

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1096-1099 OF 2008

THE STATE OF GUJARAT

APPELLANT(S)

VERSUS

RAJAK ISHAK SANGHAR & ORS. ETC.

RESPONDENT(S)

O R D E R

1. These appeals are statutory appeals filed by the appellant under Section 19 of The Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred as the "TADA Act") against the judgment dated 05.06.2007 of the designated TADA Court at Jamnagar, Gujarat, which has acquitted the respondents of all the charges framed under the provisions of TADA Act as well as under the Arms Act, 1959 (hereinafter referred as the "Arms Act").

2. The brief facts of the case are that on 08.04.1993 a vessel *Sahe-Al-Alam BDI No.813* was intercepted by the Custom Authorities. Fifteen accused persons were arrested and illegal arms and ammunition which were allegedly being carried by them seized. CR No. II 60/93 under Sections 25(1)B, 25(1A), 25(1AA) of the Arms Act was registered against them at P.S. Jamnagar City B Div.

3. Subsequently, the Investigating Officer moved an application before the Chief Judicial Magistrate, Jamnagar for adding Sections 3, 4 and 5 of TADA Act in the aforesaid FIR. This application dated 17.07.1993, *inter alia*, reads as under:-

"Respectfully submitted by I/c. Police Inspector of Jamnagar City B Div. Police station with reference to the subject noted above that-

Shri Navinchandra Chhaganlal Mehta of Jamnagar of Jamnagar Custom Division. Custom Inspector has filed complaint and offence was registered vide Jam. City Div, B Div. Police Stn. IInd CR No. 60/93 u/s. 25(1), B,D,F, G of Arms act on 12-1-93 at about 22-10 hrs.

The brief facts of this case is such that complainant of this case and other witnesses has searched the vessel Sahe al Alam BDI 813 on 8-4-93 in presence of panch at Jamnagar Nava Bunder and from there including Rajak Ishak Sanghar Tandel of Salaya, 15 persons were there and in presence of panch that vessal was searched and one plastic Theli was foundout and on checking the said theli one carbine automatic foreign made gun valued Rs. 100000/- and 15 + 2 in all 17 live cartridges with magzine valued of Rs. 375/- were foundout and they were attached in the presence of panch by the complainant and during that Khalasi Ikbal Junus Sanghar of Salaya ran away and/against remaining including of Rajak Ishak Sanghar of Salaya in all 14 accused, complaint was filed.

It has come to know that accused has brought the weapon from the foreign with and for what reason and looking to the weapon this weapon was brought for the purpose of commission of offence and at present in the country there is Terror is spread and accused wereinvolved in the terrorist activities and looking to all issues it is requested to add sec. 3,4,5 of the TADA Act in the FIR of this offence which may please be noted."

4. Subsequently, the Investigating Officer filed another application before the District Superintendent of Police on 05.08.1993, wherein he stated as under:-

"Respectfully submitted by Incharge Police inspector city B Div. Police stn. Jamnagar that-
Offence was registered on 12-4-93 vide Jamnagar city B Div. II CR No.60/93 u/s. 25(1), B,D,F,G, of Arms Act.

In this case complainant shri Navinchandra Chhaganlal Mehta Custom inspector and his staff members has on 8-4-93 checked vessal Sahe Al Alam BDI No. 813 and from that vessal one foreign made carbine automatic gun without licence valued of Rs. 100000/- and 17 cartridges were found out and including of tandel of vessal Rajak Ishak Sanghar in all 14 persons were arrest and one Khalasi of Salaya Ikbal Junus Sanghar during the inquiry found ran away and against above all persons offence vide above number was registered. In this case including of accused Rajak Ishak all 14 accused were arrested on 16-4-93 at about 17-0 hrs. after getting transfer warrant and during the time limit were forwarded and committed to the court custody and remand was sought for and the said application for remand was posted for hearing on 22-4-93 and on 22-4-93 from 12-0 hrs. to 24-4-93 upto 12-0 hrs. remand was granted and during that on doing interrogation of all the accused no any other further details were came to know and hence on completion of time of remand accused were committed to the judicial custody and they are at present in the Jail.

In this case accused has brought foreign made automatic carbine gun from abroad from Dubai in this vessel illegally and to keep and brought such dangerous weapon must not be other but except to commit the offence and in the present case at present in the country there is Terrorism has spread and in this connection it was their intention to supply such firearm and under that circumstances Sections 3,4,5 of the TADA Act were added against the accused and for that necessary permission and sanction may be given after doing proper procedure which may please be noted."

5. On the same day i.e. 05.08.1993, the District Superintendent of Police (DSP) gave a formal sanction which reads as under:-

"With reference to subject noted above,

it is to be stated that, on the basis of your report I felt that in CR No.II 60/93 of City B Div. Police stn., it is necessary to apply sec. of TADA and hence as per the authority conferred upon me u/s. 20(A) 1 of the TADA, I hereby accord sanctioned to apply sec. of TADA in offence registered at CR No.II 60/93 of City B Div. Police stn.,"

6. It is true that prior to the cognizance taken by the Court the sanction was given by an authorised Police Officer under Section 20-A(2) of TADA Act i.e. DSP and Chief Police Officer, Gujarat State, Ahmedabad. The designated Court, however, considered it a violation under Section 20-A of TADA Act, which 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 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."

Admittedly no sanction was taken from the District Superintendent of Police when the case under TADA Act was recorded by the Investigating Officer, which is clear from the averments which have been made above. In fact, when the Investigating Officer sought the second sanction under sub-Section 2 of Section 20-A of TADA Act, he admitted the fact that he has already added provisions of TADA Act for the crime allegedly committed on 08.04.1993. It is for this reason that the designated Court at Jamnagar has given a finding that there was a clear violation of mandatory provisions contained under Section 20-A of TADA Act and the matter could not have proceeded at all. We are in total agreement with these findings.

7. The second leg of the argument is that, notwithstanding, the fact that the case under TADA Act could not have proceeded without a proper sanction, yet the case under the Arms Act can proceed and it was wrong on part of the designated Court at Jamnagar, (which had powers to proceed under the Arms Act), to have set aside the entire proceedings.

8. We have gone through the impugned judgement dated 05.06.2007 of the designated Court at Jamnagar. A clear finding has been recorded that all that was recovered from the vessel viz, Sahe-Al-

Alam BDI No.813 by the Custom Authorities was one Carbine gun which was either automatic or semi-automatic with 17 live cartridges.

9. It is not the prosecution's case that the Carbine was fully loaded at the time when it was recovered. The memo of recovery for the weapon shows that it was a Carbine and then it says 17 live cartridges were recovered separately. As such, what the prosecution failed to do and there is no report to show that the carbine was in working condition and it is for this reason that the designated Court refused to go further with the matter and set aside the proceedings *in toto*.

10. The learned counsel for the appellant would cite *Kashmira Singh v. State of Punjab, (1999) 1 SCC 130*, which states that even when there was no such a report of an Arms Expert, the Court can still take cognizance of the matter if the arms which have been recovered were fully loaded. But in the facts of the present case, this is also of no help to the appellant as there is a categorical finding of the designated Court at Jamnagar that the gun which was recovered was not loaded.

11. Reference can also be made to *Jaspal Singh v. State of Punjab, (1998) 7 SCC 289* where this Court held that the failure of the prosecution in filing a report of the Arms Expert, showing that the firearms recovered were in a working condition, is fatal. This Court held as under:

2. Admittedly, no evidence was led by the prosecution to prove that the gun was in working condition and that the cartridges which were found from the person of the appellant were live cartridges. Neither ASI Balbir Singh had stated so

nor was any report from an expert obtained to establish that the gun was in working condition and that five cartridges were live. What was found in the gun were two empties and not live cartridges and, therefore, it was not proper to presume that it was in working condition. In the absence of any evidence to that effect, the conviction of the appellant under both these aforesaid sections cannot be upheld.

12. Moreover, this Court in *State of Gujarat v. Anwar Osman Sumbhaniya*, (2019) 18 SCC 524 held as under:

25. Even in the present case, it is noticed that the prosecution has essentially relied upon the confessional statement of the accused recorded under the provisions of TADA. That will be of no avail and certainly not admissible against the accused in the trial for offences under other enactments, especially when the Designated Court could not have taken cognizance of the offence under TADA for lack of a valid sanction...

13. Under these circumstances, we find no scope for interference in the impugned judgement and order. The appeals stand dismissed.

14. Pending application(s), if any, stand disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

New Delhi;
July 25, 2024

ITEM NO.104

COURT NO.16

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NOS.1096-1099/2008

THE STATE OF GUJARAT

APPELLANT(S)

VERSUS

RAJAK ISHAK SANGHAR & ORS. ETC.

RESPONDENT(S)

IA No. 359/2011 - EXEMPTION FROM APPOINTMENT OF OFFICIAL
TRANSLATOR

IA No. 11232/2008 - STAY APPLICATION)

Date : 25-07-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAHFor Appellant(s) Ms. Aastha Mehta, Adv.
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.For Respondent(s) Mr. Shikhil Suri, Sr. Adv.
Mrs. Madhu Suri, Adv.
Ms. Jyoti Suri, Adv.
Ms. Wamika Chadha, Adv.
Ms. Vidhi Kapoor, Adv.
Ms. Ishita Ahuja, Adv.
Ms. Nidhi, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The appeals stand dismissed in terms of the signed order which is placed on the file.
2. Pending application(s), if any, stand disposed of.

(JAGDISH KUMAR)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)

"Respectfully submitted by Incharge Police inspector city B Div. Police sth. Jamnagar that -

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supply such fire arm and under that circumstances sec. 3,4,5 of the TADA Act were added against the accused and for that necessary permission and sanction may be given after doing proper procedure. which may please be noted."

(quoted verbatim from paperbook)