

(1984) 12 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5024-M of 1984

Gurnam Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 12-12-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 148, 149, 302, 324, 326

Terrorist Affected Areas (Special Courts) Act, 1984 — Section 10(1), 3(1), 3(2), 4, 7

Citation : (1985) 2 ILR (P&H) 71

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : P.S. Kang, for the Appellant; Hari Singh Mann and P.S. Mann and H.S. Nagra, for the Respondent

Final Decision : Allowed

Judgement

J.M. Tandon, J.—In First Information Report No. 43, dated 1st March, 1984, under Sections 302/326/324/148/149 of the Indian Penal Code (briefly the Code), Police Station Sadar, Gurdaspur, 14 persons were named. The Police investigated the case and challaned 9 persons, excluding the Petitioners who have since been committed for trial.

2. Kuldeep Singh, Respondent filed a complaint on 16th April, 1984, praying that the Petitioners and some others may as well be summoned and committed for trial. The Chief Judicial Magistrate summoned the Petitioners and a few others under Sections 302, 326; 323, 148/149 of the Code,—vide order dated 19th July, 1984. The Petitioners have assailed the order of the Chief Judicial Magistrate in the present Criminal Miscellaneous u/s 482 of the Code of Criminal Procedure.

3. The Terrorist Affected Areas (Special Courts) Act, 1984 (shortly the Act) came into force on the 14th day of July, 1984 with effect from January, 1984. The occurrence in the instant case took place on a date after the Act had come into force with the result that the provisions of the Act shall cover the criminal

proceedings in relation thereto.

4. Section 4 of the Act provides for the Establishment of Special Courts. A Special Court can be set up by the Central Government by a notification. The Special Courts in the Punjab were set up by a notification dated 26th July, 1984.

5. Section 7 of the Act deals with the jurisdiction of the Special Courts. The relevant part of this section reads:

7(1) Notwithstanding anything contained in the Code or in any other law, a scheduled-offence committed in a Judicial zone in a State at any time during the period during which such judicial zone is, or is a part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under Sub-section (2) of Section 3 as the period during which an area declared by notification under Sub-section (1) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then:

(a) *****

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time. * * * *

6. The learned Counsel for the Petitioners has argued that the . Petitioners have been summoned as accused in a case involving scheduled offences in terms of Section 7 of the Act. The Act came into force on 14th July, 1984. Under proviso (b) to Section 7(1) of the Act, the complaint case against the Petitioners pending in the Court of the Chief Judicial Magistrate stood transferred to the concerned Special Court. The Chief Judicial Magistrate had, therefore, no jurisdiction to pass the impugned order dated 19th July, 1984.

7. The learned Counsel for the Respondents have argued that a notification constituting the Special Courts in Punjab was issued on 26th July, 1984. The Central Government had not setup the concerned; special Courts on 19th July, 1984. The argument proceeds that the cases could stand transferred in terms of proviso (b) to Section 7(1) of the Act after the Special Courts has been established. The question of the transfer of such cases to non-existing Special Courts did not arise. The Chief Judicial Magistrate, therefore, continued to exercise jurisdiction in the present, case involving scheduled offences on 19th July, 1984. The contention of; the learned Counsel is without force.

Sub-section (1) of Section 10 of the Act reads:

A Special Court may take cognizance of any scheduled offence, without the

accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

It is clear that after the coming into force of the Act, a Special Courts could entertain a complaint involving scheduled offences. It is in this background that all the pending cases involving scheduled offences stood transferred to the concerned Special Court in terms of proviso (b) to Section 7(1) of the Act. The Act had come into force on 14th July, 1984. The effect of proviso (b) to Section 7(1) read with Section 10(1) of the Act is that the Chief Judicial Magistrate ceased to exercise jurisdiction in the complaint case against the Petitioners after the Act had come into force. The Chief Judicial Magistrate, therefore, had no jurisdiction to pass the impugned order summoning the Petitioners as accused on 19th July, 1984 in a case involving scheduled offences irrespective of the fact that the concerned Special Court was set up,--vide notification dated 26th July, 1984.

8. In the result, the application is allowed to the extent that the impugned order of the Chief Judicial Magistrate dated 19th July, 1984 summoning the Petitioners as accused in the complaint filed by Kuldip Singh, Respondent is quashed.