

Before J. M. Tandon and K. P. S. Sandhu, JJ.

BASANT SINGH,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 5857-M of 1984

April 16, 1985

Terrorists affected Areas (Special Courts) Act (LXI of 1984)—Sections 2(f), 7, 10 and 14—Code of Criminal Procedure (II of 1974)—Section 482—Interlocutory order made by Special Court—Petition under section 482—Whether can be entertained against such order.

Held. that the Special courts have exclusive jurisdiction to try a scheduled offence as defined under section 2(f) of the Terrorist Affected Areas (Special Courts) Act, 1984. Section 7 of the Act deals with the jurisdiction of the court, whereas section 10 thereof deals with the procedure and power of the court. It is clear from the reading of the various provisions that a special court set up under the Act in spite of exercising its exclusive jurisdiction to try scheduled offences tries such offences as a court of sessions so far as may be in accordance with the procedure prescribed in the Criminal Procedure Code for the trial before a court of sessions. Section 14 of the Act provides an appeal from the judgment of sentence or order of the Special Court but reading of section 14(1) shows that an interlocutory order cannot be assailed before the Supreme Court. A petition under section 482 of the Criminal Procedure Code is neither an appeal nor revision. Section 14(2) of the Act bars the filing of an appeal or revision before the Court from any judgment sentence or order by a Special court but not examination by the High Court of an interlocutory order passed by a Special court in exercise of inherent powers under section 482 of the Code. The High Court is therefore, competent to entertain a petition under section 482 of the Code to examine an interlocutory order passed by a Special court. (Paras 3 to 10)

(Case referred by Hon'ble Mr. Justice K. P. S. Sandhu to a Larger Bench for adjudication on 30th January, 1985. The Division Bench consisting of Hon'ble Mr. Justice J. M. Tandon and Hon'ble Mr. Justice K. P. S. Sandhu again referred the case to the learned Single Judge for deciding the case on merits on 16th April, 1985).

Petition under Section 482 Cr.P.C. praying that the order of Shri A. L. Bahri Judge, Special Court, Judicial Zone, Patiala, dated 5th September, 1984 ordering the framing of charge under Section 307 I.P.C. may kindly be set aside and he be ordered to send the

case for trial to C.J.M., Ropar for trial according to law for an offence under Section 326 I.P.C. and it is further prayed that the proceedings pending in the above court, may kindly be stayed till decision of the accompanying petition.

R. S. Ghai, Advocate, with P. V. Santoshi, Advocate, for the Petitioner.

D. S. Brar, AAG Punjab for the State. Harbans Singh, Senior Advocate with M. P. Gupta, Advocate, for the complainant.

JUDGMENT

J. M. Tandon, J.

(1) *In State v. Basant Singh and others* (Sessions case No. 1-R of 1984) pending in Special Court, Patiala, the accused have been charged by Special Judge,—*vide* order, dated September 5, 1984. All the accused have been charged under section 149, I.P.C. Raja Singh accused has been charged under section 307, I.P.C. and the remaining accused under section 307 read with section 149, I.P.C. Joginder Singh accused has been charged under section 323, I.P.C. and the remaining under section 323/149, I.P.C. Sewa Singh has been charged under section 423, I.P.C. and the remaining under section 324/149, I.P.C. Kuldip Singh has been charged under section 323, I.P.C. and the remaining under section 323/149, I.P.C. Basant Singh is one of the six accused in the Session case. He filed Criminal Miscellaneous No. 5857-M of 1984, under section 482, Cr.P.C. Praying that the order of the Special Judge, dated September 5, 1984, framing the charge against him and other accused under section 307, I.P.C. be quashed and consequently the case may be directed to be sent to the Chief Judicial Magistrate, Ropar, for trial for an offence under section 326, I.P.C.

(2) During the course of hearing before the learned Single Judge, a question arose whether a petition under section 482, Cr.P.C. can be entertained against the order of the Special Judge, dated September 5, 1984. The learned Single Judge opined that the point whether a petition under section 482, Cr.P.C. can be entertained against an interlocutory order passed by the Special Judge or not is of considerable importance and should be decided by a larger Bench. It is under these circumstances that this matter has come up before us for consideration.

(3) Special Courts have been set up in the State of Punjab and Union Territory, Chandigarh, under section 4 of the Terrorist

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Affected Areas (Special Courts) Ordinance, 1984, which now stands replaced by the Terrorist Affected Areas (Special Courts) Act, 1984, (hereafter the Act). Section 7 of the Act deals with the jurisdiction of the Special Courts. The relevant part of this section reads :

“7(1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

.....”

(4) The Special Courts have exclusive jurisdiction to try a scheduled offence which, as defined under section 2(f) of the Act, means an offence specified in the Schedule being an offence committed in a terrorist affected area.

(5) Section 10 of the Act deals with the procedure and powers of Special Courts. Sub-section (4) of this section reads:

“(4) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence have all the powers of a Court of Session and shall try such offence as if it were a Court of Session “so far as may be in accordance with the procedure prescribed in the Code of the trial before a Court of Session.”

It is thus clear that a Special Court set up under the Act in spite of exercising exclusive jurisdiction to try scheduled offences tries such offences as a Court of Session so far as may be in accordance with the procedure prescribed in the Criminal Procedure Code for the trial before a Court of Session.

(6) Section 14 of the Act provides for an appeal from the judgment of sentence or order of Special Court and sub-sections (1) and (2) thereof read:

“(1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment,

sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

- (2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order of a Special Court."

(7) An interlocutory order passed by a Special Court cannot be assailed either in appeal before the Supreme Court under section 14(1) or in revision. The point for consideration is whether such an interlocutory order can be examined in proceedings under section 482, Cr.P.C. or not.

Section 482, Cr.P.C. (hereinafter the Code) reads:

"482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court of otherwise to secure the ends of justice."

(8) The learned counsel for the State and the complainant have argued that section 482, of the Code cannot be invoked for examining an interlocutory order passed by the Special Court as it has been set up under the Act and not under the Criminal Procedure Code irrespective that it is a Court of Sessions in terms of section 10(4) of the Act. It has also been contended that in view of the specific provision contained in section 14(2) of the Act it would be wrong to hold that an interlocutory order passed by the Special Court can be examined by the High Court under section 482 of the Code. The contention is without merit.

(9) The provisions contained in the Code in relation to the trial of cases before a Sessions Court, subject to a contrary provision under the Act, have been made applicable to the trial of scheduled offences by a Special Court. It is so provided under section 10(4) of the Act. A judgment, sentence or order not being interlocutory order passed by a Special Court is appealable to the Supreme Court. In view of the provisions contained in section 14(2) of the Act, no appeal or revision can be entertained by the High Court against any judgment, sentence or order not being interlocutory order by a

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Special Court. A petition under section 482 of the Code is neither appeal nor revision. Section 14(2) of the Act bars the filing of an appeal or revision before the High Court from any judgment, sentence or order by a Special Court, but not examination by the High Court of an interlocutory order passed by a Special Court in exercise of the inherent powers under section 482 of the Code.

Section 15(4) of the Act reads:

“Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a scheduled offence in a terrorist affected area.”

(10) A person accused of having committed a scheduled offence in a terrorist affected area cannot be granted pre-arrest bail as it is so provided under section 15(4) of the Act. A person accused of having committed a scheduled offence in a terrorist affected area can, however, be allowed bail either by the Special Court or by the High Court under section 439 of the Code. The scheme of the Act is suggestive that the jurisdiction of the High Court has not been negated *in toto qua* the Special Courts. The Act does provide for exclusive jurisdiction of the Supreme Court in certain matters like appeal under section 14 and transfer of cases under section 11. The High Court shall be taken to have been divested of its powers under the Act otherwise exercisable under the Code to the extent the jurisdiction has been vested in the Supreme Court. There is no provision in the Act indicative that the High Court has been divested of its inherent power under section 482 of the Code either specifically or by implication *qua* interlocutory orders passed by the Special Court. The High Court is, therefore, competent to entertain a petition under section 482 of the Code to examine an interlocutory order passed by the Special Court under the Act.

(11) The file be now placed before the learned Single Judge for deciding Criminal Miscellaneous No. 5857-M of 1984 on merits.

K. P. S. SANDHU, J.—I agree.

H. S. B.