
(1986) 09 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 613 of 1986

Gurdial Singh and Another	Vs	APPELLANT
The State of Haryana		RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (1987) 2 ILR (P&H) 274 : (1986) 2 RCR(Criminal) 432

Hon'ble Judges : Pritpal Singh, J;K.S. Tiwana, J

Bench : Division Bench

Advocate : J.S. Mann, for the Appellant; Kamal Sharma, A.A.G. Hary., for the Respondent

Judgement

Pritpal Singh, J.—The Petitioners Gurdial Singh and Gurmukh Singh were committed to the Court of Session for trial under Sections 307 and 323 read with Section 34, Indian Penal Code. The trial commenced in the Court of the learned Additional Sessions Judge, Hissar. Appropriate charges were framed and part of prosecution evidence was recorded.

2. The Petitioner Gurmukh Singh was separately prosecuted u/s 25 of the Arms Act on the allegation that when he was arrested in the main case he was found to be in possession of a single-barrelled gun, the licence regarding which had expired earlier and had not been renewed. This case was also being tried in the Court of the learned Additional Sessions Judge, Hissar.

3. When a part of the evidence was recorded on April 16, 1986 in the case under Sections 307 and 323 read with Section 34, Indian Penal Code, an application was moved on behalf of the prosecution that the case along with the other case u/s 25 of the Arms Act be transferred to the Designated Court constituted under the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter called "the Act"). The learned Additional Sessions Judge allowed the application and forwarded both the cases to the Designated Court, Bhiwani, vide an order of the same date

4. The Petitioners filed the instant revision petition against the order of the learned Additional Sessions Judge, transferring the cases to the Designated Court, on the plea that these cases are exclusively triable by the Court of Session and the Designated Court has no jurisdiction to try the same. The learned Single Judge of this Court, who heard the revision petition, referred the petition to be decided by a larger Bench considering the importance of the point involved therein. It is in these circumstances that we are now seized of the matter.

5. We will first deal with the case under the Arms Act. It is contended by the learned Petitioner's counsel that this case does not come within the ambit of the Act and so it could not be sent to the Designated Court for trial. We are unable to uphold this contention. The preamble of the Act shows that it 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. The second part of the Act deals with the punishments for, and measures for coping with, terrorist and disruptive activities. This part consists of Sections 3 to 6. As to what is a terrorist act is defined in Sub-section (1) of Section 3. It says that "whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act." Sub-section (2) prescribes punishment for the committing of terrorist act. Sub-section (3) lays down punishment to be awarded to (he person who conspires or attempts to commit a terrorist act.

6. Sub-section (2) of Section 4 defines the term "disruptive activity" as follows:

For the purposes of Sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever:

- (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, for the cession of any part of India or the secession of any part of India from the Union.

Explanation:-For the purposes of this Sub-section.

(a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union."

Sub-section (1) of Section 4 prescribes punishment for disruptive activities.

7. It is not necessary to discuss Section 5 because it deals with powers of the Central Government to make rules. This section is not relevant for our purposes.

8 Then comes Section 6 which requires to be pointedly noticed for the decision of this case. It reads as under:

6. (1) If any person contravenes, in any area notified in this behalf by a State Government, any such provision of, or any such rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptionist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life, and shall also be liable to fine.

(2) for the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

9. Designated Courts under the Act are constituted by virtue of Section 7. Section 9(1) lays down that "Notwithstanding anything contained in the Code, (which means the Code of Criminal Procedure as defined in Section 2(1) of the Act) every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed." This Section makes it clear that any offence for which punishment is provided under the Act or any rule made thereunder has to be tried exclusively by the Designated Court. According to Section 6(1) reproduced above every offence under the Arms Act committed in any area notified in this behalf by the State is punishable under this Section. Section 6 admittedly is applicable to the present cases because concededly there is a notification by the Haryana State Government making all the provisions of Arms Act applicable to the territories of Haryana under the said provision. There is, therefore, no scope of doubt that by virtue of Section 6 every offence committed under the Arms Act in the State of Haryana is punishable under this Section. As such u/s 9 of the Act the offence committed under the Arms Act in Haryana has to be tried exclusively by a Designated Court constituted under the Act.

10. The contention of the learned Petitioner's counsel is that Section 6 of the Act has been inducted merely to provide enhanced punishment regarding the offences committed under the Arms Act and some other Acts mentioned in the

Section It is said that Section 25 of the Arms Act remains punishable under the Arms Act itself and for this reason Section 9 of the Act has no application. We are not impressed by this contention. The Act is a self contained statute enacted for a special purpose elucidated in the preamble. It is a rule of construction that all the provisions of a statute are to be read together and given effect to, and it is, therefore, the duty of the Court to construe a statute harmoniously. Section 6 of the Act is a part and parcel of the Act and it is not merely meant to provide enhanced punishment for offences committed under the various Acts mentioned therein. It is unambiguously prescribed in this Section that in the areas notified by the State Government the offences committed under the Acts mentioned in the Section, including the Arms Act, notwithstanding anything contained in those Acts, are punishable under this Section. In other words the provisions regarding the commission of offences under those Acts have been imported in the Act for purposes of sentencing. Since the offences covered by the Arms Act are made punishable u/s 6 in certain areas notified by the State Government, Section 9 evidently becomes applicable and every offence committed under the Arms Act has necessarily to be tried by the Designated Court. The Designated Court is, therefore, undoubtedly seized of the jurisdiction to try the case u/s 25 of the Arms Act against the Petitioner Gurmukh Singh.

11. Now we advert to the other case under the Indian Penal Code. It is contended on behalf of the Petitioner that the case under Sections 307 and 323 read with Section 34, Indian Penal Code, could not be sent by the Additional Sessions Judge to the Designated Court for trial because he himself was vested with the appropriate jurisdiction to try that case. It is said that he could not divest himself of the jurisdiction and was not competent to ask the Designated Court to try the same. In reply the contention of the learned State counsel is that Section 10 of the Act empowered the Designated Court to try this case along with the afore-mentioned case u/s 25 of the Arms Act. Section 10(1) reads as follows:

10(1) When trying any offence a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

A bare reading of this provision would indicate that to attract its application three conditions are necessary. Firstly, the Designated Court should be trying an offence falling within its jurisdiction. Secondly, the accused should be charged of committing the other offences in the same trial, and thirdly those other offences must be connected with the offence triable by the Designated Court. In the present case the second and the third conditions are not fulfilled. Manifestly, Sections 3, 4 and 6 of the Act are not attracted to the case against the Petitioner under the Indian Penal Code. The Petitioners, in this case, are neither alleged to have committed any "terrorist" or disruptive act, nor an offence under the Arms Act. The Petitioner Gurmukh Singh is being tried separately u/s 25 of the Arms Act to which Section 6 of the Act applies. Both the cases were being separately

tried in the Court of the learned Additional Sessions Judge. Even though a gun, the licence of which had already expired, was allegedly recovered from Gurmukh Singh Petitioner during the investigation of the case under the Indian Penal Code, it is not the prosecution case that this gun had been used in the perpetration of the crime. Gurmukh Singh has not been charged with an offence u/s 27 of the Arms Act in the case under the Indian Penal Code for having used the gun during the commission of the crime-Hence, the offences under the Indian Penal Code and Section 25 of the Arms Act are not subject matter of the same trial, nor it can be said that the offence u/s 25 of the Arms Act is directly connected with the offences under the Indian Penal Code. We are, therefore, of the firm opinion that the enabling provision of Section 10 (1) of the Act, which empowers the Designated Court to try any other offence with which the accused may be charged of at the same trial along with the offence exclusively triable by it is not attracted to the present case. The Additional Sessions Judge was fully competent to try the case under the Indian Penal Code and he had no jurisdiction to transfer the same to the Designated Court. The case had been made over to him for trial by the learned Sessions Judge of the Division u/s 194 of the Code of Criminal Procedure. The jurisdiction of the Additional Sessions Judge was, therefore, only confined to try the case, and it did not extend to transferring the same to the Designated Court or any other Court. The Designated Court also cannot try this case along with the case under the Arms Act because of the inapplicability of Section 10 of the Act.

12. For aforesaid reasons the impugned order dated April 16, 1986 of the learned Additional Sessions Judge, Hissar, is partly quashed. The case under Sections 307 and 323 read with Section 34, Indian Penal Code, against the Petitioners will be tried in the Court of the learned" Additional Sessions Judge, Hissar. The Designated Court, Bhiwani will at once return the records of the case to the Court of the Additional Sessions Judge, Hissar. The Designated Court, Bhiwani, will, however, try the case under the Arms Act.

K.S. Tiwana, J.

I agree.