

as it appears to us, perceived substantial compliance of the requisite elapse of periods conditional to the grant of relief and on recording satisfaction of free consent and lack of collusion, granted the relief instantly. And in our view rightly. The fact of fruitful years in human life being short and the possibility of the litigating parties rearranging their lives after the divorce by mutual consent, also seem to have been the pervasive factors when this Court granted instant relief without letting the parties to go in for another bout of litigation in the processual mill.

(17) For the aforesaid view thus, we are of the view that if the circumstances warrant, as has been spelled out above, the matrimonial Court can dissolve a marriage by a decree of divorce between two Hindus on the basis of a compromise entered into between the parties during the pendency of the divorce petition without strictly following the procedure prescribed by section 13-B(2) but on satisfying itself of not only the requirements of section 23(1)(c) but also of the specifically applicable section 23(1)(bb) of the Act. Thus question No. 2 aforesaid is answered in the said manner.

(18) Since the questions of law have been answered, the main matter be sent back to the Hon'ble Single Judge for decision.

D. S. TEWATIA, J.—I agree.

H. S. B.

Before K. S. Tiwana and Pritpal Singh, JJ.

GURDIAL SINGH and another,—*Petitioners.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 613 of 1986.

September 12, 1986.

Terrorist and Disruptive Activities (Prevention) Act (XLVI of 1985)—Sections 6, 9, 10(1)—Arms Act (XI of 1878)—Section 25—Indian Penal Code (XLV of 1860)—Sections 307 and 323—Accused on trial before Sessions Court for offences committed under the

Gurdial Singh and another v. State of Haryana (Pritpal Singh, J.)

Arms Act and the Penal Code in an area notified under the Terrorist Act—Offence under Section 25 of the Arms Act punishable under Section 6 of the Terrorist Act—Offences under the Code not covered thereunder—Prosecution applying for transfer of the entire trial to the Designated Court constituted under the Terrorist Act—Offences committed under the Code not connected with offence under the Arms Act—No allegation that the weapon recovered was used in committing the offence under the Code—Offences under the Arms Act—Whether exclusively triable by the Designated Court under the Terrorist Act—Court of Session—Whether has jurisdiction to transfer the trial of offences under the Code to the Designated Court.

Held. that according to Section 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 every offence under the Arms Act, 1878, committed in any area notified in this behalf by the State Government, is punishable under this Section. Since the offences under the Arms Act are punishable under Section 6 of the Terrorist Act, in the areas notified by the State Government, Section 9 of the Terrorist Act becomes applicable to every offence committed under the Arms Act and has necessarily to be tried by the Designated Court. As such, the Designated Court is undoubtedly seized of the jurisdiction to try the case under Section 25 of the Arms Act. Hence such offence is triable exclusively by the Designated Court constituted under the Terrorist Act.

(Paras 9 and 10).

Held. that a bare reading of Section 10(1) of the Terrorist Act would indicate that to attract its application three conditions are necessary. Firstly, the Designated Court should be trying an offence falling within its jurisdiction. Secondly, the accused should be charged of committing the other offences in the same trial, and thirdly those other offences must be connected with the offence triable by the Designated Court. Where, however, there is no allegation that the accused were guilty of any terrorist or disruptive act nor that the accused charged of an offence under Section 25 of the Arms Act had used the weapon during the commission of the crime, the offences under the Penal Code and the Arms Act cannot be said to be the subject matter of the same trial nor it can be said that the offence under the Arms Act is strictly connected with the offence under the Code. The enabling provision of Section 10(1) of the Terrorist Act which empowers the Designated Court to try any other offence with which the accused may be charged of at the same trial alongwith the offence exclusively triable by it is not attracted in this situation. The Additional Sessions Judge was, therefore, fully competent to try the offences under the Code and had no jurisdiction to transfer the trial of such offences to the Designated Court.

(Para 11).

This case was referred to a Division Bench by Hon'ble Mr. Justice M. M. Punchhi on 29th May, 1986 for decision of important question of law involved in the case. Division Bench consisting of Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice Pritpal Singh finally disposed of the case on 12th September, 1986.

Petition for revision of the order of Shri K. K. Chopra, Additional Sessions Judge, Hissar, dated 16th April, 1986 ordering that the case be sent to the Designated Court, Bhiwani for trial according to law. Accused Gurdial Singh is directed to appear and accused Gurmukh be produced before the Designated Court, Bhiwani on 30th April, 1986.

J. S. Mann, Advocate, for the Petitioners.

Kamāl Sharma, A.A.G., Haryana, for the Respondent.

JUDGMENT

Pritpal Singh, J.—

(1) The petitioners Gurdial Singh and Gurmukh Singh were committed to the Court of Session for trial under sections 307 and 323 read with section 34, Indian Penal Code. The trial commenced in the Court of the learned Additional Sessions Judge, Hissar. Appropriate charges were framed and part of prosecution evidence was recorded.

(2) The petitioner Gurmukh Singh was separately prosecuted under section 25 of the Arms Act on the allegation that when he was arrested in the main case he was found to be in possession of a single-barreled gun, the licence regarding which had expired earlier and had not been renewed. This case was also being tried in the Court of the learned Additional Sessions Judge, Hissar.

(3) When a part of the evidence was recorded on April 16, 1986 in the case under sections 307 and 323 read with section 34, Indian Penal Code, an application was moved on behalf of the prosecution that the case along with the other case under section 25 of the Arms Act be transferred to the Designated Court constituted under the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter called 'the Act'). The learned Additional Sessions Judge allowed the application and forwarded both the cases to the Designated Court, Bhiwani,—*vide* an order of the same date.

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(4) The petitioners filed the instant revision petition against the order of the learned Additional Sessions Judge, transferring the cases to the Designated Court, on the plea that these cases are exclusively triable by the Court of Session and the Designated Court has no jurisdiction to try the same. The learned Single Judge of this Court, who heard the revision petition, referred the petition to be decided by a larger Bench considering the importance of the point involved therein. It is in these circumstances that we are now seized of the matter.

(5) We will first deal with the case under the Arms Act. It is contended by the learned petitioner's counsel that this case does not come within the ambit of the Act and so it could not be sent to the Designated Court for trial. We are unable to uphold this contention. The preamble of the Act shows that it was enacted to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. The second part of the Act deals with the punishments for, and measures for coping with, terrorist and disruptive activities. This part consists of Sections 3 to 6. As to what is a terrorist act is defined in sub-section (1) of Section 3. It says that "whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act." Sub-section (2) prescribes punishment for the committing of a terrorist act. Sub-section (3) lays down punishment to be awarded to the person who conspires or attempts to commit a terrorist act.

(6) Sub-section (2) of Section 4 defines the term "disruptive activity" as follows:—

"For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or

through any other media or in any other manner whatsoever:—

- (i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or
- (ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section—

- (a) “cession” includes the admission of any claim of any foreign country to any part of India; and
- (b) “secession” includes the assertion of any claim to determine whether a part of India will remain within the Union.”

Sub-section (1) of Section 4 prescribes punishment for disruptive activities.

(7) It is not necessary to discuss Section 5 because it deals with powers of the Central Government to make rules. This section is not relevant for our purposes.

(8) Then comes Section 6 which requires to be pointedly noticed for the decision of this case. It reads as under:—

- “6. (1) If any person contravenes, in any area notified in this behalf by a State Government, any such provision of, or any such rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptionist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life, and shall also be liable to fine.

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“(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.”

(9) Designated Courts under the Act are constituted by virtue of Section 7. Section 9(1) lays down that “Notwithstanding anything contained in the Code. (which means the Code of Criminal Procedure as defined in Section 2(1) of the Act) every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed.” This Section makes it clear that any offence for which punishment is provided under the Act or any rule made thereunder has to be tried exclusively by the Designated Court. According to Section 6(1) reproduced above every offence under the Arms Act committed in any area notified in this behalf by the State is punishable under this Section. Section 6 admittedly is applicable to the present case because concededly there is a notification by the Haryana State Government making all the provision of Arms Act applicable to the territories of Haryana under the said provision. There is, therefore, no scope of doubt that by virtue of Section 6 every offence committed under the Arms Act in the State of Haryana is punishable under this Section. As such under section 9 of the Act the offence committed under the Arms Act in Haryana has to be tried exclusively by a Designated Court constituted under the Act.

.....

(10) The contention of the learned petitioner’s counsel is that Section 6 of the Act has been inducted merely to provide enhanced punishment regarding the offences committed under the Arms Act and some other Acts mentioned in the Section. It is said that Section 25 of the Arms Act remains punishable under the Arms Act itself and for this reason Section 9 of the Act has no application. We are not impressed by this contention. The Act is a self-contained statute enacted for a special purpose elucidated in the preamble. It is a rule of construction that all the provisions of a statute are to be read together and given effect to, and it is, therefore, the duty of the Court to construe a statute harmoniously. Section 6 of the Act is a part and parcel of the Act and it is not merely meant to provide enhanced punishment for offences committed under the various Acts mentioned therein. It is unambiguously prescribed in this Section

that in the areas notified by the State Government the offences committed under the Acts mentioned in the Section, including the Arms Act, notwithstanding anything contained in those Acts, are punishable under this Section. In other words the provisions regarding the commission of offences under those Acts have been imported in the Act for purposes of sentencing. Since the offences covered by the Arms Act are made punishable under Section 6 in certain areas notified by the State Government, Section 9 evidently becomes applicable and every offence committed under the Arms Act has necessarily to be tried by the Designated Court. The Designated Court is, therefore, undoubtedly seized of the jurisdiction to try the case under section 25 of the Arms Act against the petitioner Gurmukh Singh.

(11) Now we advert to the other case under the Indian Penal Code. It is contended on behalf of the petitioner that the case under sections 307 and 323 read with section 34, Indian Penal Code, could not be sent by the Additional Sessions Judge to the Designated Court for trial because he himself was vested with the appropriate jurisdiction to try that case. It is said that he could not divest himself of the jurisdiction and was not competent to ask the Designated Court to try the same. In reply the contention of the learned State counsel is that Section 10 of the Act empowered the Designated Court to try this case along with the afore-mentioned case under section 25 of the Arms Act. Section 10(1) reads as follows :—

“10(1) When trying any offence a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.”

A bare reading of this provision would indicate that to attract its application three conditions are necessary. Firstly, the Designated Court should be trying an offence falling within its jurisdiction. Secondly, the accused should be charged of committing the other offences in the same trial, and thirdly those other offences must be connected with the offence triable by the Designated Court. In the present case the second and the third conditions are not fulfilled. Manifestly, sections 3, 4 and 6 of the Act are not attracted to the case against the petitioners under the Indian Penal Code. The petitioners, in this case, are neither alleged to have committed any terrorist or disruptive act, nor an offence under the Arms Act. The petitioner

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Gurmukh Singh is being tried separately under section 25 of the Arms Act to which section 6 of the Act applies. Both the cases were being separately tried in the Court of the learned Additional Sessions Judge. Even though a gun, the licence of which had already expired, was allegedly recovered from Gurmukh Singh petitioner during the investigation of the case under the Indian Penal Code, it is not the prosecution case that this gun had been used in the perpetration of the crime. Gurmukh Singh has not been charged with an offence under section 27 of the Arms Act in the case under the Indian Penal Code for having used the gun during the commission of crime. Hence, the offences under the Indian Penal Code and section 25 of the Arms Act are not subject matter of the same trial, nor it can be said that the offence under section 25 of the Arms Act is directly connected with the offences under the Indian Penal Code. We are, therefore, of the firm opinion that the enabling provision of Section 10(1) of the Act, which empowers the Designated Court to try any other offence with which the accused may be charged of at the same trial along with the offence exclusively triable by it, is not attracted to the present case. The Additional Sessions Judge was fully competent to try the case under the Indian Penal Code and he had no jurisdiction to transfer the same to the Designated Court. The case had been made over to him for trial by the learned Sessions Judge of the Division under section 194 of the Code of Criminal Procedure. The jurisdiction of the Additional Sessions Judge was, therefore, only confined to try the case, and it did not extend to transferring the same to the Designated Court or any other Court. The Designated Court also cannot try this case along with the case under the Arms Act because of the inapplicability of section 10 of the Act.

For aforesaid reasons the impugned order, dated April 16, 1986 of the learned Additional Sessions Judge, Hissar, is partly quashed. The case under sections 307 and 323 read with section 34, Indian Penal Code, against the petitioners will be tried in the Court of the learned Additional Sessions Judge, Hissar. The Designated Court, Bhiwani, will at once return the records of the case to the Court of the Additional Sessions Judge, Hissar. The Designated Court, Bhiwani, will, however, try the case under the Arms Act.

K. S. TIWANA, J.—I agree.

H.S.B.