
(1995) 08 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1319 of 1995

Swaroop

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Arms Act, 1959 — Section 25(1), 27

Constitution of India, 1950 — Article 226

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 18, 19, 20A, 3(1), 3(2)

Citation : (1996) CriLJ 1

Hon'ble Judges : P. Venkatarama Reddi, J; D.H. Nasir, J

Bench : Division Bench

Advocate : N. Guru Gopal, for the Appellant; Govt. Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, J.—This writ petition under Art. 226 of the Constitution is filed by the wife of the accused convicted under S. 3(2)(ii) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the Act") and Sections 25(1)(b) and 27 of the Indian Arms Act in Sessions Case No. 272 of 1992 by the III Addl. Metropolitan Sessions Judge, Hyderabad. By the judgment dated 26th October 1992, the accused who was convicted under the aforementioned provisions was sentenced to suffer R.I. for eight years for the offence punishable under S. 3(2)(ii) of the Act; two years and four years respectively for the offences under Ss. 25(1)(b) and 27 of the Indian Arms Act. The sentences are to run concurrently. Without filing an appeal under S. 19 of the Act, the present writ petition is filed praying for a writ of certiorari to quash the conviction and sentences and to declare that the Court had no jurisdiction to convict the accused.

2. When the writ petition came up before our learned sister, Maruthi, J., she referred the matter for a decision by the Division Bench. In the concluding para of the reference order, the learned Judge observed as follows :

"The judgments in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, ; State of West Bengal and another Vs. Mohammed Khalid and others, and W.P. No. 1764 of 1994 dated 2-3-1994 relied on by the learned Government Pleader are cases where there is no conviction but even at the threshold of launching of prosecution, the jurisdiction of this Court under Art. 226 of the Constitution was invoked. There was no occasion where in exercise of the jurisdiction under Art. 226 of the Constitution, conviction was set aside. Therefore, having regard to the importance of the question involved and having regard to the fact that liberty of a citizen is involved, it is a fit case where the matter should be decided by a Division Bench so that there can be an authoritative pronouncement on this question."

Thus, the learned Judge expressed a doubt whether the jurisdiction under Art. 226 of the Constitution can be invoked to set aside a conviction without availing of the appellate remedy.

3. The gravamen of the charge against the accused was that on 12-5-1992 at about 6.10 p.m., the accused was striking terror in the locality of Audaiyanagar by brandishing a sword and creating panic amongst the public uttering the words that persons who failed to pay "Rowdi Mamools" would be killed and on receiving an anonymous phone call, the police party led by the Inspector of Police (P.W. 4) of Market Police Station, Secunderabad overpowered the accused near the playground where he was standing. Then and there, M.O. 1 was seized under a panchnama (Ex. P-1) in the presence of P.W. 3. On the information of the accused that he kept lethal weapons in his house, the police party along with P.W. 3 and the accused went to his house whereupon the accused picked up eight lethal weapons and one iron bar with nails (M.Os. 2 to 10). In the charge-sheet, the accused has been projected as a notorious criminal with a history of grave crimes. It is alleged that the accused could not be convicted as he was acquitted in many criminal cases as the witnesses did not dare to depose against him. The charge relating to the offence under S. 3(2)(ii) of the Act reads as follows :

"That you on the 12th day of May 1992 at about 6.10 p.m. at Audaiah Nagar, Secunderabad were in possession of a sword and were striking terror among the people of the locality by brandishing the sword in a violent mood and chasing them with the sword and created panic among the public by terrorising them and that you thereby committed an offence under S. 3(1) of the Terrorist and Disruptive Activities (Prevention) Act 1987 punishable under S. 3(2)(ii) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, and within my cognizance."

At the trial, four witnesses for the prosecution were examined. P.Ws. 1, 2 and 4 are the police officers who went to the spot on the crucial date. P.W. 3 is supposed to be a panch witness. The learned Sessions Judge believed the version of the prosecution witnesses, especially that of P.W. 3 and found the accused guilty.

4. Relying upon the judgments of the Supreme Court, it is contended that the offence alleged against the accused cannot be brought within the scope and purview of the Terrorist and Disruptive Activities (Prevention) Act and that the accused should have been tried only under the provisions of the ordinary criminal law. It is submitted that even before the trial, the designated Court should have applied its mind on the question of jurisdiction and discharged the accused or transferred the case to the competent Court if the Court felt that any other offence has been committed. The learned Counsel further submits that on account of ignorance and lack of proper advice, the accused could not prefer an appeal in the Supreme Court under S. 19 of the Act. As the petitioner is languishing in jail for a period of more than two years, it is contended that this Court should intervene under Art. 226 of the Constitution and set the convict at liberty. The learned Government Pleader submits that there is no want of jurisdiction in the designated Court and the proper remedy for the accused is to file an appeal against the conviction.

5. Though a contention was raised before the learned single Judge that there was no compliance with S. 20-A of the Act for want of sanction from the competent authority, this point has not been pressed in the course of arguments before us, evidently for the reason that S. 20-A was not in force at the time when the offence took place or at the time of filing the charge-sheet.

6. It is trite to say that the existence of alternative remedy or the non-availment thereof is not a bar to the exercise of jurisdiction under Article 226 of the Constitution. If we had come to the conclusion that the Court acted altogether without jurisdiction, e.g., as in the case of *A.R. Antulay Vs. R.S. Nayak and Another*, or a mandatory statutory pre-requisite for assuming jurisdiction is found to be absent, we could have seriously considered whether we should quash the conviction notwithstanding the alternative remedy. But we find no such basic and vital infirmity in the case. The error, if any, committed by the Court in exercise of its jurisdiction is not normally corrected in a proceeding under Article 226 of the Constitution. The fact that an appeal is provided to the Supreme Court directly is another weighty consideration which we should bear in view in reflecting over the issue. In a case where a designated criminal Court, after full trial, returned a finding of guilt against the accused u/s 3(2)(ii) of the Act and an appeal against the judgment lies to the Supreme Court, the propriety demands that we should refrain from examining the legality of conviction in exercise of our jurisdiction under Article 226 of the Constitution. We must remind ourselves of the well settled rule that the High Court in a writ proceeding refrained from entering into the arena of appreciation of evidence and reaching a finding of its own. May be, the contention of the petitioner's Counsel that the evidence of policemen and the panch-witness is artificial and untrustworthy does not lack force. But that is a matter for the appellate Court to appreciate, but not for us.

6-A. Based on the legal position enunciated by the Supreme Court in regard to application of TADA to given situations, the learned Counsel for the petitioner has

endeavoured to make out a case of want of jurisdiction on the part of the designated Court so as to pave the way for intervention of this Court under Article 226 of the Constitution.

7. In *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, , the Supreme Court observed (para 8) :

"The provisions of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorist and disruptive activities that resort should be had to the drastic provisions of the Act. While invoking a criminal statute, such as the Act, the prosecution is duty bound to show from the record of the case and the documents collected in the course of investigation that facts emerging therefrom *prima facie* constitute an offence within the letter of the law. When a statute provides special or enhanced punishment as compared to the punishments prescribed for similar offences under the ordinary penal laws of the country, a higher responsibility and duty is cast on the Judge to make sure there exists *prima facie* evidence for supporting the charge levelled by the prosecution."

8. In a recent case *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, Dr. A. S. Anand, J. speaking for the Court analysed Section 3(1) of TADA and observed that unless the act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that Section by means of the weapons as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence u/s 3(1) of TADA. The learned Judge then made the following pertinent observations (para 11) :

"Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable u/s 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under S. 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied."

9. The learned Government Pleader argues that this is not a case of an offence being committed against a particular person or a few persons and the offensive act of the accused is not such that could be effectively dealt with under the ordinary criminal law. It is submitted that the act of the accused who is a notorious rowdy had the tendency of creating a panicky atmosphere amongst the law abiding people of the locality and such act was done with the intention and motive envisaged by Section 3(1) and the ingredients of Section 3(1) are satisfied. Prosecution of the accused under the Indian Penal Code for an offence

of public nuisance or the like or initiating security proceedings under the Code of Criminal Procedure will not be an effective remedy to check the menace. On the other hand, the learned Counsel for the petitioner vehemently contends that the situation created by the alleged offensive act of the accused can be effectively dealt with by setting in motion the provisions of the ordinary criminal law. We are not inclined to enter into this controversy. Looking at the prosecution version in the background of the allegations in the charge-sheet and the charges at their face value, we can only say that at best, the question whether it was appropriate to apply TADA against the accused is a moot point. As the conviction has already been recorded by a competent Court against the accused accepting the prosecution version, it is not at all proper for us to interfere under Article 226 of the Constitution, allowing the accused to bypass the remedy of appeal, more specially when such appeal is provided to the Hon'ble Supreme Court.

10. The contention of the learned Counsel for the petitioner that the designated Court failed to apply its mind as per Section 18 of the Act before the trial commenced, does not appeal to us. Reliance on Section 18 becomes practically irrelevant as the accused has got conviction pursuant to a fulfilled trial.

11. In the light of the above discussion, we do not wish to go into the merits of the case with a view to examine whether the evidence on record was sufficient to convict the accused or whether the offence of which the accused was charged falls within the purview of Section 3(1) of TADA. These matters have to be agitated in the appeal. Even now it is open to the accused to file an appeal u/s 19 of the Act with an application to condone the delay under the proviso thereto.

12. In the result, the writ petition is dismissed subject to the above observation. No costs.

13. Petition dismissed.