
(1992) 12 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3393-M of 1992

Rajbir Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Citation : (1993) 1 AICLR 625 : (1993) 2 RCR(Criminal) 127

Hon'ble Judges : S.K.Jain, J

Advocate : H.N. Mehani, D.S. Bishnoi, H.L. Sibal, R.S. Bains, Advocates for appearing Parties

Judgement

Jain, J.

1. Rajbir Singh petitioner has brought this petition under Section 482 of the Criminal Procedure Code seeking the quashing of the order dated March 16, 1992 passed by Judge, Designated Court, Bhiwani & Annexure P2 and charge sheet, Annexure P3, of the same date.

2. Facts of this case are that FIR No. 382 under Sections 307/120B of the Indian Penal Code read with Section 25/27/154/59 of the Arms Act and Sections 3 and 6, of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short TADA) was registered against Rajbir Singh, petitioner herein, on September 24, 1990 in Police Station City, Bhiwani on the challan having been filed Shri M. R. Bansal, Judge, Designated Court (Sessions Judge), Bhiwani vide his order dated March 16, 1992 directed framing of the charge against the petitioner under Sections 3/6 TADA, 307 of the Indian Penal Code and 27 of the Arms Act. Accordingly charge sheet Annexure P3 was drawn against the petitioner on the same date.

3. On being served the present petition has been contested on behalf of the State. Written statement has been filed. Learned Counsel for the parties have been heard.

4. Learned counsel for the petitioner has argued firstly, that originally FIR No.

382 of September 24, 1990 was recorded against the Petitioner in Police Station, Bhiwani under Sections 307/120B of the Indian Penal Code he and 25/27/54/59 of the Arms Act but subsequently Sections 3 and 6 of TADA were also added. The petitioner filed Criminal Miscellaneous Petition No. 4338 M of 1991 seeking the quashing of the said FIR. Shri J. C. Sethi, Additional Advocate General, Haryana, had appeared on behalf of the State. He had made a statement before this Court that the local investigating agency had dropped the charge under Section 3/6 of TADA and as such petitioner was not charged under the said Act. On his having made such a statement the counsel for the petitioner held withdrawn the abovesaid criminal miscellaneous petition. According to the learned counsel the said statement of Mr. Sethi was binding on the State and the accusations against the petitioner under Section 3/6 of TADA had been withdrawn, charge under the said section could not be framed against him in order to appreciate this argument, I have carefully examined the order (Annexure P1) date August 30, 1991 passed by this Court.

In CrI. Misc. No. 4338M of 1991. It reads as under :

"Mr. I. C. Sethi, Addl. Advocate General, Haryana states that the Local Investigating Agency has dropped the charge under Sections 3/6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, and at present the petitioner is not charged under the said Act.

In view of the above statement made by Mr. Sethi, the learned counsel for the petitioner does not press his petition, and the same is dismissed as such."

5. From the above order it is evident that on the statement having been made by learned Additional Advocate General Haryana. Criminal Misc. No. 4338M of 1991 was dismissed as not pressed. The question doing rounds right now is as to whether the abovesaid statement of Mr. Sethi tantamounts to withdrawal from the prosecution of the accused in respect of the offence under Sections 3/6 of TADA. Section 321 of the Code of Criminal Procedure deals with the withdrawal from the prosecution. It reads as under :

"321. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and, upon such withdrawal, (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences :

Provided that where such offence :

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

6. Analytical examination of the above provision would show that this section enables only the Public Prosecutor or the Assistant Public Prosecutor to withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. For doing so, consent of the court is necessary. The proviso to the section lays down that consent of the Central Government has to be obtained before a Public Prosecutor or Assistant Public Prosecutor moves the court for withdrawal of the case whenever the offence falls within the categories mentioned in sub clauses (i) to (iv) of the proviso. The Supreme Court in *M.N. Sanharanarayanan Nair v. P.V. Balakrishnan and others*, AIR 1972 SC 495, has held that the section is in general terms and does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution. The essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or subsequent information before it will falsify the prosecution evidence or other similar circumstances. It is difficult to predicate all factors, as they are dependant entirely on the facts of each case. Nevertheless, it is a duty of the Court to see that the permission is not sought on grounds extraneous to the interest of justice or that the offences which are offences against the State go unpunished merely because the Government as a general policy or expediency unconnected with its duty to prosecute offenders under the law directs the Public Prosecutor or Assistant Public Prosecutor to withdraw from the prosecution.

7. Again, in *Deputy Accountant General v. State of Kerala*, AIR 1970 Kerala 158 (equivalent to 1970 CrL LJ 966) a Full Bench of the Kerala High Court held that the power to withdraw though an executive power should be exercised in the light of Public Prosecutor's own judgment and not at the dictation of some other authority, however high. This power is not an absolute power; it can be exercised only with the consent of the Court. The curb thus placed on the power is to ensure that it is not abused that is to say, not exercised for improper reasons or to save improper acts. The court gives its consent in the exercise of its judicial discretion and before granting consent, it must be satisfied that the grounds

stated for the withdrawal are proper grounds; grounds which, if true, would make the withdrawal in furtherance of rather than hindrance to the object of the law.

8. When the facts and circumstances of this case are tested on the anvil of the above ratio it is found that the Public Prosecutor or the Assistant Public Prosecutor Incharge of the case had not applied to the Court seeking permission to withdraw from the prosecution of the petitioner in respect of the offence under Sections 3/6 of TADA for which he was proposed to be tried nor the Court at any point of time in the exercise of its judicial discretion had granted such a consent. Admittedly, Mr. J. C. Sethi, Additional Advocate General, Haryana was at no point of time appointed as a Public Prosecutor or Assistant Public Prosecutor. Therefore, he was not competent to make the abovesaid statement. Moreover, as is clear from the facts evident on the face of the record, he did not seek the consent of the Court to withdraw the case against the accused for an offence under Section 3/6 of TADA. Before this Court when CrI. Misc. No. 4338M of 1991 came up for hearing he had simply stated that the local investigating agency had dropped the charge under Section 3/6 of TADA and the petitioner was not charged against the said Act. He did not seek permission of the Court to withdraw the case against the accused for the offence under Section 3/6 of TADA nor this Court had granted such permission. It simply recorded a fact that in view of the statement of Mr. Sethi, the learned counsel for the petitioner did not press his petition and resultantly it had dismissed the petition as such.

9. For the aforesaid reasons I do not find any merit in the first argument of the learned counsel which falls to the ground.

10. Secondly, the learned counsel for the petitioner has argued that offence under Section 3/6 of TADA was not even prima facie made out from the FIR. I have carefully examined the true translation of the FIR reproduced in para No. 2 of the petition; true translation of the statement of Sarwan Singh dated September 24, 1990, recorded under Section 161 Cr.P.C., Annexure R1/T; true translation of the statement of Ramphal alias Om Parkash dated September 24, 1990 recorded under Section 161 Cr.P.C. Annexure R2/T; and have also gone through the provisions of Section 3/6 of TADA. The relevant portion of the FIR reads as under :

".....Today the Aggarwal Youth Association had organized a programme in connection with Aggarsen Jayanti at Anaz Mandi which was going on. Shri Banarsi Dass Gupta, Ex. C. M. Haryana was sitting in the meeting as Chief Guest on Sofa and Shri Mool Chand Jain. Minister Haryana, Shri Ram Rup son of Shri Thiala Ram Gupta, r/o Bhiwani, Pawan son of Satyan Narain Kedia r/o Bhiwani and I was sitting near Guptaji. Many other persons were also present in the meeting. Around 9.30 P.M. accused Rajbir came from the left side of the stage with pistol in his right hand and immediately, fired with his pistol at Shri B. D. Gupta after reaching in front of him. Accused Rajbir is an employee of the Market Committee, Bhiwani. The bullet struck Shri B. D. Gupta on the chest on the right

side. I immediately jumped and caught Rajbir's hand which carried the pistol and Ram Rup caught hold of Rajbir. Rajbir fell on the ground and while lying on the ground fired two more towards the stage with his pistol. This shot by chance did not hit any body.....

Statements of Sarwan Singh and Ram Phal are in the following terms :

.....On 13/9/1990 in the area of New Anaj Mandi. Bhiwani a function of one Act play was being played by the Youth Aggarwal Organisation in lieu of Aggarsen Jayanti. Play/function was going on. Shri Banarsi Dass Gupta, Ex. Chief Minister Haryana was sitting on the Sofa as Chief Guest of the meeting (Sabha.). Besides Shri Mool Chand Jain, Ex. Minister Haryana, Ram Roop Gupta, Pawan Kumar Kedia, Ram Narain President were also present in the meeting/Sabha. I and Ramphal & Om Parkash son of Jagan Nath Mahajan r/o Anaj Mandi Bhiwani and many other people were also present in the meeting/Sabha. At about 9.45 pm in the night from the left side of the stage accused Rajbir employee of the Market Committee, Bhiwani whom I knew earlier came with a pistol in his right hand. On reaching in front of Shri Banarsi Dass Gupta he fired a shot with his pistol which struck in Shri B. D. Gupta's chest in the right side. On this Ram Narain Pardhan/President caught hold of his hand carrying pistol quickly and Ram Roop caught hold of him by the arms. Rajbir fell on the ground and fired two more shots from his pistol towards stage which by chance did not strike anyone. In the meantime Pawan Kumar snatched his pistol from his hand. On 22/9/1990 I along with Ram Phal alias Om Parkash son of Jagan Nath r/o New Grain Market Bhiwani were talking in the Anaj Mandi in the meantime Rajbir came towards City, Bhiwani. When I asked about his whereabouts then Rajbir accused told that he was coming after attending the Chautala's party meeting. He further stated that Chautala government is working good for 12 the Jats. These Baniyas are opposing the Jat Government and want to topple down the Government. I will be forced to do an act so that these Baniyas could not dare to speak a word against the Jat Government, Rajbir accused has good terms with Shri Vijay Singh, Exn., Market Committee, Bhiwani and he frequently visits him and Vijay Exn. is soninlaw of Shri Tek Ram ExMLA and Sh. Tek Ram Ex. MLA is a relative of Mr. Chautala. Thus Rajbir accused is very close to Om Parkash Chautala. This fact has already been published in the newspapers that Sh. Chautala was sworn in as Chief Minister by pulling down the Govt. of Shri BD Gupta and in dropping the Government of Chautala, BD Gupta and Mool Chand Jain had played an important role and Hukam Singh is a dummy Chief Minister; that all the government works were being performed by Mr. Chautala so the government was supposedly of Chautala. This fact is known to everyone when Mr. Devi Lal made a statement published in the newspapers that Baniya community should be deprived from the right to vote. On this statement of Devi Lal all the Baniya community organised against Jats. Yesterday it was a Baniya Sammelan/Jayanti. Rajbir was a Jat by caste and a man of Mr. Om Parkash Chautala. So he wants to create a terror in Baniya community and also does not want to see Baniyas organised against Jats and wants that no Baniya could dare to oppose Jats in

future....."

11. The learned Judge, Designated Court, took the above material into consideration while hearing, the parties on the question of framing of the charge and came to the following conclusion vide para 4 of his order dated March 16, 1992 :

"After hearing the arguments I am of the view that as accused has fired on a person, who remained Chief Minister from a point blank range at a time when he was there in a function to preside over it which was having a big gathering, there is prima facie case punishable under Sections 3/6 of TADA and 307 IPC, so he is ordered to be charged for the above offences. He is also liable for an offence u/s 27 of the Arms Act."

12. It has not been denied that the whole of the State of Haryana has been declared `notified area" under Section 2(1)(f) of TADA It is also not denied that TADA was in force in Bhiwani i.e. in the area where the occurrence had taken place at the relevant time. According to Section 3 of TADA, "whosoever 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 that 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 poisonous or noxious gases or other chemicals or by 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 loss of, or damage to, or destruction of, property or disruption of any supplies of services essential to the life of the community or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

13. Learned Advocate General has argued that from the material on record, portions of which have been reproduced above, it is evident that the case of the prosecution is that the petitioner wanted to strike terror in people in general and Aggarwal community in particular and also wanted to alienate Aggarwal community and to adversely affect the harmony amongst Aggarwal community and Jat community and with that purpose in a public meeting organised by Aggarwal community where a great number of people were present, fired a shot towards Shri Banarsi Dass Gupta who was presiding over the meeting and even while falling on the ground, he had fired two shots towards the stage where a number of persons were present and, therefore, a prima facie case under sections 3/6 of TADA was made out and the Judge, Designated Court, Bhiwani, had rightly framed a charge against the petitioner under these sections. I find force in the above argument of the learned Advocate General. I restrain myself from commenting on the merits of case so that either of the parties may not be prejudiced. It is now wellsettled that the extraordinary powers under Article 226 of the Constitution of India and the discretionary powers under `section 482 of

the Code of Criminal Procedure may be exercised by the High Court :

i) where the allegations made in the First Information Report even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; or

ii) where the uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused; or

(iii) where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence or where the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceeding against the accused; or

iv) where there is an express legal bar engrafted in any of the provisions of the code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or concerned Act, providing efficacious redress for the grievance of the aggrieved party; or

v) where a criminal proceeding is manifestly attended with mala fide and or where the proceeding is maliciously instituted with an ulterior motive to wreak vengeance and with a view to spite him due to private and personal grudge.

14. The present case does not fall in any one of the above categories and therefore, neither the FIR nor the order framing the charge nor the continuance of the trial tantamounts to the abuse of the process of the court.

For the reasons recorded above, this petition is dismissed.