A MOHD. YUNUS

v.

STATE OF GUJARAT

OCTOBER 15, 1997

B [G.N. RAY AND G.B. PATTANAIK, JJ.]

Terrorists and Disruptive Activities (Prevention) Act, 1987 : Section 20A, 3 and 5.

C *TADA Accused—Charge under Sections 3 and 5—Condition precedent for invoking provisions—Prior approval of statutory authority for initiating criminal proceedings—Failure to comply with—Effect of.*

Appellant accused charged under Sections 3 and 5—Prior approval of D *District Superintendent of Police as required under section 20 A(1) not obtained—Application filed by appellant for dropping the charges for non compliance with mandatory provisions of section 20A—Rejection by Designated Court—Appeal before Supreme Court—Held, prior approval of statutory authority is mandatory—Such a permission should be in writing—Oral permission cannot be accepted—On facts held even oral permission was* E *not granted.*

Anirudhssinji Karansinhji Jadeja and Anr. **v.** *State of Gujarat,* **AIR (1995) 5 SC 2390, referred to.**

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 741 of 1997.

From the Judgment and Order dated 21.4.97 of the Designated Court, Ahmedabad in T.C.C. No. 3 of 1996.

G W.A. Ansari, K.M.M. Khan, Shuyab Arshi and N.A. Siddiqui for the Appellant.

Dr. Ghatate and Ms. H. Wahi for the Respondent.

H The following Order of the Court was delivered :

In this appeal, the order dated 21st April, 1997 passed by the learned Addl. Designated Judge, Ahmedabad rejecting the application made by the appellant for dropping the charge under Sections 3 and 5 of Terrorists and Disruptive Activities (Prevention) Act, 1987 (in short TADA) in Terrorist Criminal Case No. 3/96 arising out of I.C.R. No. 94/93 of the police station Rakhiyal, District Ahmedabad on account of non compliance of mandatory provisions of Section 20A of TADA, is under challenge. A B

The learned counsel for the appellant has referred to the decision of three judges' Bench of this Court in *Anirudhssinji Karansinhji Judeja and Anr.*, v. *State of Gujarat,* AIR (1995) 5 SC 2390. It has been held in the said decision that cognizance of the offence under TADA can be taken on compliance of the provisions of sub-section (1) of Section 20A and sub-section (2) of Section 20A of TADA. Sub-section (1) of Section 20 A of TADA provides : C

> "20-A (1) 'Notwithstanding anything contained in the code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintended of Police." D

The learned counsel has contended that in this case, the statutory authority as referred to in sub-section (1) of Section 20A of TADA has not given any prior approval for initiating the criminal proceedings under TADA. Therefore charges under TADA cannot be invoked. E

It is, however, contended by the prosecution that on the very date when investigation had been made in this case, the Commissioner of Police, Ahmedabad was present and he had given oral permission under Section 20A(1) of TADA. We may indicate here that considering the serious consequences in a criminal case initiated under the provisions of TADA, oral permission cannot be accepted. In our view, Section 20A (1) must be construed by indicating that prior approval of the statutory authority referred to in the said sub-section must be in writing so that there is transparency in the action of the statutory authority and there is no occasion for any subterfuge subsequently by introducing oral permission. F G

That apart, in the facts of the case we have no hesitation to hold that even oral permission had not been granted. Dr. Ghatate, the learned counsel for the respondent has drawn our attention to two documents, namely, the letter addressed by the ACP Crime Branch Ahmedabad to the Deputy H

A Commissioner, Crime bench, Ahmedabad city, for invoking Sections 3 and 5 of TADA in respect of Rakhial Police Station CR 1-94/93. This letter is dated 11th August, 1994. In the said letter, a request was made that in the facts indicated in the letter, it was necessary to invoke sections 3 and 5 of TADA and a request was made to grant approval accordingly. The other document placed before us by Dr. Ghatate is the permission given by D.C.P. on the basis B of request made by the A.C.P. Crime Branch Ahmedabad. It appears that on 11.8.94 such permission had been granted by Mr. A.K. Surolia the Deputy Commissioner of Police Crime Branch, Ahmedabad City and such grant of permission is to the following effect:

C 'Therefore, after a careful consideration I deem it fit that in this case relevant provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short TADA) are to be applied in the FIR and hence I grant permission for the same.'

Such letter on the face of it indicates that the alleged oral permission D had not been granted by the Commissioner of Police otherwise there would not have been any occasion for seeking permission from an authority subordinate to the Commissioner of Police namely, the Deputy Commissioner of Police and consequential grant of permission by such subordinate authority. As the mandatory provisions of Section 20A(1) of TADA has not been complied with, the charge under the provisions of Sections 3 and 5 of TADA E cannot be sustained in the said criminal case. Therefore, such invocation of the provisions of TADA stands quashed. It is however made clear that it will be open to the concerned authority to proceed in accordance with law as indicated in paragraph 16 of the decision of this Court in Anirudhsinhji's case for invoking provisions of TADA. We make it clear that we have not considered F as to whether or not in the facts of the case, a case under Sections 3 and 5 of TADA has been made out because the condition precedent for invoking such provisions had not been complied with. Such question is therefore kept open to be considered at the appropriate stage. This appeal is accordingly disposed of.

G T.N.A. Appeal disposed of.