

A

SURINDER

v.

THE STATE OF HARYANA

MAY 3, 1994

B

[R.M. SAHAI AND FAIZAN UDDIN, JJ.]

C

Terrorist and Disruptive Activities (Prevention) Act, 1987 : Arms Act—Section 5/25—Accused making disclosure statement—Recovery of a pistol and two cartridges on the basis of the statement—Armourer's report—Pistol in working order—No mention about the cartridges—No proof that cartridges were live—Accused deemed to be in possession of arms only—Not to be convicted under TADA—Could be convicted only under Arms Act.

D

During the course of his interrogation in a dacoity case the appellant made a disclosure statement on the basis of which a pistol and two cartridges were recovered. The Armourer's report was to the effect that the pistol was in working order, but no mention was made about the cartridges. The Designated Court held the appellant guilty and convicted him under section 25 of the Arms Act read with section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and sentenced him to five years rigorous imprisonment. Against the said order, appellant preferred the present appeal.

E

Partly allowing the appeal, this Court

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HELD : 1. A person could be prosecuted for an offence under Section 5 of the TADA Act only if he was could to be possession of both arms and ammunition. If the cartridges are excluded because they were not live, it has to be held that the appellant was not in possessed of arms and ammunition as contemplated under Section 5 of the TADA Act. [865-D]

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2. In the instant case, the report submitted by the Armourer, does not make a mention of cartridges. Further in his deposition he stated that the articles wre handed over to him in open condition. This is supported by the statement of the Investigating Officer who in his cross-examination admitted that pistol and cartridges were not sealed. In the absence of sealing of these materials serious doubt is cast on the prosecution. In any case even assuming that the pistol was in working order and therefore it

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was arms, the prosecution could succeed only if the cartridges are held to be ammunition. It has been defined in clause (b) of Section 2 of the Arms Act to mean ammunition for any firearms etc. A cartridge can be ammunition for any firearms if it is live. It was therefore, incumbent on the prosecution to prove that the cartridges recovered on showing of the appellant were live. But no evidence was led in this behalf. The Armourers' report could not establish it as it was silent. In the absence of any evidence or material on record to establish that the cartridges were live, they were liable to be excluded and the appellant could be deemed to be in possession of arms only. [864-H & 865-A-C]

3. The conviction of the appellant under Section 5 of the TADA Act is set aside, but his conviction under Section 25 of the Indian Arms Act is maintained. He has already been in jail for nearly four years. The sentence is, therefore, reduced to the period already undergone. [865-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 233 of 1994.

From the Judgment and Order dated 19.2.1994 of the Additional Judge, Designated Court, Kaithal in Sessions Case No. 47/D/91.

S.R. Bhat for the Appellant.

K.C. Bajaj and Ms. Indu Malhotra for the Respondent.

The following order of the Court was delivered :

This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'the TADA Act') directed against the judgment and order of the learned Additional Judge, Designated Court, Kaithal (Haryana), raises three questions of law, one, whether a person can be prosecuted under Section 5 of the TADA Act for recovery of arms on his showing, two, whether the arms and ammunition which are recovered from the possession should be serviceable and live in order to attract Section 5 and last, on whom the burden lies to prove that the arms and ammunition were such as was contemplated by Section 5 of the Act.

The appellant was prosecuted under Section 25 of the Indian Arms Act read with Section 5 of the TADA Act. According to the prosecution when interrogation of the appellant was going on in a dacoity case in

A connection with FIR No. 370 on 24.11.1990, the accused made a disclosure statement telling the Inspector that he had kept buried on pistol and two cartridges of .12 bore by the side of the kotha of Raj Kumar and Siwan Kaithal Road. On his statement the aforesaid pistol and the cartridges are stated to have been recovered on 14.2.1991. They were sent on 16.3.1991 to the Armourer who in his report stated that the pistol was in working order. No mention was made about cartridges. The Designated Court after considering the evidence of the recovery and other witnesses recorded the finding that the recovery was established and the arms and ammunition having been recovered at the instance of the appellant, he was in possession of it within the meaning of Section 5 of the TADA Act, consequently held him guilty and convicted him under Section 25 of the Indian Arms Act read with Section 5 of the TADA Act and sentence him to undergo rigorous imprisonment for a period of five years.

D Shri S. Ravindra Bhat, the learned counsel for the appellant, urged that the expression 'is in possession' used in Section 5 of the TADA Act should be construed narrowly and it should be confined to those cases where the recovery is made at the time of arrest. According to him, it should not be given an extended meaning so as to apply to even those cases where the arms and ammunition are recovered at the showing of the accused. The learned counsel emphasised that the word 'in' and urged that E the Legislature having used the expression in a restricted sense it has to be construed as being operative at the point of time when recovery is made and it does not extend to constructive possession or recovery of arms which are recovered at the showing of the accused as such recovery of arms cannot be said to be in possession of the accused. The learned counsel F urged that if the Legislature would have intended to give a wide meaning to the possession of arms and ammunition then it would have used the expression 'possessed' instead of 'is in possession'. We do not consider it necessary to decide this wider aspect as, in our opinion, the other submission made by the learned counsel that there being no evidence to show that the cartridges which are stated to have been recovered at the instance of G the appellant were live, it could not be treated as ammunition.

H In the report submitted by the Armourer, there is no mention of cartridges. Further, in his deposition he stated that the articles were handed over to him in open condition. In other words, they were not sealed. This is supported by the statement of the Investigating Officer who

in his cross-examination admitted that pistol and cartridges were not sealed. In absence of sealing of these materials serious doubt is cast on prosecution. In any case even assuming that pistol was in working order, therefore, it was arms the prosecution could succeed only if the cartridges are held to be ammunition. The word has been defined in clause (b) of Section 2 of the Arms Act to mean ammunition for any firearms etc. A cartridge can be ammunition for any firearm if it is live. It was, therefore, incumbent on the prosecution to prove that the cartridges recovered on showing of the appellant were live. But no evidence was led on this behalf. The Armourer's report could not establish it as it was silent. It failed to discharge it. In absence of any evidence or material on record to establish that the cartridges were live, they were liable to be excluded and the appellant could be deemed to be in possession of arms only. In *Paras Ram v. State of Haryana*, [1992] 4 SCC 662, it has been held by this Court that a person could be prosecuted for an offence under Section 5 of the TADA Act only if he was found to be possessed of both arms and ammunition. If the cartridges are excluded because they were not live, it has to be held that the appellant was not in possession of arms and ammunition as contemplated under Section 5 of the TADA Act.

In the result, this appeal succeeds and is allowed in part and the conviction of the appellant under Section 5 of the TADA Act is set aside, but his conviction under Section 25 of the Indian Arms Act is maintained. He has already been in jail. We are informed that he is in jail for nearly four years. The sentence is, therefore, reduced to the period already undergone. The appellant who is in jail shall be released forthwith unless he is required in any other connection.

G.N.

Appeal allowed.