

(2014) 09 SC CK 0178

SUPREME COURT OF INDIA

Case No: Writ Petition(s)(Criminal) No(s). 46 of 2008.

Ashiq Hussain Faktoo -
Petitioners @HASH Union of
India and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 24, 2014

Acts Referred:

- Constitution of India, 1950 - Article 137, Article 32

Citation: (2016) 9 SCC 746 : (2017) 1 SCC Cri 93

Hon'ble Judges: Dipak Misra and V. Gopala Gowda, JJ.

Bench: Division Bench

Advocate: Mr. Ram Jethmalani, Mr. B.A. Khan, Sr. Advocates, Mr. Ramesh Chandra Singh, Mr. Rajiv Khurana, Mr. Sudarshan Rajan, Mr. Manu Sharma, Ms. P.R. Mala, Mr. Pranav Diesh, Mr. Karan Kalia, Mr. Ali Jethmalani, Advocates, for the Petitioners; Mr. R.S. Suri, Sr. Advocate, Mr. Rajiv Nanda, Mr. B.V. Balram Das, Mr. Arvind Kumar Sharma, Mr. Anis Suhrawardy, Mr. Sunil Fernandes, Advocates, for the Respondents

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. The appeal was preferred forming the subject matter of Criminal Appeal No. 889 of 2001 by the Central Bureau of Investigation against the petitioners who were arrayed as accused persons therein. The assail was to the judgment dated 14.07.2001 passed by the Presiding Officer of the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for brevity, "TADA").

2. This Court, after advertng to the factual matrix dealing with the certain aspects in law, reversed the judgment of acquittal and recorded a conviction and sentenced the respondents-accused persons, the petitioner herein, to suffer rigorous imprisonment for life.

3. When this writ petition was listed on 28.01.2010, a two-Judge Bench had passed the following order:

"Issue notice.

Looking to the gravity of the matter, we would like the learned Solicitor General of India to assist the Court in this case. Court notice be sent to him."

4. We have referred to the aforesaid order as at one point of time, while dealing with the writ petition, the Court had expressed its concern as regards the gravity of the matter.

5. We have heard Mr. Jethmalani, learned senior counsel for the petitioners and Mr. Suri, learned senior counsel for the Union of India.

6. Mr. Suri has raised a preliminary objection to the effect that the writ petition under Article 32 of the Constitution of India is not maintainable in view of what had been stated in **Roopa Ashok Hurra v. Ashok Hurra and Anr. (2002) 4 SCC 388**. In the said case, the Constitution Bench, after referring to **A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602 : 1988 SCC (Cri) 372** and certain other authorities, came to hold as follows:

"14. On the analysis of ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person, whether he was a party to the case or not."

7. At this juncture, Mr. Jethmalani, learned senior counsel impressed upon us that as per Antulay's case (supra), a writ petition could be filed challenging the judgment which is contrary to the established procedure of law and also on the maxim *ex debito justitiae* inclusive of violation of the principle of natural justice. To buttress the submission about the vulnerability of the judgment-in-appeal, he has raised the following contentions:

(a) The decision in appeal reversing the judgment of acquittal to that of conviction, there is a manifest breach of Article 21 of the Constitution of India, for the conviction had been based on an absolute impermissible confession recorded by the police officer on 28.06.1993 while the accused petitioner was in police custody.

(b) The confession which had been placed reliance upon by this Court is squarely hit by Sections 25 and 26 of the Evidence Act, 1872 and further it deserves to be appreciated that Section 15 of the TADA does not save it from the invalidity.

(c) To earn the status of legal evidence, it has to be relevant under Section 5 of the Evidence Act and the Court cannot place reliance upon it solely declaring it as admissible despite it being irrelevant. Quite apart from that when bar of Section 25 of the Evidence Act has not been removed in the manner required by law, the same justifies the order of acquittal making the judgment of reversal by this Court

absolutely sensitively susceptible.

(d) The factum of confession that establishes the guilt is to be read in the context of Section(s) 17, 18 and 24 of the Evidence Act and when all the provisions are not appositely satisfied or the ingredients are not met with, the Court cannot proceed to convict the accused on the erroneous finding which has no foundation in law.

(e) The statement of confession being known, a confusion cannot be the governing factor for establishing the guilt in the obtaining factual matrix. The said proposition is buttressed on the bedrock of the ratio laid down in **Palvinder Kaur v. State of Punjab, AIR 1952 SC 354 : 1953 Cri. LJ 154** and **Shankar v. State of Tamil Nadu (1994) 4 SCC 478 : 1994 SCC (Cri) 1252**.

8. Considering the aforesaid submissions, we find it will not be advisable to place reliance on paragraph 14 of the judgment in Roopa Ashok Hurra's case (supra), as suggested by Mr. Suri and throw the writ petition at the threshold.

9. We have been apprised by Mr. Jethmalani as the writ petition was filed, no application for review was filed. We are of the considered opinion if the present writ petition is converted to a review petition and heard in the open Court on the fundamental principles of review as well as the maxim ex-debito justitiae, the cause of justice would be sub-served and accordingly we direct the Registry to convert the present writ petition to a review petition and list before the appropriate Bench in open Court as expeditiously as possible.