

(1994) 11 GAU CK 0006

Gauhati High Court

Case No: Criminal Revision No. 96 of 1990

Rajendra Singh Rautela

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Nov. 11, 1994

Acts Referred:

- Criminal Procedure Code, 1973 - Section 482
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (1994) 2 GLJ 467

Hon'ble Judges: V.Dutta Gyani, J and D.N.Baruah, J

Bench: Division Bench

Advocate: N.Dutta, S.N.Bhuyan, J.M.Choudhary, S.N.Sharma, Advocates appearing for Parties

Judgement

V. Dutta Gyani, J.

This criminal revision under section 397/401 CrPC has come up for hearing before this Bench as one of us (Baruah, J), when it came up for hearing, opined that considering importance of the point involved It should be decided by a larger Bench and directed it to be placed before, Hon"ble Chief Justice for necessary orders. Ever since, it is being listed before a Division Bench. It is accordingly listed before this Bench. The point raised in this criminal revision is whether a criminal prosecution under section 3, 4 and 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, for short TADA, to be quashed by this Court in exercise of its revisional jurisdiction under section 397/401 CrPC or inherent powers under section 482 CrPC.

2. The petitioner is serving as a Manager in Dajoo Tea Estate within the jurisdiction of Police Station North Lakhimpur. He possess a 22 bore Rifle and a DBBL Gun under valid licence. His wife also has a revolver covered by a valid licence.

3. On 2.3.90 he was served with a notice to deposit the licenced gun on the police station for safe custody, but he could not deposit the same as he sustained a

fracture and could not move from his residence.

4. It is his case that on 4.3.90 at around 2 PM, 4/5 persons all strangers, came in a Gypsy and forcefully took away the revolver belonging with threat of dire consequence and with assurance to return the same after some days. The couple was scared. As they live at a far distant place from the police station they could not do so because of the escalating violence in the area faced with danger of their lives, till 6.3.90 about the incident. On 6.3.90 the FIR was lodged and a case under section 395 IPC was registered with North Lakhimpur PS being FIR Case No 251/90. Along with lodging of FIR the petitioner also surrendered his licensed guns.

5. Another FIR was lodged by one Shri Laksheswar Gogoi at, the same Police Station being PS Case No. 254/90 under section 188 IPC read with section 27/29 (b) of the Arms Act and sections 3, 4 and 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short TADA) corresponding to OR Case No. 360/90. This FIR, inter alia, alleges that the petitioner in spite of receipt of notice dated 2.3.90 failed to surrender arms and neglected to take action. Apprehending his arrest, the petitioner has approached this Court for invoking inherent powers for quashing the proceedings.

6. We would like to make it clear that we are not going into the factual aspects or related merits of the case. Confining ourselves to the prime question of law whether inherent powers can be invoked and exercised by the High Court to quash a pending criminal prosecution under TADA. Before proceeding to deal with the rival contentions, as advanced at the Bar, it would be worth while to note the object and scope of section 482 CrPC.

7. The nonobstante clause that Nothing contained in this Code shall be deemed to limit or affect, the inherent powers of the High Court, is no doubt very significant as argued by Mr. Choudhury, but the words "this Code are equally significant to the inherent powers of High Court relating to making of such orders as may be necessary

(i) to give effect to any orders under this Code, or

(ii) to prevent abuse of process of any Court, or

(iii) otherwise to secure ends of justice.

The impact of the section and purpose of "making such orders" spelt out by the above analysis. (This inherent power is not something given or conferred upon the High Court by the Code, it was there even under the old Code. Section 482 is declaratory in nature).

8. The nonobstante clause "Nothing contained in this Code* has no doubt an overriding effect, as argued by Mr. Choudhury, but while interpreting it, its operation can not be so extended as to cover other laws, it has to be confined to

"this Code" ie the Code of Criminal Procedure. Such a clause can not reasonably be read as overriding anything contained in any other related existing law (See Supdt & Remembrancer Legal Affairs vs. Satyen Bhonmick, AIR 1981 SC 917).

9. The legal fiction arising out of a clause should be carried to its logical end as pointed out by the Supreme Court in *State of AP vs. Vallabhapuram Ravi*, AIR 1985 SC 870). but at the same time it must be confined to the limited purpose for which it is created (*CST vs. Union Medical Agency*, AIR 1981 SC 1).

10. Before adverting to the provisions of TADA, let once again analyse the section 482, CrPC itself the deeming fiction is confined to this Code, and nor other Codes or laws. While interpreting the scope of inherent power of the High Court, the Supreme Court indicating as to how and when it should be exercised has pointed out in *Janata Dal vs. HS Choudhury*, (1992) 4 SOS 365, as follows :

"128. Sections 397, 401 and 482 of the new Code are analogous to " sections 435, 439 and 561A of the old Code of 1898 except for certain "substitutions, omissions and modifications. Under section 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court."

11. Now adverting to the TADA, this Court in a reasoned judgment, as reported in *Hiren Brahma vs. State of Assam*, 1992 CrL LJ 1351 [1991 (1) GLJ416] profoundly summarised provisions of the Act as under;

"5. This law laid down by the Apex Court is binding on all Courts within the territory of India as laid down in Article 141 of the Constitution of India, and as such this Court is duty bound to enforce the above law laid down. It has come to the notice of this Court that even in the ordinary cases, section 3 and 4 of the above Act are added by the prosecution which is absolutely illegal. Though this Court can not interfere with the impugned order, this Court can definitely direct the Designated Court, by invoking the provisions of Article 227 of the Constitution, to observe the law laid down by the Apex Court."

12. The Legislature by enacting TADA viewed and treated offence of terrorism as special criminal problem and created special Court called "Designated Court" to deal with these problem of terrorism and disruptive activities for the trial of which a

special procedure has been provided under the Act. These Designated Courts are not, so far as TADA is concerned, subordinate to High Court.

13. Referring the case of *Usraanbhai Dawoodbhai Memoo vs. State of Gojrat*, (1988) 2 SCC 271 : AIR 1988 SC 922, learned counsel for the petitioner Mr. Choudbury has argued that two questions were considered by the Supreme Court in this case, namely (1) jurisdiction and power of the High Court under section 439 CrPC or section 482 CrPC to grant bail to an accused charged with section 3/4 of the TADA, and (2) the nature and restraint put on the Designated Court in the matter of granting bail under section 20 (B) of the Act. The view expressed in *Usmanbhai Danoodhai Memon* (supra) has been reiterated by the Supreme Court in *Niranjan Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijaya*, AIR 1990 SC 1962 : 1990 CrLJ 1869. It can not be gain saying that TADA is a special Act created a new class of offence dealing with terrorism and disruptive activities as defined under section 3 (1) and 4 (2) of the TADA. It also provides for special procedure for trial. The Designated Courts are to be established by the Central or State Govt. under section 9(1) of the TADA by notification in the official Gazette. Under the scheme of the TADA application of Criminal Procedure Code has been modified or curtailed as can be gathered from section 20 of the TADA. It is also worthwhile to note that under section 19 of the TADA "notwithstanding anything contained in the Criminal Procedure Code, an appeal from any judgment, sentence or order passed by a Designated Court" is made appealable to the Supreme Court, thereby excluding High Court's jurisdiction in relation to the arrest of a person accused of an offence under the TADA or Rules or made thereunder. Section 25 of the TADA reads as follows :

"25. Overriding effect The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act."

It is in the light of this provision that the Supreme Court in *Usmanbhai Dawoodbhai Memon* (supra) has given effect to legal maxim *generalia speciali* but nonderogant, as categorically held that where an enactment provide for a special procedure for the trial of certain offences, it is that procedure that must be followed and not the one prescribed by the Code (see para 17). In the same case the Supreme Court has explained the object and scope of the Act and legislative intention to provide special machinery to combat the growing mammoth of terrorism. In view of the foregoing discussion it will not be correct to say, as argued by Mr. Choudhury, learned counsel for the petitioner, that *Usmanbhai Dawoodbhai Memon* (supra) is confined only to grant of bail. A Constitution Bench of the Supreme Court while dealing with special procedure described under the TADA in *Kartar Singh vs. State of Punjab*, (1994) 3 SCC 569 has held as follows :

"145. ... As we have indicated above, the Act tends to be very harsh and drastic containing the stringent provisions and provides minimum punishments and to some other offences enhanced penalties also. The provisions prescribing special procedures aiming at speed disposal of cases, departing from the procedures prescribed under the ordinary procedural law are evidently for the reasons that the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities, secondly that the incensed offences are arising out of the activities of the terrorists and disruptionists which disrupt or are intended to disrupt even the sovereignty and territorial integrity of India or which may bring about or support any claim for the cession of any part of India or the secession of any part of India from the Union, and which create terror and a sense of insecurity in the minds of people. Further the Legislature being aware of the aggravated nature of the offences have brought this drastic change in the procedure under the law so that the object of the legislation may not be defeated and nullified."

14. It is cardinal rule of interpretation that it should conform to the legislative intent; and Court should not take a narrow and restricted view which will defeat the purpose of the Act (see *Vatan Mai vs. Kailash Nath*, AIR 1989 SC 1534) and as pointed out by the Apex Court in the case of *State of UP vs. Radhey Shyara*, AIR 1989 SC 682, : "It is job of the Court to interpret of the Legislature by the words used. The fairest and the most rational method to exploring his intentions at the time when the law was made by signs, the most natural and probable."

15. In the light of this principle of interpretation and bearing in mind ♦the object of TADA, it can not be said that powers under section 482 CrPC can be invoked in respect of prosecution under the TADA.

For the foregoing reasons, this petition fails and accordingly dismissed.