Supreme Court of India
Jasbir Singh vs State Of Punjab on 19 February, 1997
Equivalent citations: AIR 1998 SC 1660, 1998 (1) ALD Cri 532, 1998 CriLJ 2063, JT 1998 (2) SC 292, 1998 (2) SCALE 176, (1998) 8 SCC 525
Bench: G Nanavati, S Kurdukar
ORDER Judgement pronounced by Nanavati, J.

1.This appeal arises out of the judgment and order passed by the Court of the Additional Judge, Designated Court, Jalandhar in T.D. Sessions Case No. 8/95. The appellant has been convicted under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with sections 4 and 5 of the Explosive Substances Act and section 25 of the Arms Act.

2. What is held proved against the appellant is that on a disclosure statement made by him 15 kgs of RDX powder, 5 detonators with some fuse wire and a steno-gun kept in a gunny bag and buried in the ground of the Handloom center of Village Dugri were recovered. In order to prove its case the prosecution had examined amongst other witnesses P.W.11 Radha Kishan the Investigating Officer. P.W.10 Mukhvinder Singh and P.W.9 Mukhtiar Singh who had acted as an independent witness to the making of the disclosure statement and recovery of the articles made pursuant thereto.

3. What is contended by the learned counsel for the appellant is that P.W.9 Mukhtiar Singh who has been examined by the prosecution as independent witness is really a police agent and on the basis of his evidence it ought not to have been held proved that the appellant had made a statement that he had concealed the said articles and that police had recovered the same when those articles were dug out by the appellant after taking the police to that spot. It was submitted that Mukhtiar Singh had a tea stall just opposite the police station and he had also acted as witness in 3 to 4 cases as observed by the trial court.

4. The fact that he was having a tea stall opposite police station stands proved as a result of the admission made by Mukhtiar Singh himself. He, however, denied the suggestion made by the defence that he was a witness in 3 to 4 cases of Kartarpur police station. In his cross examination he admitted that he was a witness in one case of conspiracy, but denied that he was a witness in any other case. In view of his denial and absence of any other material it is difficult to accept the contention that the said witness was repeatedly put up as a witness by the police and thus was under the thumb of police. On the contrary we find that during his cross examination he had tried to help the accused by stating that his signatures on all the documents were obtained at the police station.

5. The learned counsel also contended that if he is believed to be an independent witness, then it should have been held that recovery of the incriminating articles and their seizure was not made in presence of any independent person of the locality. The evidence of Inspector Radha Krishan and P.W.10 Mukhvinder Singh is that the recovery and seizure memo was prepared at the place from where those articles were dug out by the appellant. In his examination-in-chief P.W.10 Mukhvinder Singh has also stated that those articles were seized in his presence and the memo exhibit P.W.9/b was attested by him. That document shows that it was prepared at Village Dugri. In view of all this evidence the contention raised by the learned counsel cannot be accepted.

6. The learned counsel also pointed out certain inconsistencies in the evidence of those three witnesses and submitted that for that reason their evidence should not have been believed. We find that they are minor inconsistencies and they do not affect credibility of those witnesses. Learned counsel also contended that the sten gun was not kept in a sealed packet after it was seized and thus the prosecution has failed to establish that the sten gun which was produced before the Court was really found from the possession of the appellant or that it was discovered by him, the finding that it was found from the possession of the appellant is erroneous. We do not find any substance in this contention because the sten gun had a number written on it and it was noted in the seizure memo and it tallied with the number found on the stengun produced in the Court. RDX powder after its seizure was kept in a scaled packet and it is proved that on examination it was reported as a highly explosive substance. A contention regarding validity of registration of the offence and the investigation that followed was also raised on the ground that no permission of the Superintendent of Police was obtained before registering the offence. We do not find any substance in this contention also. As observed by the trial court a letter was produced and placed on record to show that the required permission was granted by the Sr. Supdt. of Police. Though the said letter was not formally proved, it was treated a part of the record as no objection to its admissibility was taken. The learned counsel also submitted that the prosecution evidence was false as the accused was already in police custody since one month before the date of the incident. He pointed that as early as on 15.12.1994 a complaint was made on behalf of the appellant that he was missing from the village, and the said complaint was received by the New Delhi office of the National Human Rights Commission on 22.12.1994. Assuming that to be correct, there is nothing on record to show that the appellant was taken away by the police on 15.12.1994 and since that date he was in their custody. Even in his statement recorded under Section 313 of the Crl. Procedure Code the appellant has not stated when and which police officer had taken him away and where was he kept in custody. A vague statement that he was already in police custody and the police had taken his signatures on blank papers cannot be regarded as sufficient to create any doubt regarding the evidence of the prosecution witnesses. The learned counsel drew our attention to the decisions of this Court in (1). Pradeep Narayan Madgaonkar & Ors. vs. State of Maharashtra , (2) Mohan Singh vs. State of Haryana and (3) State of Punjab vs. Om Prakash & Anr. reported in 1995 Crl. Law Journal 3655, but it is not necessary to consider them any more as they are of no help to the appellant, in view of the finding of fact recorded by the Designated Court and confirmed by us.

7. As we do not find any substance in this appeal, it is dismissed. The appellant shall be taken into custody if he has not served out the sentence.

Crl. A. No. 1086 of 1997

8. The appellant has been convicted under Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 and Section 25 of the Arms Act, by the Court of Additional Judge, Designated Court, Jalandhar in T.D. Sessions Case No. 9 of 1995.

9. What has been held proved against the appellant is that on 5.1.1985 at about 7.30 P.M., when he was apprehended and searched by the police, he was found in possession of one mouser 30 bore an 7 live cartridges.

10. What is contended by the learned counsel for the- appellant is that the prosecution evidence itself shows that the pistol and the cartridges alleged to have been recovered from the appellant did not have any number or some distinctive mark on them and after their seizure by the police they were not scaled. Thus the identity of the weapon and the cartridges seized and the weapon and cartridges produced before the court was not established by the prosecution. Having gone through the evidence, we find that the contention raised on behalf of the appellant is correct and, therefore, deserves to be accepted. The pistol and the cartridges did not have any mark or any number on them and after seizing the same police had not thought it fit to wrap them and apply a seal over them. No explanation in that behalf was given by the prosecution witnesses. This aspect was not considered by the trial court. As the identity of the incriminating articles has not been established by the prosecution, we allow this appeal, set aside the conviction of the appellant both under Section 5 of the TADA Act and 25 of the Anns Act and acquit him of all the charges leveled against him.