

**SUPREME COURT OF INDIA**

C.B.I.

Vs.

Abu Salem Ansari

CrI.A.No.328 of 2009

(K.G. Balakrishnan CJI. and P. Sathasivam JJ.)

06.02.2009

**ORDER**

1. Heard the learned Additional Solicitor General appearing for the CBI and also the learned counsel for the respondents.

2. Leave granted.

3. The first respondent is an accused in a case pending before the Designated Court in Bombay under TADA Act. It appears that the first respondent was absconding and was arrested in a foreign country. He was extradited and brought to India on 11.11.2005 and by that time the trial of the other accused was over. The prosecution wanted to rely on the evidence recorded by the Designated Court in the earlier trial conducted wherein the first respondent was not present as an accused. By the impugned order, the learned Judge, Designated Court, held that the prosecution may rely on the earlier evidence recorded in the earlier trial against the first respondent subject to establishment of existence of any of conditions precedent as described in second part of Section 299 of the *Code of Criminal Procedure* (Cr.P.C.). This order is challenged before us by the CBI.

4. Section 299 Cr.P.C. reads as under:-

“299. Record of evidence in absence of accused.-(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits on India.”

5. As regards the first respondent, sub-section (1) of Section 299 would apply as he, an accused person, was absconding, his case is already split up and has to undergo the trial. Obviously, the evidence adduced in the earlier trial cannot be used against the first respondent except as provided in sub-section (1) of Section 299 Cr.P.C. In the circumstances of the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused.

6. In the present case, sub-section (2) of Section 299 Cr.P.C. has no application. Therefore, we make it clear that the prosecution may rely on the earlier evidence recorded in the earlier trial against the first respondent subject to establishment of existence of any of the conditions precedent as described in first part of Section 299 Cr.P.C.

The appeal is disposed of accordingly.