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State of Rajasthan Vs. Mohinuddin Jamal Alvi and Anr.

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Court : Supreme Court of India

Decided On : May-04-2016

Judge : A.K. Sikri and R.K. Agrawal

Appellant : State of Rajasthan

Respondent : Mohinuddin Jamal Alvi and Anr.

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO(S). 2464-2466/2014 STATE OF RAJASTHAN APPELLANT(S) VERSUS MOHINUDDIN JAMAL ALVI & ANR. RESPONDENT(S) WITH CRIMINAL APPEAL NOs. 464-466/2013

JUDGMENT

A.K. SIKRI,J.

All these appeals arise out of a common judgment dated 24.04.2012 rendered by the Designated Court for Rajasthan at Ajmer in TADA Special Case Nos. 1, 2 & 3 of 1999. Four accused persons were arrayed and prosecuted by the prosecution under Sections 3(2)(ii), 3(3) and 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987(hereinafter referred to as TADA Act and Section 4A of the Explosive Substances Act,1908. The TADA Court has acquitted two accused, namely, M. Jamal Alvi and Habib Ahmed. Against their acquittal, State of

Rajasthan has filed appeals which are registered as Criminal Appeal Nos. 2464-66 of 2014. Other two accused, namely, Abre Rehmat Ansari @ Qari and Dr. Mohd. Jalees Ansari, have been convicted by the TADA Court and challenging that conviction, these persons have filed Criminal Appeal Nos. 464-466 of 2013. It is for this reason, we have heard all these appeals together which are being disposed of by this common judgment. Mr. R.K. Dash, learned senior counsel, appearing for the convicted accused persons submitted at the outset that he would not be going into the merits of the case because of the reason that the prosecution has to fail due to non-compliance of the mandatory requirements of Section 20A of the TADA Act. For this reason, we are eschewing any discussion on the merits of the case. Section 20A deals with the cognizance of offense that has to be taken under TADA Act and 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.

As per the aforesaid Section, no information about the commission of offense under TADA is to be recorded by the police without the prior approval of District Superintendent of Police. The specific authority which is named under sub-Section (1) of Section 20A is District Superintendent of Police. In the present case, it is on record that the approval that was taken was of Additional Director General of Police Mr. Shyam Partap Singh Rathore. The TADA Court has treated the said approval as valid because of the reason that approval is given by an authority which is higher than the District Superintendent of Police. The question, therefore, is as to whether it is only District Superintendent of Police whose approval will meet the requirements of law or it can be given by an Officer higher in rank. This question is no more res integra and is settled by a series of judgments of this Court. It is not necessary to give account of all those judgments as in the latest judgment rendered by this Court in Hussein Ghadially @ M.H.G.A.Shaikh & Ors. vs. State of Gujarat (2014) 8 SCC425 all the previous precedents are taken note of and on that basis, this Court has reiterated the position in law that even an authority higher in rank would not be competent to give the approval as required

under sub- Section(1)of Section 21A of the TADA Act. The same has been interpreted in the said judgment in the following manner:

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. The question is whether the power of approval vested in the District Superintendent of Police could be exercised by either the Government or the Additional Police Commissioner, Surat in the instant case. Our answer to that question is in the negative. The reasons are not far to seek:

21. 1 We say so firstly because the statute vests the grant approval in an authority specifically designated for the purpose. That being so, no one except the authority so designated, can exercise that power. Permitting exercise of the power by any other authority whether superior or inferior to the authority designated by the Statute will have the effect of re- writing the provision and defeating the legislative purpose behind the same - a course that is legally impermissible. In Joint Action Committee of Air Line Pilots Association of India V. Director General of Civil Aviation (2011) 5 SCC435 this Court declared that even senior officials cannot provide any guidelines or direction to the authority under the statute to act in a particular manner. 21.2. Secondly, because exercise of the power vested in the District Superintendent of Police under Section 20-A (1) would involve application of mind by the officer concerned to the material placed before him on the basis whereof, alone a decision whether or not information regarding commission of an offence under TADA should be recorded can be taken. Exercise of the power granting or refusing approval under Section 20-A (1) in its very nature casts a duty upon the officer concerned to evaluate the information and determine having regard to all attendant circumstances whether or not a case for invoking the provisions of TADA is made out. Exercise of that power by anyone other than the designated authority viz. the District Superintendent of Police would amount to such other authority clutching at the jurisdiction of the designated officer, no matter such officer or authority purporting to exercise that power is superior in rank and position to the officer authorised by law to take the decision. 21.3. Thirdly, because

if the Statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in Taylor v. Taylor (1875)LR1ChD426and adopted later by the Judicial Committee in Nazir Ahmed v. King Emperor AIR 1936 PC253and by this Court in a series of judgments including those in Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh AIR 1954 SC322 State of Uttar Pradesh v. Singhara Singh AIR 1964 SC358 Chandra Kishore Jha v. Mahavir Prasad 1999 (8) SCC266 Dhananjaya Reddy v. State of Karnataka 2001 (4) SCC9and Gujarat Urja Vikas Nigam Ltd. V. Essar Power Ltd. 2008 (4) SCC755 The principle stated in the above decisions applies to the cases at hand not because there is any specific procedure that is prescribed by the Statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such approval might as well not have been enacted.

In arriving at the aforesaid conclusion, the Court also referred to and relied upon the three Judge Bench decision of this Court in Anirudhsinhji Karansinhji Jadeja & Anr. Vs State of Gujarat (1995) 5 SCC302 in which the position in law was stated in the following manner:

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 authoritys 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.

Learned counsel appearing for the State of Rajasthan tried to argue that the Division Bench in the aforesaid judgment in Hussein Ghadially @M.H.G.A.Shaikh & Ors. (Supra) did not interpret the decision rendered in Anirudhsinhji Karansinhji Jadeja & Anr. (Supra) correctly. As according to him, in Anirudhsinhji Karansinhji Jadeja & Anr. (Supra), this Court had given one more reason for quashing the TADA proceedings which is contained in para 15 of the said judgment, as in the said para, the Court noted that the State Government had given sanction without even discussing the matter with the Investigating Officer and without assessing the situation independently which showed lack of proper and due application of mind of the State Government by giving sanction/consent. His submission predicated on para 15 of the said judgment that the prosecution would be treated as bad in law only if there was a default on the part of the prosecutor on both the aspects, namely, only when violation of sub-Section(1) of Section 20A as well as grant of prior approval by the District Superintendent of Police is not there and also when the State Government while giving sanction/consent has not applied its mind independently. We do not agree with the contention of the learned counsel for the State. From the reading of the judgment in Anirudhsinhji Karansinhji Jadeja & Anr. (Supra), it becomes clear that this Court had given the aforesaid two reasons while holding that the trial against the accused persons in the said case under TADA was vitiated. However, that does not mean that both the reasons have to be satisfied. Even both are independent of each other and even if one violation is found that would be sufficient to upset the trial. That is what this Court did in Hussein Ghadially @ M.H.G.A.Shaikh & Ors. (Supra). From the aforesaid it becomes clear that since the prior approval of the District Superintendent of Police was not taken in the instant case, the trial got vitiated on this ground itself. The appeals filed by the convict persons being Criminal Appeal Nos. 464-466 of 2013 are allowed setting aside their conviction. The other appeals which are preferred by the State being Criminal Appeal Nos. 2464-2466 of 2014 are dismissed. The two convicts, namely, Abre Rehmat Ansari @ Qari and Dr. Mohd. Jalees Ansari shall be released forthwith, if they are not required in any other case. .....J.

[A.K. SIKRI]. .....J.

[R.K.AGRAWAL]. NEW DELHI; MAY04 2016.

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