SUPREME COURT OF INDIA

Ebha Arjun Jadeja

Vs.

State of Gujarat

Crl.A.No.1692 of 2009

(Deepak Gupta and Aniruddha Bose,JJ.,)

16.10.2019

JUDGMENT

Deepak Gupta,J.,

1. This appeal by the accused is directed against the order passed by the Designated TADA Court whereby the application filed by the accused that they should be discharged due to non- compliance of Section 20-A(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act") was dismissed.

2. Briefly stated the facts of the case are that appellant no.1/accused no. 1, Ebha Arjun Jadeja, was wanted in Crime No. II- 3/1994 registered against him under Section 25(1B)(a) and 27 of the Arms Act, 1959 and under Section 3 and 5 of TADA Act etc.

3. The prosecution version is that on 10.04.1995, when Police Inspector C.J. Singh along with some other police personnel was doing night round in Kutiyana and was trying to keep a secret watch over bootleggers, he received some information that appellant no. 1, who was absconding in Crime No. II-3/1994, was coming to his village in a motor vehicle. The police inspector arranged two witnesses and after preparing preliminary panchnama, left Kutiyana in a Government jeep at about 1.00 to1.15 a.m. They set up a naka and at about 2.45 a.m., one motor vehicle came from the side of village Garej. The vehicle was asked to stop and it stopped. Accused no. 1 was found sitting on the driver's seat. The police cordoned the motor vehicle in which two other persons (appellant nos.2 and 3) were also sitting. All these three persons were asked to get down and disclose their identities. On making personal search of these three persons, following recoveries were made:

S. No.	Name of the accused	Recoveries
1.	Ebha Arjun Jadeja	1. One foreign made 9mm beretta pistol and three live cartridges and one fired cartridge, valued at Rs.1,50,150/-. 2. One 32 bore foreign made revolver and 5 live cartridges, valued at Rs. 50,250/-. 3. One fired cartridge
2.	Bachchu Bhikha Mer	One 315 bore country made tamancha, valued at Rs. 3,000/-.
3.	Keshu Chana Mer	One 12 bore country made tamancha, valued at Rs. 2,000/-.

4. The three accused persons could not produce any licence and the aforesaid arms were seized. Though the first information report (FIR) was recorded under the Arms Act, in the very same FIR, the officer also recorded as follows:

> "One 9 MM semi automatic prohibited foreign made pistol and its cartridges loaded in it and Japan made revolver and its cartridges in a loaded condition were found from Mer Ebha Arjan. Out of which, it becomes from the smell coming from the barrel of the pistol and box that the same is used before some time for firing. From the two persons with Jadeja Ebha Arjan, namely, Mer Bachu Bhima and Mer Keshu Chana also, two country made tamanchas are found and Mer Ebha Arjan is a gang leader of gundas in Porbandar area and in that circumstances, the persons as above are found in an Ambassador car no.GJ-M-8905 and it appears that they are going to commit any terrorist activity and so all the three persons were legally arrested for the offence under Sections 25(1)(Ba), 27 of the Arms Act and Section 135 of the Bombay Police Act and motor car Ambassador no.GJM-8905 valuing at Rs.100000/- was also seized in this case. Hence, it is my complaint against them for the offence under Sections 25(1)(BA), 27 of the Arms Act and Section 135 of the Bombay Police Act. My witnesses are panchas with me and the police personnel and others who are found during the investigation. The above persons were found in possession of weapons and cartridges from out of the weapons and explosives mentioned in Arms Rules 1962 Schedule-1 Class-1 and Class-3(A) Column no.2

and 3 in public area and hence, as the offence under Section 5 of TADA Act is also made out and so, arrangement is made for obtaining the sanction of the District Superintendent of Police, Porbandar under Section 20(A)(1) of the Act, by making a report along with copies of the panchnama and F.I.R. and identification sheets of the accused."

5. Thereafter on the same day i.e. 10.04.1995, the District Superintendent of Police granted sanction to add Section 5 of TADA Act to the offences already registered. The grievance of the appellants is that in terms of Section 20-A(1) of TADA Act, no information about commission of offence under the Act could have been recorded without approval of the District Superintendent of Police. Therefore, it is contended that the entire initiation of the action wherein the Crime No.II.28/1995 was recorded without sanction of the District Superintendent of Police, vitiates the entire proceedings in so far as they have been initiated under TADA Act.

6. Section 20-A of TADA Act reads as under:

> "20-A. Cognizance of offence.—(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police. (2) 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."
>
> The language of the Section is mandatory in nature. It starts with a non-obstante clause. It forbids the recording of information about the commission of offence under TADA Act by the police without prior approval of the District Superintendent of Police.

7. The provisions of Section 20-A(1) are mandatory. This issue is no longer res integra. In *Rangku Dutta @ Ranjan Kumar Dutta v. State of Assam*[1], this Court held that the provision, which was couched in negative terms is mandatory in nature. Relevant portion of the judgment reads as under:

> "18. It is obvious that Section 20-A(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression "No" after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh's Principles of Statutory Interpretation, 12th Edn...."

8. Learned counsel for the appellants also placed reliance on the judgment of this Court in *Anirudhsinhji Karansinhji Jadeja & Anr. v. State of Gujarat*[2]. In this case, the case was registered against the accused initially under the Arms Act. The District Superintendent of Police, instead of giving approval for recording information, made a report to the

Additional Chief Secretary, seeking permission to proceed under TADA Act. Thereafter, the Additional Chief Secretary, Home Department, gave sanction to proceed under TADA Act. Dealing with the issue whether Section 20-A(1) was violated and whether the prosecution was, therefore, vitiated, this Court has observed as under:

> "11. The case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all."

9. Similar matter came up before this Court in *Ashrafkhan & Anr. v. State of Gujarat*[3] . Dealing with the issue of the consequences of non-compliance of Section 20-A(1) of TADA Act, this Court held as follows:

> 27. It is worth mentioning here that TADA, as originally enacted, did not contain this provision and it has been inserted by Section 9 of the Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993 (43 of 1993). From a plain reading of the aforesaid provision it is evident that no information about the commission of an offence shall be recorded by the police without the prior approval of the District Superintendent of Police. The legislature, by using the negative word in Section 20-A(1) of TADA, had made its intention clear. The scheme of TADA is different than that of ordinary criminal statutes and, therefore, its provisions have to be strictly construed. Negative words can rarely be held directory. The plain, ordinary grammatical meaning affords the best guide to ascertain the intention of the legislature. Other methods to understand the meaning of the statute is resorted to if the language is ambiguous or leads to absurd result. No such situation exists here. In the face of it, the requirement of prior approval by the District Superintendent of Police, on principle, cannot be said to be directory in nature."
>
> Thereafter, reference was made to the various judgments of this Court and it was held as under:
>
> "37. The plea of the State is that the Commissioner of Police having granted the sanction under Section 20-A(2) of TADA, the conviction of the accused cannot be held to be bad only on the ground of absence of approval under Section 20-A(1) by the Deputy Commissioner. As observed earlier, the provisions of TADA are stringent and consequences are serious and in order to prevent persecution, the

legislature in its wisdom had given various safeguards at different stages. It has mandated that no information about the commission of an offence under TADA shall be recorded by the police without the prior approval of the District Superintendent of Police. Not only this, further safeguard has been provided and restriction has been put on the court not to take cognizance of any offence without the previous sanction of the Inspector General of Police or as the case may be, the Commissioner of Police. Both operate in different and distinct stages and, therefore, for successful prosecution both the requirements have to be complied with. We have not come across any principle nor are we inclined to lay down that in a case in which different safeguards have been provided at different stages, the adherence to the last safeguard would only be relevant and breach of other safeguards shall have no bearing on the trial. Therefore, we reject the contention of the State that the accused cannot assail their conviction on the ground of absence of approval under Section 20-A(1) of TADA by the Deputy Commissioner, when the Commissioner of Police had granted sanction under Section 20-A(2) of TADA." The Court further held that non-compliance of Section 20-A was not a curable defect and could not be cured in terms of Section 465 of Code of Criminal Procedure, 1973 (CrPC).

10. Thereafter in *Hussein Ghadially & Ors. v. State of Gujarat*[4], this Court dealing with Section 20-A of TADA Act held as follows:

> "21. A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the police without the prior approval of the District Superintendent of Police "
>
> Thereafter, reference was made to the various judgments of this Court and it was held as under:
>
> "29. The upshot of the above discussion, therefore, is that the requirement of a mandatory statutory provision having been violated, the trial and conviction of the petitioners for offences under TADA must be held to have been vitiated on that account "

11. The law is therefore, clear that if Section 20-A(1) of TADA Act is not complied with, then it vitiates the entire proceedings.

12. On behalf of the respondents, it is urged that in terms of Section 154(1) of CrPC, an FIR has to be lodged whenever information of commission of a cognizable offence is received. It is also urged that Section 20-A(1) of TADA Act bars the recording of information but it does not specifically bar registration of the FIR under the Arms Act. It is also urged that the District Superintendent of Police has to take a decision and, therefore, some information has to be placed before him and then only he can decide whether the sanction should be granted or not. As far as the last submission is concerned, there can be no quarrel with respect to the same. Obviously, information will have to be given to the

District Superintendent of Police but this information can be in the nature of a communication specifically addressed to the District Superintendent of Police and not in the nature of information being recorded in the Register or Book meant for recording of information under Section 154 of CrPC. We may refer to the opening portion of Section 154 of CrPC, which reads as under:

> "154. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:
> xxx xxx xxx"

13. The word 'FIR' is not used in Section 154 of CrPC, though it is now commonly used with regard to information recorded under Section 154. Therefore, whenever information relating to commission of a cognizable offence is given orally then the officer- in-charge of the police station is bound to record that information in a book to be kept for such offences in such form as the State Government may prescribe in this behalf. What is prohibited under Section 20-A(1) of TADA Act is the recording of information. We can presume that the Legislature while introducing Section 20-A(1) in TADA Act was also aware of the provisions of Section 154 of CrPC. Therefore, the clear-cut intention was that no information of commission of an offence under TADA Act would be recorded by the police under Section 154 of CrPC without sanction of the competent authority. The reason why Section 20-A(1) was introduced into TADA Act in the year 1993 by amendment was that because the provisions of TADA Act were very stringent, the Legislature felt that a senior official should look into the matter to ensure that an offence under TADA is made out and then grant sanction.

14. The bar under Section 20-A(1) of TADA Act applies to information recorded under Section 154 of CrPC. This bar will not apply to a rukka or a communication sent by the police official to the District Superintendent of Police seeking his sanction. Otherwise, there could be no communication seeking sanction, which could not have been the purpose of TADA Act.

15. Each case is to be decided on its own facts. The police official, not being the District Superintendent of Police, may receive information of commission of an offence and may reach the scene of a crime. He can record the information on the spot and then send a rukka to the police station for recording of FIR. There may be cases of serious offences like murder, rape, offences under Narcotic Drugs and Psychotropic Substances Act, 1985, Protection of Children from Sexual Offences (POCSO) Act, 2012 etc. where any delay in investigation is fatal. In these cases, the police officer is entitled to record the information some of which may indicate an offence under TADA Act, also because non-recording of the information with regard to the main offence may delay the investigation and hamper

proper investigation in the matter. In such cases, while recording the information and recording the FIR, for the offences falling under TADA Act, the police officials concerned can approach the District Superintendent of Police for sanction under Section 20-A(1) of TADA Act. The investigation in serious cases of murder, rape, smuggling, narcotics, POCSO Act etc. cannot be delayed only because TADA Act is also involved.

16. At the same time, where the information basically discloses an offence under TADA Act and the other offence is more in the nature of an ancillary offence then the information cannot be recorded without complying with the provisions of Section 20-A(1) of TADA Act. This will have to be decided in the facts of each case. In the case in hand, the only information recorded which constitutes an offence is the recovery of the arms. The police officials must have known that the area is a notified area under TADA Act and, therefore, carrying such arms in a notified area is itself an offence under TADA Act. It is true that this may be an offence under the Arms Act also but the basic material for constituting an offence both under the Arms Act and TADA Act is identical i.e. recovery of prohibited arms in a notified area under TADA Act. The evidence to convict the accused for crimes under the Arms Act and TADA Act is also the same. There are no other offences of rape, murder etc. in this case. Therefore, as far as the present case is concerned, non-compliance of Section 20-A(1) of TADA Act is fatal and we have no other option but to discharge the appellants in so far as the offence under TADA Act is concerned. We make it clear that they can be proceeded against under the provisions of the Arms Act.

17. As pointed out by us above, the situation may be different where, to give an example, the police official finds a dead body, sees that a murder has taken place, apprehends a person, who is running away after committing the murder and from that person a prohibited arm is recovered in a notified area. In such a situation, the main offence is the offence of murder and the offence of carrying a prohibited weapon in a notified area is the secondary offence under TADA Act. Here, the police official can record the information and arrest the person for committing an offence under Indian Penal Code,1860 but before proceeding under TADA Act he will have to take sanction under Section 20- A(1) of TADA Act.

18. In view of the above, the appeal is allowed, the order of the Designated TADA Court is set aside and the appellants are discharged from the offences under TADA Act but they may be proceeded against under other provisions of law, if required. Pending application(s), if any, stand(s) disposed of.

Judgment Referred.

[1]*(2011) 6 SCC 0358*
[2]*(1995) 5 SCC 0302*
[3]*(2012) 11 SCC 0606*
[4]*(2014) 8 SCC 0425*