
(2024) 12 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : CRA No.17 of 2010

Farid Ahmad

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 31-12-2024

Acts Referred:

Prevention of Terrorism Act, 2002 — Section 3(4), 32, 34
Code of Criminal Procedure 1973 — Section 342
Evidence Act 1872 &mdash, Section 25

Citation : (2024) 12 J&K CK 0007

Hon'ble Judges : Sanjeev Kumar J, Puneet Gupta, J

Bench : Division Bench

Advocate : Shafiq Ur Rehman, Raman Sharma

Final Decision : Dismissed

Judgement

JUDGMENTTAG-JUUDGMENT

Sanjeev Kumar J

1. This appeal by the convict-Farid Ahmed filed under Section 34 of the Prevention of Terrorism Act, 2002 [â??POTAâ??] is directed against

the judgment dated 19th July, 2010 and order dated 20th July, 2010 passed by the Designated Court for Jammu Province under POTA, whereby the

appellant herein has been convicted for commission of offence punishable under Section 3(4) of the POTA and sentenced to undergo imprisonment

for three years with fine of Rs.1000/- and in default of making the payment of fine, for further imprisonment of six months.

2. Before we advert to the grounds of challenge urged by the learned counsel appearing for the appellant, we deem it appropriate to set out material

facts relevant to the disposal of this appeal.

3. The prosecution case, in brief, as set up against the appellant, is that the appellant while he was serving in the police as Constable in District

Udhampur remained absent from duty w.e.f. 29th September, 2001 till 11.11.2001. The appellant joined back his duties on 15.11.2001. The police

seized some photographs of militants from the possession of the appellant. On questioning, the appellant divulged that the film/negatives were given to

him by the militants for developing into photographs. During investigation, it also came to be established that the appellant was harbouring the militants

of Mahore area to spread militancy. The investigation was concluded following a confessional statement made by the appellant before the Senior

Superintendent of Police, Poonch. The appellant was found to have committed offence punishable under Section 3(4) of POTA and was challaned

before the trial Court. The appellant was charged for offence under Section 3(4) of the POTA. The charge was read over to the appellant, the

appellant denied his guilt and claimed trial.

4. With a view to establish charge against the appellant the prosecution examined PW-1 Dr. Kamal Saini, the then SSP, Poonch, PW2 Jatinder Raina,

Constable District Police, Poonch, PW-3 Mohd. Sharief, PW-4 Mohd. Yucoob, PW-5, Ashok Kumar PW-6 Surjit Kumar Dutta, PW-7 Shabir Ahmed,

PW-8 Khaliq Hussain, PW-9 Manjit Singh, PW-10, Jamal Din, PW-11 Ghulam Mohd and PW-12 Sh. S.K.Bhagat, the then Chief Judicial Magistrate,

Poonch. The incriminating evidence brought on record by the prosecution during trial was put to the appellant and his statement under Section 342

Cr.P.C. was recorded. The appellant submitted that he was not absent from duty but was on leave and that he had no connection with the militants

nor had he given any photo to Jaswant Singh for developing. He also denied having made any confession before the SSP, Poonch, Dr. Kamal Saini.

He claimed to have been produced by the Investigating Officer before the Chief Judicial Magistrate, Poonch but submitted that he was not asked any

question by the Magistrate. The trial Court having considered the prosecution evidence, more particularly the confessional statement made by the

appellant before the SSP, Poonch under Section 32 of the POTA held the case set up by the prosecution against the appellant proved and accordingly

convicted the appellant for commission of offence under Section 3(4) of POTA. Upon hearing both the sides on the quantum of sentence to be

awarded to the appellant, minimum punishment of three years with fine of Rs.1,000/- was imposed.

5. The impugned judgment is challenged by the appellant primarily on the ground that the confession recorded by the police is not in conformity with

the provisions of Section 32 of the POTA and, therefore, could not have been made the sole basis for convicting the appellant. The confessional

statement recorded under the supervision of Senior Superintendent of Police, Poonch, PW-1 Dr. Kamal Saini is attacked by the learned counsel for

the appellant on the following grounds:-

a) That the police was not competent to record any confession, as such, the confession recorded by the police while the accused is in custody is hit by

Section 25 of the Evidence Act.

b) That under Section 32 of the POTA, confession is required to be recorded after administering a warning to the accused and making him aware that

he was not bound to make confession and that if he would do so, it would be used against him. The appellant in the instant case was not administered

any such warning.

c) That the confession under Section 32 of POTA could have been recorded only by an officer not below the rank of Superintendent of Police and in

the instant case the confession was recorded by the reader of the Senior Superintendent of Police and, therefore, not admissible in evidence.

6. It is trite law that confession made by an accused to the police under Section 32 of the POTA can be used as evidence in the Court of Law

provided it meets the following conditions:-

i) Confession is made to a police officer not below the rank of Superintendent of Police.

ii) The confession is recorded in writing or by mechanical or electronic device by such officer i.e. officer not below the rank of Superintendent of Police.

iii) The confession is recorded in an environment free from threat or inducement.

iv) The confession is recorded in the language in which the person makes it.

v) That the person making confession is produced along with original statement of confession before the Chief Judicial Magistrate within forty eight

hours.

7. The constitutional validity of Section 32 of POTA was upheld by the Honâ??ble Supreme Court in People'S Union For Civil Liberties

Anr. vs Union Of India, (2004) 9 SCC 580. Later a note of caution was sent by the Honâ??ble Supreme Court that before a confession

recorded under Section 32 of POTA is relied upon and accepted admissible in evidence, it must be of sterling value inspiring confidence of the Court.

As a matter of prudence, the Court relying upon such confession must insist for corroboration.

8. In the light of aforesaid legal position, let us examine the case on hand. The trial Court has indeed based the conviction of the appellant on the

confessional statement made by him before the Senior Superintendent of Police, Poonch but not before it is corroborated by the oral evidence on

record. The appellant in his confessional statement has admitted that the terrorists had visited his house on 02.11.2001 and gave him a negative film to

be developed. He gave the film to Sainik Studio for developing. The Police apprehended the appellant immediately after he took delivery of the

photographs is also stated by the appellant in his confessional statement. This testimony of the appellant was corroborated by PW-Jatinder Raina and

PW-Manjit Singh. PW-Jatinder Raina has categorically deposed that the negative film and photographs were seized by him vide seizure Memo

EXPW-JR.

9. From reading of the confessional statement made by the appellant, it clearly transpires that before making the actual confession before the

Superintendent of Police, he answered few questions put to him. The questions and answers recorded as part of the confessional statement would

indicate that he was warned about the consequences of making the voluntarily confession. The appellant was given two hours time to think over and

make the statement. He was also informed that he was not bound to make any such statement and the statement would be recorded only if he

volunteers for it. After the statement was recorded, the Senior Superintendent of Police appended his certificate that the provisions of Section 32 of

POTA were complied with before recording the statement. The statement was recorded in Urdu in which the appellant had made it. There is no

dispute with regard to the fact that within forty eight hours, the appellant was also produced before the Chief Judicial Magistrate, Poonch. The

Statement of Chief Judicial Magistrate was also recorded during trial, in which Mr. S.K.Bhagat, the then CJM, Poonch has clearly stated that the

appellant was produced before him on 31.12.2001 along with recorded confessional statement, the appellant did not complain of any torture for

extracting confessional statement from him. PW-S.K.Bhagat has also proved the certificate issued by him in this regard i.e. EXPW-SK.

10. Viewed in this context, it is not correct to say that the confessional statement made by the appellant before the Superintendent of Police, Poonch

was recorded in violation of Section 32 of POTA. There is no dispute with regard to the fact that the confessional statement was made before the

Senior Superintendent of Police, Poonch and was recorded by his Reader under his directions. It cannot be, therefore, said that the statement has been

recorded by an officer below the rank of Superintendent of Police. The statement has been recorded in Urdu, the language in which it was made by

the appellant. We are saying so because no grievance has been raised by the appellant on this score.

11. There is no evidence on record suggesting that the confessional statement of the appellant was not recorded in an environment free from threat or

inducement. The appellant had an opportunity to make statement before the Chief Judicial Magistrate when he was produced before him on

31.12.2001 alongwith original statement of confession recorded by the Senior Superintendent of Police, Poonch Dr. Kamal Saini.

12. As a matter of fact, no complaint of any torture during his custody in police was made by the appellant. In these circumstances, it is evident that

the confession was made by the appellant voluntarily without any threat or inducement and, therefore, was capable of being relied upon for convicting

the appellant.

13. The corroborative evidence like seizure of photographs and negatives is not disputed by the appellant. There was an effort made by the learned

counsel for the appellant to suggest that as per the statement of PW-1 Dr. Kamal Sani, who recorded the confessional statement of the appellant, the

signatures of the appellant had been taken on blank papers on which the statement attributed to the appellant was recorded by the Senior

Superintendent of Police, as per his own will.

14. We have read the statement of PW-1 Dr. Kamal Saini in its entirety and are of

the view that last two lines of the statement of Dr. Kamal Saini

cannot be read in isolation and out of context. As a matter of fact, at the end of cross-examination of Mr. Saini, a suggestion was put to him that he

had taken the signatures of the appellant on blank papers and recorded the statement of his own. To this suggestion, Mr. Saini replied that it is false

but the word false was not recorded by the Court. The statement as written in Urdu reads thus:-

â??YetÂ BaatÂ haiÂ kiÂ muljamÂ seÂ humÂ neÂ koreyÂ kaagazÂ per dastkhat liye they aur us per humne apni marji se iqbaliaz urm

kalamband kia, jaise ki pucha geya hai.â??

15. It does not, in any manner, convey that the prosecution witness Dr. Kamal Saini had, in his deposition before the Court, admitted that he had got

blank papers signed by the appellant and that the confessional statement was written by him on his own. The trial Court has correctly appreciated the

evidence on record and has come to a right conclusion with regard to the guilt of the appellant.

16. For the foregoing reasons, we dismiss the appeal and uphold the judgment of conviction and the order of sentence passed by the trial Court. The

bail bonds of the appellants are cancelled. The appellant, who is on bail, shall surrender before the trial Court within ten days and upon his surrender,

he shall be sent to jail for serving the remaining sentence. In case the appellant fails to surrender before the trial Court within the period prescribed,

the trial Court shall secure his presence through coercive measures and send him to jail for serving the remaining sentence.

17. Record be sent to the trial Court alongwith a copy of this judgment.