

IDRISHAN YAKUBHAN PATHAN
v.
STATE OF GUJARAT THROUGH PUBLIC PROSECUTOR

JULY 27, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Prevention of Terrorism Act, 2000; Ss. 3(3), 4; 20, 21(2)(b), 22(3), 34(1)(4)/Penal Code, 1860; Ss. 120(B), 286, 307 and 337/Explosive Substances Act, 1908; Ss. 3, 4 & 6:

Charges under Prevention of Terrorism Act—Initiation of proceedings against accused—Challenging the order of Special Court, POTA, two appeals filed by the accused—Acquitting him in one of the cases under POTA, High Court rejected his prayer for bail in the other case under POTA and dismissed the appeal—On appeal, Held: High Court was not justified in concluding the matter in the later case in POTA in view of the observations made in the former case—Hence, the matter relating to criminal appeal in the later case, remitted to the High Court for consideration afresh.

There were two proceedings initiated against the accused-appellant. The first was POTA Case No.08 of 2003 and another was POTA Case No. 12 of 2003. Challenging the order of the Designated Judge, Special Court (POTA), two appeals were filed by the appellant, i.e. Criminal Appeal Nos.1287 of 2004 and 1288 of 2004. The appellant has been acquitted from the charges levelled against him in POTA Case No. 8 of 2003. So far as the prayer for bail in POTA Case No.12 of 2003 is concerned, certain observations were made by the Court while dismissing Criminal Appeal No.1287 of 2004. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The High Court noted that because of acquittal in POTA Case No.8 of 2003 the appeal was infructuous. Obviously, the same relates to Criminal Appeal No.1287 of 2004. So far as the Criminal Appeal No.1288 of 2004 is concerned, the same relates to the POTA Case No.12 of 2003. The High Court was, therefore, not justified in holding that the matter in

A POTA Case No.12 of 2003 was concluded for various reasons in view of the observations made in the appeal relating to POTA Case NO. 8 of 2003.

[Para 3] [607-B-C]

B 1.2. In Criminal Appeal No. 1288 of 2004 which is related to POTA Case No.12 of 2003, whether any relief can be granted by the concerned Court in that POTA Case was not considered by the High Court. The confusion arose before the High Court relating to the case numbers. In the circumstances, the impugned order is set aside and the matter relating to Criminal Appeal No.1288 of 2004 is remitted to the High Court to consider the matter afresh in accordance with law. [Para 4] [607-D-F]

C 2. It is clarified that no opinion has been expressed on the merits of the case. [Para 5] [607-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 943 of 2007.

D From the Judgment & Order 08.01.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1288 of 2004.

Kamini Jaiswal for the Appellant.

E Hemanika Wahi for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

F 2. Challenge in this appeal is to the order passed by the Division Bench of the Gujarat High Court dismissing the appeal filed under Section 34(1)(4) of the Prevention of Terrorism Act, 2000 (in short the 'POTA'). There seems to be some confusion about the factual position and therefore the details are not necessary to be noted.

G 3. Undisputedly, the challenge before the High Court was to the order dated 7.7.2004 passed by the Designated Judge, Special Court (POTA) Ahmedabad. There were two proceedings initiated against the appellant. The first was Pota Case No. 08 of 2003 arising out of complaints, namely, I.C.R. No. 184 of 2002 registered at Kagdapith Police Station, I.C.R. No. 116 of 2002 registered at Vejalpur Police Station and I.C.R. No. 244 of 2002 registered at

H Satellite Police Station for offences punishable under Sections 120(B), 307,

337, 286 of the Indian Penal Code, 1860 (in short the 'IPC') read with Sections 3, 4 & 6 of Explosive Substances Act, 1908 (in short the 'Explosive Act') and under Sections 3(3), 4, 20, 21(2)(b) and 22(3) of the POTA. It is to be noted that two appeals were filed by the appellant i.e. Criminal Appeal Nos.1287 of 2004 and 1288 of 2004. The appellant has been acquitted from the charges leveled against him in POTA Case No.8 of 2003. So far as the prayer for bail in POTA Case No.12 of 2003 is concerned, certain observations were made by the Court while dismissing Criminal appeal No. 1287 of 2004 on 21.9.2004. The High Court noted that because of acquittal in POTA Case No.8 of 2003 wherein further revival in that case the appeal was infructuous. Obviously, the same relates to Criminal Appeal No. 1287 of 2004. So far as the Criminal appeal No.1288 of 2004 is concerned, the same relates to the POTA Case No.12 of 2003. The High Court was therefore not justified in holding that the matter was concluded for various reasons in view of the observations made in the appeal relating to POTA Case No.8 of 2003.

4. A perusal of the documents on record shows that Criminal Appeal No.1288 of 2004 related to POTA Case No.12 of 2003. Whether any relief can be granted by the concerned Court in that POTA case was not considered. The confusion arose before the High Court relating to the case numbers. There is no dispute that Criminal Appeal No.1288 of 2004 before the High Court related to POTA Case No.12 of 2003. It appears that the High Court permitted the appellant to take a proper proceeding seeking his release on bail so far as POTA Case No.12 of 2003 is concerned. The High Court apparently failed to notice that Criminal Appeal No.1288 of 2004 related to POTA Case No.12 of 2003. In the circumstances we set aside the impugned order and remit the matter relating to Criminal Appeal No.1288 of 2004 to the High Court to consider the matter afresh in accordance with law.

5. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is allowed to the aforesaid extent.

S.K.S.

Appeal allowed.