
(1995) 04 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 271, 272, 273, 274, 275, 276, 261, 262, 263, 268 and 270 of 1995

Brij Mohan and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 10-04-1995

Acts Referred:

Arms Act, 1959 — Section 25, 27, 3, 7
Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 173, 438, 482
Penal Code, 1860 (IPC) — Section 412, 414
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 15, 18, 19, 2, 20A

Citation : (1995) 1 RLW 335 : (1995) 3 WLC 30 : (1995) 2 WLN 131

Hon'ble Judges : P.K. Palli, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—These Special Appeals are directed against the judgment dated 20-3-95, passed by the learned Single Judge, by which the writ petitions, filed by the petitioner-appellants, were dismissed and the appellants were directed to surrender before the Designated Court, Ajmer, on or before 28-3-95. Since all theses appeals arise out of the same judgment and involve identical controversies, we, therefore, think it proper to decide all these Special Appeals by this common judgment.

2. F.I.R. No. 77/93 u/s 3/25 of the Indian Arms Act was registered against one Poonam Chand Bishnoi at Police Station, Bajju (District Bikaner). During the investigation in this F.I.R., two bages full of arms and ammunition were recovered from the Dhani of Poonam Chand Bishnoi. On interrogation, it was revealed that Poonam Chand Bishnoi was engaged in the activities of smuggling arms and ammunitions from Pakistan through the border district of Bikaner in the State of Rajasthan and was supplying these arms and ammunitions through the other members of the gang to the terrorists and disruptionists operating in

Punjab, who by their activities, have disrupted the communal peace and harmony is Punjab and seriously threatened the sovereignty and territorial integrity of the Country. Poonam Chand, on invterrogation, further told the investigating officer that he sold some arms and ammunitions to Hanuman Pooniya, Mohan Ram, Rajas and Sri Chand. On the basis of this disclosure made by Poonam Chand, on 28.9.93 an F.I.R. No. 81/93 Under Sections 3 and 5 of the Terrorists and Disruptive Activities Act (T.A.D.A. Act) and u/s 3/25 of the Indian Arms Act was registered against Poonam Chand, Gulam Nabi, Hanuman Pooniya, Mohan Ram, Ramjas and Sri Chand. During the Course of investigation, confessional statement of Poonam Chand Bishnoi, u/s 15(1) of the T.A.D.A. Act was recorded by the District Superintendent of Police, Bikaner. Poonam Chand disclosed the names of forty-nine persons, who were involved in this racket of smuggling arms and ammunitions from Pakistan and supplying the same to the terrorists and disruptists operating in Punjab. These forty-nine persons include the petitioners, to whom Poonam Chand had sold various arms and ammunitions, which were received from Pakistan, but the investigating officer could be able to arrest only twenty persons and the remaining twenty-nine accused, including the petitioners, could not be arrested. The police, after necessary investigation, presented the challan against the ten persons for the offences Under Sections 3, 4, 5, and 6 of the T.A.D.A. Act, 7/25 and 27 of the Indian Arms Act and Under Sections 5, 6, and 9 of the Indian Explosive Act, 1908, and against the remaining ten persons, who have been arrested for the offences u/s 5 of the T.A.D.A. Act, 7/25 and 27 of the Indian Arms Act. While submitting the charge-sheet against these twenty persons, it was mentioned that the investigation against the remaining twenty-nine persons, whose names have been disclosed by Poonam Chand that he had sold the arms and ammunitions to them, the investigation is still going on as they have not been arrested and a report u/s 173(8) Cr. P.C. will be filed against them after their arrest and completion of the investigation. The appellant-petitioners, apprehending their arrest in pursuance to the F.I.R No. 81/93, lodged at police Station, Bajju (District Bikaner), filed bail applications u/s 438 Cr. P.C. for grant of anticipatory bail before the High Court. They, also, filed Criminal Miscellaneous petitions u/s 482 Cr. P.C. for quashing the F.I.R No. 81/1993 as well as for quashing the proceedings. These petitions u/s 482 Cr. P.C. as well as the applications u/s 438 Cr. P.C. for grant of anticipatory bail, were ultimately dismissed as not pressed in view of the decision of the Constitutional Bench of the Supreme Court in: Kartar Singh v. The State of Punjab , wherein it has been held that the High Courts, under the Code of Criminal Procedure, have no jurisdiction to quash the proceedings or to grant bail for the offences under the T.A.D.A. Act as the jurisdiction of the High Courts under the Code of Criminal procedure has been completely ousted.

3. The petitioners thereafter filed the writ petitions for quashing the F.I.R No. 81/93 dated 28-9-93 registered at Police Station, Bajju and, also, for quashing the charge-sheet and proceedings pending against them in the Designated Court, Ajmer, in pursuance of the aforesaid F.I.R., Under Sections 3 and 5 of the

T.A.D.A. Act and Section 3/25 of the Indian Arms Act. It was also prayed in the writ petitions that the investigating agency may be restrained to proceed with the investigation and to arrest the petitioner-appellants and in case they are arrested, they may be released on bail. Reply on behalf of the State were filed only in some of the cases, but as the matters arise out of one F.I.R., the learned Single Judge, therefore, considered those replies in all the aforesaid cases and disposed of the writ petitions filed by the petitioner-appellants and while dismissing the writ petitions, the learned Single Judge observed that it will not be proper to examine the objections raised by the petitioners at this stage and it would be appropriate for the petitioners to raise all these objections before the respective Designated Courts and Directed the petitioners to surrender before the Designated Court on or before 28-3-95. It is against this judgment dated 20-3-95, passed by the learned Single Judge dismissing the writ petitions filed by the petitioner-appellants that the appellants have preferred these Special Appeals.

4. It is contended by the learned Counsel for the appellants that (1) the allegations made in the FIR and the evidence collected during the investigation, do not justify the application of T.A.D.A. Act against the appellants as they do not belong to the category of the persons governed by the T.A.D.A. Act; (ii) the mandatory provisions of Section 20A(1) of the T.A.D.A. Act have not been complied with as the FIR No. 81/93 dated 28.9.93 has been registered at Police Station, Bajju (district Bikaner) without the prior approval of the District Superintendent of Police, Bikaner; (iii) the learned Single Judge, though directed the appellants to appear before the Designated Court to raise their grievances before the Designated Court but he pre-Judged the issue, gave his findings and left nothing for the Designated Court to decide. Mr. G. Vaishnava learned Counsel for appellant Bhom Raj in D.B. Civil Special Appeal No. 270 of 1995 - has raised some additional grounds that (a) the name of appellant Bhom Raj has not been given in the FIR: (b) he has been falsely implicated in the case by Poonam Chand on account of strained relations with him but later-on Poonam Chand has filed an affidavit in favour of Bhom Raj; (c) no recovery of any arm or ammunition has to be made from this appellant as the same has been made from the father of Poonam Chand; and (d) appellant Bhom Raj is neither a previous convict nor it has been alleged against him that he is involved in terrorist and disruptive activities. Mr. M.L. Garg - learned Counsel for appellants Ram Kishan and Mam Raj in D.B. Civil Special Appeal No. 268 of 1995 - has, also, raised an additional ground that appellants Ram Kishan and Man Raj have been implicated in the case on the false confessional statement of Shiv Lal and no recovery of any arm or ammunition has been made from them and in fact the recoveries have been made at the instance of Shiv Lal from the hotel at Jaipur where Shiv Lal was staying.

5. Countervailing the challenges made by the learned Counsel for the appellants, the learned Additional Advocate General submitted that there is ample evidence collected by the investigating agency, which Justify the invoking of the provisions

of T.A.D.A. Act against the appellants and so far as appellants Ram Kishan, Mam Raj and Bhom Raj are concerned, the investigation against them is still pending and the recoveries have to be made from them after they are arrested. The contention of the learned Additional Advocate General, so far as the recovery of the arms and ammunitions made from Rajhans Hotel, Jaipur, is concerned, is that these recoveries were made from the room in which accused Ram Kishan and Mam Raj were staying and according to him, the investigation has not been completed and, therefore, at this pre-mature stage, the proceedings cannot be quashed by the High Court exercising its powers under Article 226 of the Constitution of India. It has been further contended by the learned Additional Advocate General that the jurisdiction of the High Court has been excluded in the matters relating to T.A.D.A. Act.

6. We have considered the submissions made by the learned Counsel for the parties.

7. The first contention, raised by the learned Counsel for the appellants, is that under Article 226 of the Constitution of India, the High Court can quash the proceedings under the T.A.D.A. Act if the allegations made against the accused ex facie do not constitute any offence under the T.A.D.A. Act. The Court, also, owes a duty to ensure that the State Machineries should act fairly and not with extraneous consideration and if the proceedings under the Act are found to be an abuse of the process of the Court or taken for extraneous consideration or there is no material on record to show that a case under the T.A.D.A. Act is made-out then these proceedings can be quashed by the High Court. In support of its contention, learned Counsel for the appellants have placed reliance over: Ayub Khan Kalandar Khan Pathan v. The State of Gujarat and Ors. 1990 (1) Crimes 182, Rafiq Abid Patel and Ors. v. The Inspector of Police, Kashmird Police Station, Thane and Anr. 1992 Cr.L.J. 394. Shri Ajit Khimji Udeshi v. The State of Maharashtra (1993 (1) CRIMES 1032, Santosh Dattaram More and Anr. v. The State of Maharashtra 1993 (2) CRIMES 252, Ghanshyam Soni v. Union of India 1994 (1) Crimes 287, Kartar Singh v. The State of Punjab , Sawai Singh v. The State of Rajasthan and Ors. D.B. Habeas Corpus Petition No. 4880 of 1994 decided on 16.2.95 and State of Maharashtra v. Abdul Hamid Haji Mohammed 1994 Suppl. (1) SCC 579.

8. Now, we have to consider and determine the limitation of the power of the High Court Under Articles 226 and 227 of the Constitution of India relating to the matters under the T.A.D.A. Act pending before the Designated Court. The T.A.D.A. Act was enacted to curb the growing menace of the terrorism in different parts of the Country as ordinary criminal law was found inadequate for this purpose. The Act makes special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. The Act created a new class of offences not covered by the Indian Penal Code or any other Penal Law and provides a special machinery and special procedure for the trial of such cases, Terrorists and

disruptionists have been grouped as a separate class of offenders from the ordinary criminals. Under the Act, there is a complete exclusion of the jurisdiction of the High Courts in the matters involving the trial of any person on an accusation of any offence punishable under the T.A.D.A. Act or any rule made thereunder. The powers of the trial in Such cases vests in the Designated Court constituted u/s 9 of the Act and the order passed by the Designated Court has been made appealable before the Hon"ble Supreme Court u/s 19 of the Act. The High Court, therefore, under the Code of Criminal Procedure, has no jurisdiction to interfere in the matters of trial of the offences or for the grant of bail in the offences under the T.A.D.A. Act.

9. Whether the powers of the High Court, Under Articles 226 and 227 of the Constitution of India, can be taken away by the legislation like the T.A.D.A. Act? In the case of Ayub Khan Kalandar Khan Pathan v. The State of Gujarat and Ors. 1990 (1) CRIMES 182 ; the Division Bench of Gujarat High Court held that "once there is an imminent threat of violation of fundamental rights coupled with overt-act, such an action of the Government can be challenged for protecting the fundamental rights guaranteed Under Article 21 of the Constitution of India. In view of the aforesaid discussion, we hold that the provisions of the T.A.D.A. Act do not take away the fundamental right of the petitioners inserted Under Article 21 and, therefore, the High Court has, also, power Under Article 226 to entertain such petition for protecting the fundamental right before it is violated." In that case, the High Court, after looking into the facts and circumstances of the case, came to the conclusion that the FIR alongwith the statement of three persons, do not disclose commission of offence u/s 3 of the T.A.D.A. Act and, therefore, the High Court directed the respondents not to arrest the petitioner for the alleged commission of the offences but further observed that the respondent No. 2 will be at liberty to further investigate the matter and on further investigation if he is satisfied that it is necessary to proceed against the petitioner under the provisions of T.A.D.A. Act, he would be at liberty to do so. In Rafiq Abid Patel and others etc. Vs. The Inspector of Police, Kashimira Police Station, Thane and another, the petition was made for quashing the proceedings initiated against the petitioner Under Sections 5 and 6 of the T.A.D.A. Act, No prima facie case for applying the provisions of the Act was made-out and, therefore, the Division Bench of Bombay High Court, exercising its powers under Article 226 of the Constitution of India, quashed the proceedings initiated against the petitioner. In Shri Ajit Khimji Udeshi v. The State of Maharashtra 1993 (1) CRIMES 1032, the Division Bench of Bombay High Court opined that the application of the provisions of the T.A.D.A. Act against the petitioners, having regard to the facts and circumstances of the case, was not sustainable and, therefore, the proceedings were quashed, but the Division Bench, however, observed that the decision is passed on the facts and circumstances of the case and does not lay down any final verdict in the matter. In the case of: Santosh Dattaram More and Anr. v. The State of Maharastra (1993 (2) CRIMES 252, the controversy before the Division Bench of Bombay High Court was: whether the Designated Court has

jurisdiction to try the case of the petitioner Under Sections 412 and 414 IPC when the provisions of the T.A.D.A. Act were not applicable to the petitioner. The Division Bench of Bombay High Court held that the Designated Court may have jurisdiction to try any other offence in respect of an accused provided that the other offence is connected with such other offence under the T.A.D.A. Act but not in the case where no case is triable under T.A.D.A. Act is made out. This case, on which reliance has been placed by the learned Counsel for the appellant, has no relevance to the present case as the controversy raised in that case is not under consideration before this Court. In the case of: Ghanshyam Soni v. Union of India and Ors. 1994 (1) CRIMES 287, the proceedings against the petitioners u/s 5 of the T.A.D.A. Act were initiated with respect to the possession of arms and ammunitions recovered from the residential premises of the petitioner situated in the town of Pali. Likewise, in the case of Sawai Singh v. The State of Rajasthan and Ors. D.B. Habeas Corpus Petition No. 4880 of 1994 - decided on 16.2.95, the proceedings were initiated against him u/s 5 of the T.A.D.A. Act read with Section 3/25 and 27 of the Indian Arms Act with respect to the possession of the arms and ammunitions recovered from his house situated in Kuchera (district Nagaur). Pali and Kuchera (district Nagaur) were not declared as Notified Areas within the meaning of Section 2(7) of the T.A.D.A. Act and, therefore, the provisions of Section 5 of the T.A.D.A. Act are not attracted. When the Act itself was not applicable in the areas, from where the recoveries were made the ingredients of the offences were not made-out and the proceedings were wholly without jurisdiction and were rightly quashed. In the case of: The State of Maharashtra v. Abdul Hamid Haji Mohammed 1994 Suppl. (1) SCC 579, though the controversy raised was the same but it was not decided by the Supreme Court but the order, granting bail by the High Court, was stayed and the case was remanded to the High Court to dispose of the writ petition itself. As no issue has been decided by the Supreme Court in this case, this judgment is, also, of no assistance to the appellants.

10. The scope of jurisdiction of the High Court under Article 226 of the Constitution of India for quashing the criminal proceedings pending before the Designated Court under the T.A.D.A. Act, came-up for consideration before the Supreme Court in the case of State of Maharashtra Vs. Abdul Hamid Haji Mohammed, , wherein the Supreme Court, after considering the law on the point, held as under:

It is, no doubt, true that In an extreme case if the only accusation against the respondent prosecuted In the Designated Court in accordance with the provisions of T.A.D.A. Act is such that ex facie It cannot constitute an offence punishable under T.A.D.A. Act, then the High Court may be justified in Invoking the power under Article 226 of the Constitution on the ground that the detention of the accused Is not under the provisions of T.A.D.A. Act. We may hasten to add that this can happen only in extreme cases which would be rare and that power of the High Court is not exercisable In the case like the present where it may be debatable whether the direct accusation made in conjunction with the attendant

circumstances, if proved to be true, is likely to result in conviction for an offence under T.A.D.A. Act. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution and the gamut of the procedure prescribed under T.A.D.A. Act must be followed, namely, raising the objection before the Designated Court and, if necessary, challenging the order of the Designated Court by appeal in the Supreme Court as provided in Section 19 of the T.A.D.A. Act. In view of the express provision of appeal to the Supreme Court against any judgment, sentence or order, not being an interlocutory order of a Designated Court, there is no occasion for the High Court to examine merits of the order made by the Designated Court that the Act applies. We have no doubt that in the present case wherein the High Court had to perform the laboured exercise of scrutinising the material containing the accusation made against the respondent and the merits of the finding recorded by the Designated Court holding that the provisions of T.A.D.A. Act were attracted, there was sufficient indication that the writ jurisdiction of the High Court under Article 226 of the Constitution was not available. The ratio of the decisions of this Court in *R.P. Kapur and Bhajan Lal*, on which reliance is placed by Shri Jethmalani, has no application to the facts of the present case. There was thus no justification for the High Court in the present case to exercise its jurisdiction under Article 226 of the Constitution for examining the merits of the controversy much less for quashing the prosecution of respondent Abdul Hamid in the Designated Court for offences punishable under T.A.D.A. Act.

The same controvert again came-up for consideration before the Constitutional Bench of the Supreme Court in the case of: *Kartar Singh v. The State of Punjab* (supra). The Supreme Court, agreeing with the view taken by it earlier in *State of Maharashtra Vs. Abdul Hamid Haji Mohammed*, further held as under:

If the High Court is inclined to entertain any application under Article 226 of the Constitution, that power should be exercised most sparingly and only in appropriate and rarest cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of the application under Article 226, cannot be put in straight-jacket. However, we would like to emphasise and reemphasise that the Judicial discipline and comity of Courts require that High Courts should refrain from exercising their jurisdiction in entertaining bail applications in respect of an accused indicted under the Special Act. Since this Court has Jurisdiction to interfere and correct the orders of the High Courts under Article 226 of the Constitution of India.

The matter again came-up for consideration before the Supreme Court in *Calcutta Bomb-blast case: State of West Bengal and another Vs. Mohammed Khalid and others*, . In this case, the accused were charge-sheeted under the T.A.D.A. Act. A writ petition for quashing the proceedings, was filed before the Calcutta High Court. It was agitated before the Calcutta High Court that the provisions of T.A.D.A. Act are not applicable to them and the cognizance against

them has wrongly been taken by the Chief Metropolitan Magistrate under the T.A.D.A. Act. The High Court quashed the cognizance taken by the learned Magistrate as well as the application of the provisions of the T.A.D.A. Act against the accused. The Supreme Court, in the appeal, preferred by the State, observed that the High Court has not only gone into the laboured discussion of the facts and thereby conducted the pre-trial but also it has ignored the several Supreme Court's judgments. The Supreme Court, in this case, finally held as under:

From the above quotation it is clear if there is a debatable area it is not amenable to writ jurisdiction under Article 226 of the Constitution of India and the gamut of the procedure prescribed under T.A.D.A. Act must be followed including challenging the order of the Designated Court u/s 19. It is also clear that the High Court cannot perform a laboured exercise of scrutinising the materials.

The Supreme Court, in this case, further held as under:

In our considered view, certainly the Designated Court could do all these at the time of framing the charges and not the High Court Under Article 226, as has been done in the instant case.

11. The settled position of law, therefore, is that though the normal criminal jurisdiction of the High Courts has been taken away by the T.A.D.A. Act but the discretion of the High Courts under Article 226 of the Constitution of India, which is the creation of the Constitution of India, cannot be abridged, curtailed or taken-away by any Special Legislation. These powers can be limited only by making necessary amendment in the Constitution itself. The High Courts can exercise their discretion Under Article 226 free from all fetters imposed by the Act in the criminal proceedings under the Act. The High Courts have wide powers Under Article 226, which should be used with circumspection and in accordance with the judicial consideration and well established principles. The judicial discipline and the comity of the Court require that the High Courts should refrain from exercising their jurisdiction in entertaining petitions in respect of an accused indicated under the Special Act. Constitutional remedies available to the petitioners indicated for the offence under the Act to approach the High Court Under Articles 226 and 227 for quashing the proceedings, cannot be taken-away if the accusation against the accused are such that ex facie it cannot constitute an offence punishable under the Act and the High Court, exercising its powers under Article 226 of the Constitution of India, in such circumstances, can quash the proceedings, but this can be done only in extreme cases which would be rare and that power of the High Court is not exercisable where it may be debatable whether the direct accusation made in conjunction with the attending circumstances, if proved to be true, is likely to result in conviction of a person for the offence under the T.A.D.A. Act but in debatable cases it is not amenable to writ jurisdiction. The gamut of the procedure prescribed under the T.A.D.A. Act has to be followed including the challenge to the order of the Designated Court u/s 19 of the T.A.D.A. Act and the High Court cannot perform the laboured exercise

of scrutinising the material.

12. In the light of the settled position of law on the point, now, It has to be seen: Whether the FIR the charge-sheet, the proceedings pending before the Designated Court or the investigation in the present case, can be quashed ? Registration of the FIR and the Charge sheet can be quashed if the allegations made in the FIR and the evidence collected by the investigating agency do not disclose a cognizable offence. But if the allegations disclose the commission of the cognizable offence then the powers under Article 226 of the Constitution of India cannot be used to stifle the legitimate prosecution. Exercising the powers for quashing the proceedings at this pre-mature stage, would amount to usurping the powers vested in the trial Court, i.e., the Designated Court in the present case. In: *The State of Bihar and Anr. v. P.P. Sharma, IAS, and Anr.* 1992 Suppl. (1) SCC 222, it has been held by the Supreme Court that "entertaining the writ petitions against the charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial, amounts to pre-trial of a Criminal trial Under Article 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court." We have looked into the FIR No. 81/1993 (dated 28.9.93) lodged at Police Station, Bajju (district Bikaner) as well as the Charge-sheet. From the FIR, it cannot be said that no offence under the T.A.D.A. Act has been made out against any of the accused. The FIR discloses the existence of the ingredients of the offences atleast against some persons and, therefore, the FIR or the Charge-sheet or the proceedings, at this pre-mature stage, cannot be quashed and it will amount to holding a pre-trial by the High Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India. The appellants, if they so like, may appear before the Designated Court and show to the Court that the allegations made in the FIR and the evidence collected by the investigating agency, do not constitute any crime under the T.A.D.A. Act involving them and satisfy the Court that no case is made-out against them under the T.A.D.A. Act. If such objection is raised by the appellants before the Designated Court, the learned Judge of the Designated Court will consider the material available on record and if after consideration of the material available on record he is of the opinion that ex facie no case under the T.A.D.A. Act is made-out against the appellants then the learned Designated Court, in exercise of its powers Under Section. 18 of the T.A.D.A. Act. will transfer the case for trial of such offence to any Court having the jurisdiction under the Code and if it is of the opinion that no case is made-out against the appellants then he may drop the proceedings. But this Court, exercising its powers under Article 226 of the Constitution of India, cannot quash the FIR, the charge-sheet or the proceedings pending before the learned Designated Court.

13. The next question, which requires consideration, is: whether this Court, while exercising its powers under Article 226 of the Constitution of India, can direct the investigating agency to stop the investigation? In the present case, the matter is

under investigation so far as remaining twenty-nine accused are concerned, who have not been apprehended so far. The entire facts are incomplete. The recoveries have to be made from the accused after they are arrested. It is a statutory power of the police to investigate into the matter. The Courts are expected to refrain from interfering in the statutory power of the police of investigate and to give a pre-mature decision by directing the investigating agency not to proceed with investigation or to quash the FIR when the allegations made in the FIR are still to be investigated by the police. The evidence against the accused, who have not been apprehended so far, have not been collected, the facts are incomplete and as such the issue cannot be looked-into in the right perspective at this stage. In the absence of sufficient material, it would amount to close the chapter before it has unfolded itself. The functions of the judiciary and the police are complementary and not over-lapping. The High Courts, though have wide powers under Article 226 of the Constitution of India, are required to be careful and not to over-step the limitations of their powers and interfere in the statutory right of the police to investigate. The judiciary has been assigned the function of being a guardian of the Constitution. When other wings of the State transgress the limits, the aggrieved person can approach the Courts against such transgression but if the Courts itself transgress the limits then the aggrieved party will be left with no remedy to agitate his grievances against such transgression. We must have trust in the other agencies vested with the powers to investigate and decide and leave the things to be done by them in their own sphere. It will, therefore, not be desirable in the present case, when the investigation is yet to be concluded, to quash the FIR and close the investigation and to give a pre-mature decision quashing the prosecution.

14. The next contention, raised by the learned Counsel for the appellants is that the compliance of the mandatory provisions of Sub-section (1) of Section 20A of the T.A.D.A. Act has not been made and the FIR has been lodged without the prior approval of the District Superintendent of Police, Bikaner, and the Charge-sheet and the proceedings pending before the Designated Court deserve to be quashed. The learned Counsel for the appellants, in support of their contention, have placed reliance over: *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, . In view of the drastic and stringent provisions of the T.A.D.A. Act to safe-guard the citizen from the vexatious prosecution, Section 20A of the T.A.D.A. Act has been enacted by the Parliament. The object, with which Section 20A of the Act has been enacted, is to protect the innocent persons from the institution of possible vexatious and mala fide proceedings under the T.A.D.A. Act avoidable harassment and expenditure and to prevent the abuse of the powers by the Authorities. Sub-section (1) of Section 20A of the T.A.D.A. Act provides that no information about the commission of the offence under the Act shall be recorded by the police without the prior approval of the District Superintendent of Police. Sub-section (2) of Section 20A of the Act further provides that no Court shall take cognizance of the offence under the Act without the previous sanction of the Inspector General of Police or as the case

may be, that of the Commissioner of the Police. These are two statutory procedural guarantees and safeguards against the vexatious prosecution has been provided under the Act to the accused indicated under the T.A.D.A. Act. Without the previous approval of the District Superintendent of Police, the FIR cannot be registered and without the prior approval of the Inspector General of Police or the Commissioner of the Police, the cognizance cannot be taken.

15. In Hitendra Vishnu Thakur's case (supra), a contention was raised before the Designated Court that the sanction accorded by the competent authority u/s 20A(2) of the T.A.D.A. Act was not a valid sanction as some activities of the accused persons prior to the coming of the provisions of the Act into force, were considered by the Sanctioning Authority. This contention was repelled by the Designated Court. The correctness of that order, passed by the Designated Court repelling the contention, was challenged before the Supreme Court. The Supreme Court agreed with the order passed by the Designated Court and observed that "at the stage when the challenge was made to the order u/s 20A(2), it is only the prima facie case which was required to be established to show that the Sanctioning Authority has applied its mind to the case before the sanction was accorded." This judgment of the Supreme Court is therefore, of no assistance to the appellants, but however it may be observed that this is one of the safeguards provided u/s 20A(2) of the Act and no Court can take cognizance of an offence under the Act unless there is a sanction accorded by the competent authority.

16. In the case of: K. Balagopda v. The Government of Andhra Pradesh , the Division Bench of K. Balagopal Vs. Government of Andhra Pradesh and Others, findings for the non-compliance of the provisions of Section 20A(1) of the T.A.D.A. Act as the prior approval of the District Superintendent of Police was not obtained before lodging the FIR. In that case, from the facts disclosed in the petition, it was proved that the prior approval of the District Superintendent of Police, which is sine qua non for registering the FIR, was not obtained and as such the proceedings were quashed. In the present case, this factual aspect: whether the FIR was lodged without prior approval, has not been substantiated on either side and it is a matter of evidence, which can be taken note of by the Designated Court. The appellants can approach the Designated Court and raise these objections before it and the learned Judge of the Designated Court will consider and decide this issue.

17. Further, this point was raised only in some of the writ petitions, in which the reply on behalf of the State was not filed and not in cases where the reply has been filed. As all the writ petitions were heard together and, therefore, reply on this point is not available. From the facts available on record, it cannot be said whether the prior approval of the District Superintendent of Police, as required u/s 20A(1) was taken or not before the registration of the FIR. The registration of the FIR with or without the approval of the District Superintendent of Police is a question of fact which can be decided by the Designated Court looking to the

record of the case. The appellants can appear before the learned Judge of the Designated Court and raise this objection alongwith the other objections and the learned Judge of the Designated Court will decide the objections so raised and if the Designated Court is satisfied that the objections, raised by the appellants, are justified then he will pass appropriate order in accordance with law, but the question which requires determination on the basis of the facts is not supposed to be enquired and gone into by this Court in its extraordinary jurisdiction.

18. The next contention, raised by the learned Counsel for the appellants is that the learned Single Judge, though remanded the case and directed the petitioner-appellants to approach the Designated Court to raise the objections, but he decided the matter and left nothing for the decision of the Designated Court. The objection, raised by the learned Counsel for the appellants, is devoid of any force. The learned Single Judge has not decided any of the issue in question. At page No. 45 of the judgment, it has been clearly recorded by the learned Single Judge that to discuss the arguments in the context of the present case at this pre-mature stage may prejudice the case of either side and it would be appropriate for the petitioners to raise all these objections and can rebut the statutory presumption by adducing evidence before the Designated Court. The learned Single Judge has not given any finding on any of the issues and has left the complete matter for the decision of the Designated Court.

19. The next contention, raised by Mr. G.Vaishnava - learned Counsel appearing for appellant Bhom Raj - is that the name of this appellant was not given in the FIR and he has been falsely implicated by Poonam Chand Bishnoi and no recovery has been made from the appellant and the appellant is neither a previous convict nor there are allegations against him that he is involved in the terrorist and disruptive activities. It is true that initially Poonam Chand Bishnoi disclosed the name of only six persons, to whom he had sold the arms and ammunitions, but later-on, when huge quantity of arms and ammunitions weighing in quintals, were recovered from Poonam Chand Bishnoi, a confessional statement was made by him and then he disclosed the names of forty-nine persons who were either involved in the racket of smuggling weapons from Pakistan and supplying the same to the terrorists and disruptionists operating in Punjab. He, also, disclosed the names of several other persons, to whom he sold the arms and ammunitions and the present appellant was one of them. If during the investigation, the involvement of this appellant has been made-out then merely due to non-mentioning of his name in the FIR, the proceedings against him cannot be quashed. These are the matters which cannot be decided in the writ jurisdiction but the same can be decided only by the Designated Court in due course.

20. The other contention, raised by Mr. M.L. Garg - learned Counsel for appellants Ram Kishan and Mam Raj - is that these appellants have been implicated on the false statement of Shiv Lal and no recovery of any arm or ammunition has been made from them and in fact the recoveries have been

made from the hotel where Shiv Lal was staying. These are, also, the matters which can be decided on the basis of the relevant material available on record. The investigation against appellants Ram Kishan, Mam Raj and Bhom Raj is still incomplete, the evidence is to be collected, accused have to be arrested and recoveries have to be made. The matter, therefore, cannot be decided, on merit, at this pre-mature stage. It is a question of fact which has to be decided by the Designated Court.

21. The appellants are not without any remedy. The remedy with the appellants is to approach the Designated Court, invoke its jurisdiction for appropriate relief and the Designated Court will carefully examine the case to find-out whether the provisions of the T.A.D.A. Act are attracted in the case of the appellant-petitioners or not. Four statutory safe-guards have been provided to the accused, who is visited with the crime under the T.A.D.A. Act. Under Sub-section (1) of Section 20A of the Act, no report can be lodged without the prior approval of the District Superintendent of Police; secondly, no cognizance can be taken without the previous sanction of the Inspector General of Police as per Sub-section (2) of Section 20A; thirdly, u/s 18 of the T.A.D.A. Act, if the Designated Court, after taking the cognizance, is of the opinion that no case triable under the Act is made-out against the accused, he can transfer the case for trial of such offences to the Court having competent jurisdiction; and, lastly, before framing the charges, the Court has to closely scrutinize the evidence and has to prima facie come to the conclusion that from the evidence collected by the investigating agency, a prima facie case under the Act to proceed-with against the accused, has been made-out. Proper statutory procedural safeguards to the accused indicted with the offences under the Act, have been made in the Act which will be taken care of by the Judge of the Designated Court. The contention, raised by the learned Counsel for the appellants, is, therefore, devoid of any force.

22. The learned Single Judge was, therefore, justified in dismissing the writ petitions filed by the petitioner-appellants and directing the appellant-petitioners to approach the Designated Court for appropriate relief. We do not see any illegality in the judgment passed by the learned Single Judge and the judgment passed by the learned Single Judge does not require any interference.

23. In the result, we do not find any merit in these Special Appeal, filed by the appellant-petitioners and the same are hereby dismissed.