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SANJAY DUTT V. STATE THROUGH C.B.I., 1994 CRI LJ 2101 (BOM HC)

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INTRODUCTION

The case arose from the communal tensions of 1993 Bombay serial bomb blast. It is considered as one of the deadliest attacks happened in the history terrorist activities happened in India. The Central Bureau of Investigation (CBI) found several individuals involved in the heinous crime, one of the accused was Sanjay Dutt, a popular film actor from Bollywood. The accused were charged under the offenses under Terrorist and Disruptive (Prevention) Act of 1987³, the Arms Act of 1959⁴ and the Indian Penal Code of 1860⁵. According to the chargesheet filed by the CBI, it was claimed that Sanjay Dutt had possession of AK-56 Rifles, Hand Grenades, 9mm Pistols and cartridges for the pistols and all the ammunitions were supplied to petitioner by the individuals who were involved in the bomb blasts. It was claimed that the weapons were delivered to the petitioner's residence in January 1993 and the former had kept one rifle for self-protection and others were destroyed due to fear of being discovered. The petitioner, therefore was charged of offence under section 5 of TADA⁶ and illegal possession of weapons under the Arms Act⁷. The core question before the court was the ambit of

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³ The Terrorist and Disruptive Activities (Prevention) Act, No. 28, Acts of Parliament, 1987 (India).

⁴ The Arms Act, 1959.

⁵ The Indian Penal Code, 1860.

⁶ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

⁷ The Arms Act, 1959.

section 5 of TADA Act that criminalized the possession of weapons in a notified area⁸. The prosecution argued that the mere possession of the arms is sufficient to charge a person under the TADA Act⁹ as the possession proved the statutory presumption of the crime committed. This caused a shift of burden of proof from the prosecution to the defense to prove not guilty. The defense, on the other hand, argued that the possession cannot be read with the view of strict liability as it would go against the core principle of “innocent until proven guilty”. Another important law dealt in the present case is sec 20 (4) (b) of TADA Act¹⁰ read with sec 167(2) of CrPc¹¹ which talks about indefeasible right to bail. Under the said provision, if the investigating agency fails to complete the investigation and file the charge-sheet within the give period of time, the accused individual gains the default bail. This statutory right to bail is subject to filing of charge-sheet and if the charge-sheet is submitted with in the period then this right ceases to exist.

BACKGROUND OF THE CASE

The case emerged from the 1993 Bombay serial bomb blasts I which almost 250 people were killed, thousands were injured, and many properties, infrastructures were damaged; it was the darkest and the complex criminal series in the history of modern India. the attack was first extensive nationwide terror incident in India and disclosed the strong connection between international terror operation, organized crimes and national security threats. As a reaction, the Central Bureau of Investigation (CBI) took control of inquiry, filing many cases under the Terrorist and Disruptive Activities (Prevention) Act of 1987 also known as TADA, Indian Penal Code (IPC), 1860 and the Arms Act, 1959. Out of 189 accused charged under this, the one primary chargesheet was filed in the name of Sanjay Dutt, a famous Bollywood actor. His involvement in this case engaged massive media attention, turning the trial procedure into a national issue.

FACTUAL CONTEXT

As per the Prosecution (i.e. C.B.I. Bombay), in January of the year 1993, Sanjay Dutt received AK-56 rifles, nine magazines, hand grenades and 450 cartridges from Abu Salem and other partners of Dawood Ibrahim – the main abettors of the Bombay bomb blasts. These items have been illegally

⁸ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

⁹ The Terrorist and Disruptive Activities (Prevention) Act, No. 28, Acts of Parliament, 1987 (India).

¹⁰ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 20(4)(b), No. 28, Acts of Parliament, 1987 (India).

¹¹ Code Crim. Proc. § 167(2).

transported in India for use in the terrorism related coordinated plans. Sanjay Dutt illegally possessing preventive items such as arms which includes AK-56 rifles and 9mm pistol at his residence. later on, Sanjay Dutt was charged and arrested under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act of 1987,¹² which states that unlawful possession of enumerated weapons and arms in a “notified area” is considered as a terrorist activity. The important element was that Bombay at that time was declared “notified area” under TADA.

Post the bomb blast incident, Sanjay Dutt directed his conspirators to destroy the weapons, worried about the investigation could result in his arrest. But some leftover weapons were later discovered from the confessions and statements his co-accused has made. After arrest during the trial Sanjay Dutt confess that those weapons and arms were possessed by him but sustained that he kept only for self-defense in the wake of communal strife after the Babri Masjid demolition incident. He refused that has no connection or awareness of terrorist conspiracy.

PROCEDURAL HISTORY

Post his arrest, Sanjay Dutt was charged under Section 3(3)¹³ and 5¹⁴ of TADA, under Section 120B Indian Penal Code, 1860¹⁵, and under Section 25¹⁶ and 27¹⁷ Arms Act, 1959. His primary bail rejected due to seriousness of the crime, by the TADA Court. He then files a special leave petition under Article 135¹⁸ to the Supreme Court. In the Meantime, investigation exceed the limit of 180 days for pre-trial arrest, which arises the issue that whether Sanjay Dutt was eligible for “default bail.” The prosecution (C.B.I. Bombay) said, claiming that the chargesheet had been filed before filing any bail application, which may invalidate that right.

because of divergent interpretation of TADA provisions and impact on constitutional right such as Article 14¹⁹ and 21²⁰, to decide certain core issues the Supreme Court referred the matter to five judge’s Constitutional bench.

¹² The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

¹³ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 3(3), No. 28, Acts of Parliament, 1987 (India).

¹⁴ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

¹⁵ Indian Penal Code, 1860, § 120B, No. 45, Act of Parliament, 1860 (India).

¹⁶ Arms Act, 1959, § 25, No. 54, Act of Parliament, 1959 (India).

¹⁷ Arms Act, 1959, § 27, No. 54, Act of Parliament, 1959 (India).

¹⁸ INDIA CONST. art. 135

¹⁹ INDIA CONST. art. 14

²⁰ INDIA CONST. art. 21

LEGAL FRAMEWORK

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) was made to address the issues related terrorism and subversive activities. The main provisions were Section 5²¹ which held possession of arms or weapons illegally. And Section 20 (4) (bb)²² which extend the period of investigation from 90 to 180 days under Section 167 (2) of CrPC²³ and have right to default bail if investigation period exceeds from time.

CONSTITUTIONAL PROVISIONS

The question raised under Article 14 and 21 of the Constitution of India, which is about the “Right to Equality before the law”²⁴ and “Right to protection of life and personal liberty.”²⁵ The Supreme Court had to decide the scope of legislature can restrict the personal liberty for security of nation while safeguarding equality, justice and legal procedure.

HELD

The decision given by the Constitutional bench that even rigorous anti-terror acts must be in respect of constitutional protection and due process of law.

ANALYSIS

One of the core issues pertaining to the case is the criminalized possession of arms in a notified and statutory presumption of offence committed if proven. This was under section 5 of TADA Act²⁶ that provides for the presumption mentioned once the possession is proved. This followed by the infeasible right under section 167(2) of CrPC²⁷ read with section 20(4)(b) of TADA Act²⁸ which provides for the right to bail only if the investigation and charge-sheet is not completed within a period of 180 days as mention under TADA Act.

²¹ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

²² The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 20(4)(bb), No. 28, Acts of Parliament, 1987 (India).

²³ The Code of Criminal Procedure, 1973, § 167, No. 2, Acts of Parliament, 1973 (India).

²⁴ INDIA CONST. art. 14

²⁵ INDIA CONST. art. 21

²⁶ The Terrorist and Disruptive Activities (Prevention) Act, § 5, No. 28, Acts of Parliament, 1987 (India).

²⁷ Code Crim. Proc. § 167(2).

²⁸ The Terrorist and Disruptive Activities (Prevention) Act, § 20(4)(b), No. 28, Acts of Parliament, 1987 (India).

The criminal law contains two important aspects corpus and animus. The Supreme Court first analyzed whether knowledge and intent was necessary for offence under section 5 of TADA Act. The court analyzed whether physical possession without intent would be sufficient for presumption of guilt. The constitutional dynamic made it necessary as it brought the fundamental right to life under Article 21²⁹ in to the picture. This called for balance between legislative intent and constitutional fairness as it was absolute necessary to curb terrorist activities and also serve justice. In the case of *Kartar Singh v. State of Punjab*³⁰ upheld the constitutionality of TADA Act and it also provided that there should be a nexus between the possession of the weapon to the terrorist activities. But the court while analysing the case of Sanjay Dutt, the observation made the Kartar Singh case were obiter dicta and therefore was not suitable to specify the ambit of the case. The constitutional foundation was established with the help of Kartar Sing case which led the Bench in the present case to clarify that the presumption was rebuttable. This overall understanding is better explained in the Canadian case of *Beaver v. Her Majesty The Queen*³¹ in which it the connection between knowledge and possession of drugs was an essential element to infer liability unless the statute creates a strict liability. Drawing rationale from this it can be inferred that, the Supreme Court, even though there is a statutory presumption, reasoned that there must be conscious possession. The precedent helps in understanding presumption of guilt should not be arbitrary. The present case provides a harmonious construction, as sought by the Supreme Court, between the protection of the State and individual justice. The necessity to protect the state from terrorist attack while upholding the rights of every individual was established in the judgment. It amounts doctrinal contribution as this introduces and recapitulate principles rebuttable presumptions and withholds mens rea as core element od criminal liability.

CONCLUSION

The judgement of Supreme Court in the case of Sanjay Dutt v. State through C.B.I., 1994, is one of the leading cases in Criminal Jurisprudence of Constitution of India. it constitutes an informed judicial diligence to make balance between the importance of national and the Constitutional right to equality, Personal liberty, and procedural fairness. In its essence, the judgement upheld the truth of Indian

²⁹ INDIA CONST. art. 21

³⁰ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

³¹ *Louis Beaver v. Her Majesty the Queen*, 1957 SCC OnLine Can SC 29.

Constitutional Principles, though severe, can execute outside the limits of equality, proportionality and rationality guaranteed under Article 14³² and 21³³.

A significant role was the “Doctrine of Conscious Possession,” which protects the requirement of mens rea under Section 5 of TADA³⁴, assuring criminal liability only for those people intentionally possessing restrictive items. The court further interpreted the scope of the “Right to Bail” under Section 20 (4) (bb)³⁵, ruling established that when investigation exceed the limit of 180 days but only one chargesheet was filed, a practical balance between protecting due process of law and personal liberty from being abused. The decision restated constitutional persistence, highlighting that extraordinary provisions can never overrule fundamental rights and must endure judiciable. Therefore, some loops retain, such as the cancellation of default bail after filing of chargesheet and depend on the necessity acknowledgement under TADA, underlining need for statutory amendment.

Eventually, the judgement demonstrates the constitutional principles, reconciling security and personal liberty, and upholding equality, responsibility and oversight in critical situations must direct the implementation of state power. It has also highlighted the principles of natural justice and rule of law, equality, equity and good conscience.

³² INDIA CONST. art. 14

³³ INDIA CONST. art. 21

³⁴ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 5, No. 28, Acts of Parliament, 1987 (India).

³⁵ The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 20(4)(bb), No. 28, Acts of Parliament, 1987 (India).