of the Arms Act. Charge sheet was filed on 20.8.1993. The allegations related to alleged commission of offence on 5th December, 1992. By amendment to TADA Act, Section 20-A(2) was introduced with effect from 22.5.1993 i.e. prior to filing of the charge sheet. Charges were framed on 16.12.1993. Bail was granted to the appellant on 6.5.1994. Subsequently, on expiry of eight years' currency period, the term of TADA Act expired on 23.5.1995. By order dated 19.4.1997 the Designated Court held that in absence of sanction of the Commissioner of Police as required under

sub- section (2) of Section 20-A of TADA Act, the proceedings were non est and the cognizance taken by the Court for offences under the TADA Act was bad in law.

3. The expression used by the concerned Court in the judgment dated 19.4.1997 was "acquittal of the accused persons for the want of sanction". Subsequently, pursuant to the order by the concerned Court goods seized were retained 3.2.1998. On 4.7.2001 sanction was accorded and the order in that regard was passed and the charge sheet was filed on 18.7.2001 and summons were issued on 2.3.2002 by the impugned order.

4. The Court over-ruled the objections raised by the appellant that the proceedings were non est as it virtually amounted to infraction of Section 300 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The Designated Court did not accept the plea and observed that though the expression "acquittal" was used, in essence it cannot be an order of acquittal on merits of the case and could only operate as an order of discharge.

5. In support of the appeal, learned counsel for the appellant submitted that the view expressed by the lower court is unsustainable. According to him, after a long passage of time and the expiry of currency of Statute itself the continuance of the proceedings would be sheer abuse of the process of the Court.

6. Learned counsel for the respondent-State supported the order of the lower court.

7. The position seems to be unexceptionable that the concerned Court by judgment dated 19.4.1997 could not have directed acquittal. In the absence of sanction the Court had no jurisdiction to proceed in the matter and take cognizance of the offence. But the order passed in that regard cannot lead to acquittal of the accused.

8. Section 20-A (2) of the Act reads as follows:

"No Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police."

9. Section 20-A(2) operate as a bar on taking cognizance of the offence.

10. The effect of such an order has been considered by Federal Court in Bas Deo Agarwala v. King Emperor Â 1945 AIR(FC) 16. The relevant portion of the judgment reads as under:

"That the prosecution launched without valid sanction is invalid and or that under the common law a plea of autrefois acquit or convict can only be raised where the first trial was before a court competent to pass a valid order of acquittal or conviction. Unless the earlier trial was a lawful one which might have resulted in a conviction, the accused was never in jeopardy."

11. The principles set out in Bas Deo Agarwala's case (supra) were followed in Falli Mulla Noor Bhoy v. The King Â 1949 AIR(PC) 264. The factual scenario in that case was that after framing of the charge the Magistrate acquitted the accused after coming to the conclusion that the sanction as required by law was not there and the trial was incompetent. It was held that the order of acquittal was without jurisdiction and could only operate as an order of discharge because the Magistrate in such a case ought to discharge the accused on the ground that he had no jurisdiction to try him.

12. This Court in Mohd. Safi v. State of West Bengal Â observed as follows:

"Where a Court comes to such a conclusion albeit erroneously it is difficult to appreciate how that court can absolve the person arraigned before it completely of the offence alleged against him. Where a person has done something which is made punishable by law he is liable to face a trial and this liability cannot come to an end merely because the court before which he was placed for trial forms an opinion that it has not jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. Where, therefore, a court says, though erroneously that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence."

So far as applicability of Section 300 (1) of the Code is concerned, essentially the conditions for invoking the bar are: (i) the Court had jurisdiction to take cognizance and try the accused and (ii) the Court has recorded an order of conviction or acquittal and such conviction/acquittal remains in force.

13. The question relating to delayed sanction needs to be noted in the background of what this Court observed in P. Ramachandra Rao v. State of Karnataka Â . In para 29 it was observed as follows:

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) Â 9 (as modified in Common Cause (II) Â 6 and Raj Deo Sharma (I) and (II) Â 1 and Â the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution Of India, 1950 and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and- fast rules or to be applied like a straitjacket formula. Their

applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (1) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in AR. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 Cr.P.C and Articles 226 and 227 of the Constitution Of India, 1950 can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19.9.2000 and 26.4.2001 in the abovesaid terms."

14. The impugned order passed by the Designated Court does not suffer from any infirmity to warrant interference. However, the trial Court is requested to dispose of the matter as early as practicable preferably within 6 months from the date of communication of this order.

15. The appeal is dismissed.