

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Delivered on: May 26, 2009*

+ **CRL.A.No.239/2004**

MOHD. ASHRAF @ MOHD. SHAKEER Appellant
Through: Ms. Rakhi Dubey, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICEINDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (ORAL)

1. We have gone through the record of the learned Trial Judge.
2. From the record, it is apparent that the appellant moved an application pleading guilty to the charges framed against

him. The said application was adjourned to enable the appellant to re-consider his decision to plead guilty. The matter was adjourned to 18.9.2003.

3. On 18.9.2003, the appellant was present along with his counsel Mr.Riaz Mohd. In the presence of his counsel, the appellant re-affirmed his decision to plead guilty.

4. The appellant informed the court, as recorded in the order dated 18.9.2003, that he was a Pakistani national and was misled into doing what he did and that he felt sorry for his deeds.

5. Vide order dated 18.9.2003, the appellant was accordingly convicted for the following offences:-

- (a) Offence punishable under Section 3(3) and 3(5) POTA
- (b) Offence punishable under Section 25 of the Arms Act read with Section 5 POTA.
- (c) Offence punishable under Section 20 POTA.
- (d) Offence punishable under Section 121-A and Section 122 IPC.

(e) Offence punishable under Section 465 and 471 IPC.

(f) Offence punishable under Section 14 of the Foreigners Act.

6. Vide order dated 15.10.2003, which order we find is missing from the record of the learned Trial Judge, but certified copy whereof has been filed along with the appeal, following sentences were imposed upon the appellant:-

“(a) For the offences punishable under Section 3(3) and Section 3(5) POTA; to undergo rigorous imprisonment for 8 years and to pay a fine in sum of Rs.15,000/- and in default of payment of fine to undergo Rigorous Imprisonment for one year and to undergo rigorous imprisonment for 5 years and pay a fine in sum of Rs.25,000/-, in default to undergo rigorous imprisonment for one year, respectively.

(b) For the offence punishable under Section 20 POTA, to undergo R.I. for 5 years and to pay a fine in sum of Rs.10,000/-, in default of payment of fine to undergo RI for 6 months.

(c) For the offence punishable under Section 25 of the Arms Act read with Section 5 POTA, to undergo RI for 5 years and to pay a fine in sum of Rs. 5,000/-, in default of payment of fine to undergo RI for 3 months.

(d) For the offence punishable under Section 121A IPC to undergo imprisonment for 8 years and to pay a fine in sum of Rs.25,000/-, in default of payment of fine, to undergo RI for 1 year.

(e) For the offence punishable under Section 122 IPC, to undergo RI for 8 years and pay a fine in sum of Rs.25,000/-, in default of payment of fine to undergo RI for 1 year.

(f) For the offence punishable under Section 465 and 471 IPC, to undergo RI for two years and to pay a fine in sum of Rs.5000/- for each offence and in default of payment of fine, to undergo RI for 3 months.

(g) For the offence punishable under Section 14 of Foreigners Act, to undergo RI for 2 years and to pay a fine in sum of Rs. 10,000/-, in default , to undergo RI for 6 months.

(h) For the offence punishable under section 120B IPC, to undergo RI for 10 years and pay a fine in sum of Rs. 25,000/- in default to undergo RI for 2 years.”

7. Vide instant appeal, the appellant has challenged the order of sentence dated 15.10.2003. It is urged that the appellant has expressed remorse for his conduct and at the first instance has pleaded guilty. Thus, it is urged that the mitigating circumstance i.e. the expression of remorse by the appellant has to be taken into account and sentence tempered accordingly. It is urged that for the commission of the substantive offences in respect whereof the charge of conspiracy was framed, the sentence imposed is of 8 years rigorous imprisonment and thus it does not stand to reason as to why for the charge of conspiracy relating to the said substantive offences, the sentence imposed should be 10 years RI.

8. It is urged that as per the Code of Criminal Procedure, if the fines are not paid, the relatable period of incarceration to be undergone has to be undergone by the appellant and that in relation to payment of fine, the sentences cannot run concurrently. It is urged that the sum total of the fine imposed upon the appellant is in the sum of Rs.1,45,000/- and if the same is not paid, the imprisonment required to be undergone would be 6 years and 6 months.

9. Learned Counsel for the State urges that the offence of conspiracy is a substantive offence and therefore the learned Trial Judge justify in imposing the sentence of Rigorous Imprisonment for 10 years pertaining to the offence of conspiracy. Learned Counsel urges that keeping in view the magnitude of the offence for which the appellant was charged of, namely to enter into conspiracy to commit terrorist acts directed at the President of India and the noted cricketer Sachin Tendulkar, sentences imposed are adequate. Learned Counsel urges that the scourge of terrorism which has created a fear psychosis in the society needs to be put down with a heavy hand. Learned Counsel urges that the society's cry for justice in the form of appropriate sentence has to be respected

because the crime of terrorism shocks the conscience of the society.

10. Having considered the rival submissions, we but note that prima facie it seems discriminatory and inappropriate to impose a lesser sentence for a crime which has manifested itself in the form of commission of the crime vis-a-vis the conspiracy to commit the crime and impose a higher sentence for the substantive offence of conspiracy.

11. We agree with the submissions made by the learned counsel for the state that for offences relatable to terrorism, no leniency in the imposition of sentence has to be shown, more so, when the crime is committed by foreign national who trespasses into the territory of the Union of India and attempts to overawe the very existence of the State.

12. Thus, we do not find any infirmity in the impugned order in so far the fines have been imposed and in default, further imprisonment for respective period has been directed to be undergone.

13. But, we find a hiatus with respect to the substantive sentence of rigorous imprisonment for 10 years imposed for the charge punishable under Section 120B IPC for the reason

for the charge of conspiracy the relatable offences have resulted in a conviction for a maximum period of 8 years.

14. We accordingly take corrective action. The appeal stands disposed of modifying the order of sentence dated 15.10.2003, but limited to the sentence imposed for the offence punishable under Section 120B IPC. We direct that for the offence punishable under Section 120B IPC, the appellant shall undergo rigorous imprisonment for 8 years and pay a fine in sum of Rs.25,000/-, in default of payment of fine would undergo rigorous imprisonment for one year.

15. The appeal stands disposed of as aforesaid.

16. The trial court record be returned through a special messenger immediately.

17. For the guidance of the learned Trial Judge, we note that the Ahlmad of the court has kept the record in a most haphazard manner. The order-sheet shows that the orders passed by the learned Trial Judge have not been tagged date wise.

17. The documents required to be put in Nathi 'A' are bound in the Nathi 'B' and vice-versa.

18. It is hoped and expected that the learned Trial Judge would exercise proper supervisory control over the Ahlmad and would ensure that not only proceedings of the instant case, but pertaining to all cases before the learned trial judge, the record is maintained as per the relevant rules pertaining to the maintenance of judicial record.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

May 26, 2009
Nandan