

Bijender Kumar Vs. the State of Haryana

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Court : Punjab and Haryana

Decided On : Mar-11-1993

Reported in : 1993CriLJ2210

Judge : A.S. Nehra, J.

Acts : Terrorist and Disruptive Activities (Prevention) Act, 1987 - Sections 2, 3, 3(1), 4, 4(2), 5 and 6; [Arms Act, 1959](#) - Sections 25; Explosive Act, 1884; [Explosive Substances Act, 1908](#); [Inflammable Substances Act, 1952](#); Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Arms Rules, 1962

Appeal No. : Criminal Misc. No. 10614-M of 1992

Appellant : Bijender Kumar

Respondent : The State of Haryana

Advocate for Def. : K.S. Godara, AAG

Advocate for Pet/Ap. : Gulab Singh, Adv.

Judgement :

A.S. Nehra, J.

1. This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 12-10-1992 by which a charge

under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act 1987 (hereinafter referred to as 'the Act') has been framed by the Designated Court.

2. The prosecution story is as under:--

Sub-Inspector Rajinder Kumar along with ASI Babu Ram and three other constables were present on the Canal Bank in connection with the investigation of case FIR No. 72 of 1992, when the petitioner was found there. His search was carried out and, from the right pocket of his pant, one pistol, 12 bore country made, was found loaded. It was unloaded and one 12 bore cartridge were taken out. Since the petitioner had kept the pistol and the cartridges without licence in his possession, therefore, a case under Section 25 of the [Arms Act, 1959](#), was registered on 4-6-1992.

3. Mr. Gulab Singh Advocate, learned counsel for the petitioner, has contended that the Designated Court has erred in law in framing the charge under Section 5 of the Act against the petitioner; that the petitioner was not involved in the commission of terrorist or disruptive activities; that merely because a firearm has been recovered from the petitioner; it cannot be said that he had committed any offence under Section 5 of the Act without any further material to implicate the petitioner in such offence; and that, taking the facts and they are, the introduction of the offence under Section 5 of the Act was uncalled for and the case has to be tried under Section 25 of the Arms Act by the ordinary Court.

4. Notice of this petition was given and reply has been filed on behalf of the Station House Officer, Police Station, Julana. It has been submitted in the reply that, in order to attract the provisions of Section 5 of the Act, mere possession of firearms, which are specified in Category III(a) of Schedule I of the Arms Rules, 1962, is sufficient. In the reply, the Station House Officer, Police Station, Julana, has not stated that the weapon recovered from the petitioner was used by him in terrorist/disruptive activities.

5. Before examining the contentions advanced, it would be appropriate to make reference to the salient provisions of the Act.

6. The legislation was enacted to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. Section 2(1)(d) defines the expression 'disruptive activity' to have the meaning assigned to it in Section 4. Section 2(1)(h) of the Act defines the expression 'terrorist act' to have the meaning assigned to it under Section 3(1) of the Act. The relevant part of Section 3(1) provides that whoever with intent (i) to overawe the Government as by law established or (ii) to strike terror in the people or any section of the people or (iii) to alienate any section of the people or (iv) to adversely affect the harmony amongst different sections of the people, does any act or thing by using any of the lethal weapons mentioned therein in such a manner as to cause death of or injuries to any person or persons, commits a terrorist act. Section 4(2) defines a disruptive activity to mean any action taken in whatever manner (i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India, or (ii) which is intended to bring about or supports any claim, whether directly or indirectly, of the secession of any part of India or the secession of any part of India from the Union.

7. Section 2(1)(f) of the Act defines the expression 'notified area' and which means such area as the State Government may, by notification in the Official Gazette, specify. The expression 'notified area' finds place only in Section 5 of the Act, and Section 5 reads as under:--

Whether any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, 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.

8. Section 5, inter alia, provides that where any person is found to be in possession of unauthorised arms and ammunition specified in the section in a notified area, then such a person is liable to be punished with imprisonment for life

and/or also to be liable to fine and the minimum punishment shall not be for a term less than five years. The three ingredients for offence under Section 5 of the Act are:--

(a) possession of specified arms and ammunition;

(b) such possession is unauthorized; and (c) person with possession of arms is found in a notified area.

Section 6 of the Act provides that even if any person with intent to aid any terrorist or disruptionist, contravenes any provision of or any rule made under the [Arms Act, 1959](#), the Explosive Act, 1884, the [Explosive Substances Act, 1908](#) or the [Inflammable Substances Act, 1952](#), then such person shall be liable to punishment which may extend to imprisonment for life but which shall not be for a term less than five years and also liable to fine. Section 3 to Section 6 are covered by Part II of the Act which deals with 'punishments for and measures for coping with terrorist and disruptive activities'.

9. The issue arises for determination as it was contended on behalf of the petitioner that invocation of Section 5 by the Investigating Officer was mala fide. It was claimed that to attract the provisions of Section 5 of the Act, it is not sufficient that a person is found with unauthorised arms in a notified area, but the prosecution must show nexus between the possession of such arms to the terrorist act defined under Section 3(1) of the Act or to the disruptive activities defined under Section 4(2) of the Act. In the absence of any nexus, claims Shri Gulab Singh that invocation of Section 5 is totally in unjustified.

10. Mr. K. S. Godara, Assistant Advocate-General, Haryana, on the other hand, submitted that Section 5 of the Act is attracted as soon as the three ingredients of finding person in possession of arms, within the notified area, and such possession being unauthorized are satisfied and Section 5 of the Act is applicable de hors the provisions of Section 3 or Section 4 of the Act. It was urged that once an area is declared as a notified area, then every person is put on alert that possession of an unauthorized arm in such notified area will be viewed with seriousness and, though such possession of unauthorized arm is liable to

prosecution under the ordinary law, the possession would be liable to prosecution under Section 5 of the Act.

11. It is not possible to accede to the submission that provisions of Section 5 of the Act must be read independently and de hors of Section 3 and Section 4 of the Act. Sections 3, 4, 5 and 6 set out an integrated scheme for measures for coping with terrorist and disruptive activities and Section 5 makes possession of unauthorised arm in a notified area an offence by itself punishable with imprisonment for life, the minimum not being for a term less than five years. The punishment prescribed is certainly heavier than the one prescribed under the ordinary law. It is not correct to suggest that mere possession of unauthorised arm in a notified area is sufficient to bring home the charge under Section 5 of the Act and such possession may not have any relation or nexus to the terrorist act or disruptive activity as described under Sections 3 and 4 of the Act. The Legislature provided for a specific offence and enhanced punishment only because an area is notified on the basis that the terrorist acts or disruptive activities in such area are undertaken on a large scale or likely to be undertaken on a large scale. The area cannot be declared a notified area by the State Government, as surely that could not have been in contemplation of the Parliament, even if there is not a trace of disruptive activity or commission of terrorist act in such area. The occasion to specify any area as a notified area arises only when the Government is satisfied that terrorist acts or disruptive activities are prevalent in that area. Once this aspect is borne in mind, then it is clear that mere possession of unauthorised arm in the notified area is not sufficient to invoke the provisions of Section 5 of the Act, but Section 5 of the Act would be attracted, provided such possession has some bearing to the terrorist acts or the disruptive activities. It is not necessary that the person in possession of unauthorised arm in notified area shall personally be involved in terrorist acts or disruptive activities, but if there is any material to indicate that unauthorised arm is likely to be permitted to be used for terrorist acts or disruptive activities, then section 5 of the Act can be invoked.

12. It is necessary for the Designated Court to find out whether any material is available with the Investigating Officer to prima facie suggest that the possession of the unauthorised arms in any notified area was for indulging in terrorist acts or

disruptive activities as set out in Sections 3 and 4 of the Act and, in the absence thereof, the person need not be prosecuted under Section 5 of the Act but only in accordance with the provisions of the ordinary law.

13. During investigation, nothing was found out against the petitioner that he was indulging in terrorist acts or disruptive activities, as set out in Sections 3 and 4 of the I Act.

14. Taking the facts as they are, the introduction of the offence under Section 5 of the Act was uncalled for, and the case is to be tried under Section 25 of the Arms Act by the ordinary law. That being the position, the charge framed under Section 5 of the Act will stand quashed and the case would be tried by by the ordinary Court under Section 25 of the Arms Act. During the pendency of the trial, the petitioner is granted bail to the satisfaction of Chief Judicial Magistrate, Jind.

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