

(1991) 01 GAU CK 0005
In the Gauhati High Court
Case No : Criminal Revision No. 399 of 1990

State of Assam

APPELLANT

Vs

Prasenjit Narzary

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Criminal Procedure Code, 1973 — Section 10(3)
Criminal Procedure Code, 1973 (CrPC) — Section 10(3)

Citation : (1991) 1 GLJ 176 : (1991) 1 GLR 106

Hon'ble Judges : S.Haque, J

Bench : Single Bench

Advocate : P.C.Goswami, K.P.Sharma, J.M.Choudhary, Advocates appearing for Parties

Judgement

1. The orders dated 31. 8 1990, 5, 9. 1990 and 10. 9. 1990 of the Additional Sessions Judge, Kamrup, Gauhati passed in Misc. Case No. 199 (K)/1990 Shri Prasenjit Basumatari vs. The State of Assam arising out of Chandmari P. S. Case No. 194 of 1990 under section 412 IPC read with sections 4/5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 have been impugned by this revision by the State of Assam.

2. The Sessions Judge, Kamrup, Gauhati was the Designated Court under the provision of section 9 of the TADA (P) Act, 1987, hereinafter called the "Act" for all purposes, at the relevant time. The case was in the file of Designated Court. The Designated Court was out of station on the 3 relevant dates on which the Additional Sessions Judge passed the orders.

3. Admittedly, the Additional Sessions Judge was not a Designated Court under section 9 of the Act, when the impugned orders were passed. An amount of Rs. 2 lakhs cash was seized from the accused person of the case. The Additional Sessions Judge vide impugned orders particularly dated 10. 9. 1990 released the seized money to the accused on executing a bond before the Investigating Officer of the case. Perused all the 3 impugned orders particularly dated 10.

9.1990.

4. Learned Public Prosecutor Mr. K. P. Sarma submits that the Additional Sessions Judge, not being a Designated Court, had no jurisdiction to pass the impugned orders releasing the money and so the orders were nullity. It was evident from the order dated 10. 9. 1990 that the Additional Sessions Judge was very much conscious of the fact that he was not the Designated Courts under the provisions of section 9 of the Act.

5. The Sessions Judge (Designated Court) during absence from the station, at the relevant time made provision by an order under section 10 (3) of the Code of Criminal Procedure on the Additional Sessions Judge for disposal of any urgent application. Learned counsel Mr. J. M. Choudhury submits that the Designated Court having all powers of Court of Sessions to try offences under the Act in accordance with the provisions of the Code and therefore, the order passed by the Sessions Judge cum Designated Court under the provision of section 10 (3) of the Code would by way or procedure conferred power/jurisdiction on the Additional Sessions Judge for disposal of urgent application even for the cases under the Act (TADA). The application disposed of under impugned orders was one under section 451 of the Cr. P. C. Whereas the learned Public Prosecutor submits that section H (3) of the Act simply provides the procedure to try a case under the Act as a Sessions case by a Designated Court in accordance with the procedure prescribed in the Code for trial of a Sessions case. An order under section 10(3) of the Cr. P. C. by a Sessions Judge cum Designated Court upon the Additional Sessions Judge, not being a Designated Court, would not confer jurisdiction on the Additional Sessions Judge to dispose of any application of a case under the Act, but that would only confer to cases other than cases under the Act. The provision under section 14 (3) is not unambiguous. It has plainly prescribes that a Designated Court shall have all powers of a Sessions Judge and shall try the offence under the Act complying procedures under Chapter XV of the Code of Criminal Procedure. Therefore, the submissions of Mr. J. M. Choudhury carries no force, whereas submissions of Mr K. P. Sarma have substance and acceptable. An order under the provision of section 10 (3) of the Code of Criminal Procedure by a Sessions Judge cum Designated Court during his absence simply confers powers to dispose of any urgent application concerning cases excluding casts under the Act, but if the Court upon whom such power is conferred is a Designated Court under the provision of subsection (8) of section 9 of the Act then only such Court can dispose of any urgent application by virtue of Such powers. The Additional Sessions Judge in question was not a Designated Court under subsection (8) of section 9 of the Act, and therefore, he had no jurisdiction by virtue of that order under section 10 (3) of the Code to dispose of an application under section 451 Cr. p. C. concerning a case under the TADA (P) Act. Section 20 of the Act has clearly prescribed as to the applicability or nonapplicability of the provisions of the Code with regard to the casts/offences under the provision of the Act. It was not there that a Sessions Judge cum Designated Court, during its absence, can confer power to another

Court, not being designated, under the provision of section 10 (3) of the Code for disposal of the cases under the Act.

6. The Additional Sessions Judge was conscious as appeared from the impugned order that it was not a Designated Court but acted upon for the observations made by the Designated Court in the bail order and after going through the case diary. The Additional Sessions judge had no authority to go through the case diary of the case under the Act and to be led by the observations made by the Designated Court in the bail order dated 17.8.1990 or to act on the basis that no incriminating material could be found in case diary by self inspection. Observations of a Designated Court or examination of case diary by self would not confer jurisdiction on the Additional Sessions Judge to dispose of an application of a case under the Act. It transpired that the Additional Sessions Judge Shri S K.Dhar lacks judicial conception which was not expected from such a senior officer. Being conscious of the fact that he had no jurisdiction being not a Designated Court, how could he pass an order releasing huge amount involved in the case under TADA(P) Act. Some motives other than discharge of judicial function on good faith can not be ruled out from suspicion.

7. Even a reasonable order by a wrong forum is no order under the law and becomes a nullity. But the orders impugned can not even be attributed as reasonable because the Additional Sessions Judge was conscious that he had no jurisdiction being the wrong forum. The impugned orders were without jurisdiction and so those were illegal and nullity. It will be a chaos in the field of law and Courts if such acts are allowed as done by the Additional Sessions Judge not being a Designated Court. Special Act carries specified characteristics and the Courts must act within the provisions of the Act, the TADA(P) Act is one of such nature. (Relied principles laid down in the cases Pandurang vs. State of Maharashtra reported in AIR 1987 SC 535 and Usmanbhai Danodbhai Menon and others vs. State of Gujarat reported in AIR 1988 SC 922.)

8. The observations of the Designated Court in the bail order would not amount if the case had come out of the purview of TADA (P) Act and stood only with the offence under section 412 IPC allowing other Courts to deal with the case. The special nature and characteristic of the case under TADA (P) continues unless the Investigation Agency submits final report in respect of the offences of that Act and the same is accepted by the Designated Court or unless the offences under investigation with the Act are quashed by any competent Court.

9. The impugned order passed by the Additional Sessions Judge, Kamrup, Gauhati releasing the seized amount of Rs. 2 lakhs in favour of accused petitioner in Case Misc. No. 199 (FC)/1990 under section 412 IPC read with sections 3/4 of the Terrorist and Disruptive Activities (Prevention) Act was without jurisdiction and liable to be quashed.

10. This revision is allowed. The impugned orders dated 31.8.1990, 5.9.1990 and 10.9.1990 passed by the Additional Sessions Judge, Kamrup, Gauhati in Misc.

Case No.199 (K)/1990 arising out of Chandmari P.S. Case No. 194/1990 are hereby quashed. Now, the Designated Court, Kamrup, Gauhati is directed to take necessary actions to get return of the amount from the accused through the Investigating Agency and by other lawful method and get the same re-seized. The case will proceed in accordance with law. Send down the records immediately.

11. The Registry is directed to follow up administrative action on the Additional District & Sessions Judge, Kamrun, Gauhati Shri S. K. Dhar on the basis of the observations made in this judgment.