

REPORTABLE

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

+ CRIMINAL REVISION PETITION No. 428 OF 2008

Reserved on: 27th August, 2010

Date of decision: 10th September, 2010

STATE

..... Petitioner

Through Mr. Sanjeev Bhandari, Additional
Standing Counsel for the State along with
Inspector Ramesh Lamba, Special Branch.

versus

MEHRUNISA & ORS.

..... Respondents

Through Ms. Anita Abraham, Advocate for
respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

- | | |
|--|-----|
| 1. Whether 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 |

SANJIV KHANNA, J.:

1. Learned trial court vide order dated 3rd April, 2008 has discharged Mehrunisa- respondent No. 1 herein recording as under:-

“6. So far as accused Smt. Mehrunisa is concerned, the evidence relied on by the prosecution is the CD in which she was allegedly possessing the bag which was recovered from possession of accused Mohd. Jameel. I am unable to agree with ld. Addl.P.P. It is no doubt true that the paper card slip did contain the name and other particulars of accused Smt. Mehrunisa and it was for her to explain yet the evidence of handing over of the bag by Smt. Mehrunisa to any of the accused is missing. Involvement of any other person other than Smt. Mehrunisa in making use of this particular bag, cannot be ruled out. Therefore, there is no prima facie case against her. If the bag contained counterfeit currency notes, the same would have been found on her arrival in India as the bag must have been checked.”

(emphasis supplied)

2. The case of the prosecution is that on 25th June, 2007 on the basis of information recorded in writing in the Daily Diary Register, three persons with bags were searched near Commosum Restaurant, Nizamuddin Railway Station, New Delhi. In a large bag contained counterfeit Indian currency notes of Rs.1,000/- and Rs.500/- denominations amounting to Rs. 18.74 lacs. These had been concealed in the cavity of the bag. In fact they were rolled inside the silk thread spool to conceal them. The bag was found to be in possession of one Mohd. Naim from whom counterfeit currency notes of face value Rs.50,000/- were recovered. From the bag in possession of Mohd. Jameel, counterfeit Indian currency of Rs.13.76 lacs was recovered. A third person involved and arrested was Mohd. Muslim. In all counterfeit Indian currency of Rs.33 lacs was recovered from the three of them.

3. It is alleged by the State that the first bag had a yellow coloured paper card slip of North-Western Railway, Jodhpur Division, Thar Link Express 4889/4890 in the name of the respondent No. 1 with ticket No.6716/3, date of journey 23rd June.

4. It is stated by the prosecution that after recovery of the said counterfeit Indian currency, the yellow coloured paper card slip and on the basis of the leads given by the accused, the police started investigation. The police were able to retrieve a CD recorded by the GRP, Jodhpur. The CD shows the respondent No. 1 herein-Mehrunisa crossing the custom barrier after coming back to India in Thar Link Express on 23rd June, 2007.

5. Learned counsel appearing for the respondent No. 1 had disputed the identity of the respondent No. 1 in the said CD. She was permitted to see the CD on the computer available in the Court. Learned counsel for the State was subsequently asked to ascertain and pin point the presence of the respondent No. 1 in the said CD along with the bag, which it is alleged was subsequently seized on 25th June, 2007. Learned counsel for the State identified the respondent No. 1 in the said CD. As some doubt was expressed by the learned counsel for the respondent No. 1 about the physical appearance and identity of the respondent No. 1 in the CD, the respondent No. 1 was also asked to appear in the Court. The CD reveals that the respondent No. 1 was photographed/filmed crossing the Customs barrier along with a bag of yellow-green colour. The CD does not show that any physical examination or checking of the bag was done by the Customs.

6. Learned counsel for the respondent No. 1 submitted that even if the

bag is the same, this does not prove and establish that the respondent No. 1 was aware that she was carrying counterfeit Indian currency from Pakistan to India or that she was involved in the said crime.

7. The charge sheet records the alleged modus operandi adopted by the three accused to smuggle in counterfeit Indian currency from Pakistan. It is stated that the accused were taking help of third persons, who are ready and willing to go to Pakistan and bringing back counterfeit currency. The charge sheet mentions the modus operandi adopted by the three accused and the role of Mehrunisa as under:-

“....In first week of June 07, he (Jamil) and Naim @ Nadeem arranged two ladies sawaris namely Reshma and Mehrunisha. He along with Naim @ Nadeem and lady passengers visited Jodhpur two-three times and arranged their tickets for Pakistan by Thar Link Express on 02.06.07. He sent cosmetic items to Pakistan through them. He along with ladies Sawaris and Mohd. Naim went to Jodhpur Rajasthan and dropped them in Thar Link Express train going to Pakistan. Thereafter Shahid told him that he had booked tickets for both passengers for 22.06.07 and the savari was bringing consignment. So he sent Naim @ Nadeem to Jodhpur to receive the savaries and also gave one mobile phone to Naim having mobile number 9891010537 for communication. Naim was in need of money, so he asked Naim to keep Rs.50,000/- from the consignment received through savaries. Naim went to Jodhpur by train, on 24.06.07, Naim informed him from Jodhpur on his mobile phone that he had received both passengers/savaries and the consignment and was coming back to Delhi by Intercity Express. On 25.06.07 morning, Naim and both lady savaries arrived at Old Delhi Railway Station and Naim called him on his mobile phone, he directed Naim to let off both lady savaries after paying them some money and to meet him at Nizamuddin Station in the evening at 5 PM, where he went with his brother Muslim to receive the consignment from Naim but all of them were apprehended red handed while in possession of recovered fake currency. He disclosed that he used to stay in Hotel Gulmohar located at Railway Station Jodhpur, Rajasthan during his visits to Jodhpur in the name of Wasim. During interrogation accused revealed that other code name of Shahid was Raja.

IO also interrogated accused Mohd Naim @ Nadeem and recorded his disclosure statement. He disclosed that his cousin Mohd Jamil @ Bhura @ Wasim, who was engaged in procuring Indian fake currency through passengers going to Pakistan and was residing at Bhalaswa Dairy, Delhi asked him to assist him in fake currency business in lieu of huge profit to which he agreed. He was working with Jamil for last four months. Jamil trained him in the racket of procuring fake Indian currency from Pakistan and circulating the same in India. Jamil trained him in arranging sawaries going to Pakistan and started keeping him on front. Around three months back Jamil had sent him with one lady and his son Sonu to IGI Airport to board them in a flight going to Pakistan. These passengers brought fake currency from Pakistan via Rajasthan border and he received Rs.20,000/- in this transaction. He along with Jamil went to Kabutar market, Jama Masjid, Delhi where they arranged two passengers for Pakistan, namely Reshma r/o Rampur Maniharan, Saharanpur and Mehrunisa r/o Baraut. They took their passports and arranged their tickets to Pakistan via Rajasthan border in Thar Link Express. He along with Jamil went to Jodhpur with Mehrunisa and Reshma and boarded them in Thar Link Express on 02.06.07. Jamil had told him that the consignment of fake currency was to be procured through Mehrunisa as she was quite old and nobody would doubt her, so he had told Mehrunisa about the consignment of fake currency before boarding train to Pakistan, which was to be procured by her from Pakistan safely and directed her not to disclosed this fact before Reshma. After some days Jamil told him that Mehrunisa and Reshma were coming back to India at Jodhpur by train on 23.06.07, so he went to Jodhpur to receive them. He went to Jodhpur by train, Jamil had given him one mobile phone while going to Jodhpur to remain in touch with him, which was recovered from him at the time of apprehension. He reached Jodhpur on 23.06.07 and stayed at hotel Gulmohar in the name of Nadeem, which code name was given to him by Jamil. On 24.06.07 Mehrunisa and Reshma came back to Jodhpur via Munabao border from where he received them, Mehrunisa had given him one bag in which fake Indian currency notes were concealed in the silk thread rolls. Since the bag was quite heavy, he put nearly half of the

thread roll packets in his own bag and came back to Delhi with Mehrunisa and Reshma. On the way TT had given them reservation on their ticket. On the way he broke opened three thread rolls in which fake Indian currency notes worth Rs.54,000/- in the denomination of Rs.1,000/- each were recovered, out of which he gave Rs.2,000/- each to Mehrunisa and Reshma and remaining kept by him, which were recovered from him at the time of apprehension. After reaching at Old Delhi Railway Station, he called Jamil on his mobile phone, who directed him to let off Mehrunisa and Reshma and to meet him at Nizamudin Station in the evening at 5 PM, where they were apprehended.”

8. As per the aforesaid charge sheet two ladies, viz., Reshma and Mehrunisa- respondent No. 1 herein, along with accused Naim @ Nadeem had visited Jodhpur before they left for Pakistan and the said accused had arranged for their train ticket to Pakistan by Thar Link Express on 2nd June, 2007. Thereafter, both of them returned to India vide tickets booked for journey on 22nd June, 2007. Naim again went to Jodhpur and on 24th June, 2007 received Reshma and Mehrunisa, with the consignment. On 25th June, 2007, Naim along with two ladies came back to Old Delhi Railway Station. During this time Naim was in touch with others on the mobile telephone No. 9891010537.

9. As per the charge sheet, the respondent No. 1-Mehrunisa was assigned the role and task to procure the counterfeit Indian currency from Pakistan to India as she was old and nobody would suspect that she could be carrying on counterfeit Indian currency while coming back from Pakistan.

10. The State has relied upon the reservation slip for booking of train tickets of Mehrunisa and Reshma. It is stated that this in the reservation slip telephone No. 9873072066 is mentioned. It is stated that this telephone number belongs to Mohd. Jameel, one of the accused, who were arrested with the counterfeit Indian currency on 25th June, 2007. The alleged reservation slip was in respect of two passengers, viz., the respondent No. 1-Mehrunisa and Reshma. As per the prosecution case both of them had travelled together from India to Pakistan and also travelled back together from Pakistan to India.

11. It is alleged by the State that call details from mobile No.

9811761991 for the period 15th May, 2007 to 24th June, 2007 have been obtained from the service provider. Accused Mohd. Jameel had made calls from Rajasthan during his visits to Jodhpur and in connection with and for arranging the visit of the respondent no.1 -Mehrunisa to Pakistan. The State also relies on the calls received to and from Pakistan and to the accused Shahid who is, it is alleged, based in Pakistan.

12. In view of the aforesaid averments in the charge sheet and the evidence relied upon by the prosecution, it is alleged:-

- (1) The three accused persons namely Mohd. Naim, Mohd. Jameel and Mohd. Muslim were caught with counterfeit Indian currency of Rs.33 lacs on 25th June, 2007. The said accused had adopted modus operandi of bringing in counterfeit Indian currency through third persons who were sent to Pakistan. Mehrunisa was roped in to bring counterfeit Indian currency from Pakistan.
- (2) Mehrunisa went to Pakistan from Jodhpur by train on 2nd June, 2007 and came back to India on 24th June, 2007. The accused had arranged and provided for the visit to Pakistan, in form of train tickets, visa charges etc.
- (3) On both the dates, i.e., on 2nd June, 2007 and on the return journey on 24th June, 2007 Mohd. Naim @ Nadeem had gone to Jodhpur to see them off and pick them.
- (4) On the reservation slip on the basis of which train tickets were issued, telephone No. 9873072066, which belongs to accused Mohd. Jameel is mentioned.
- (5) On 25th June, 2007, the bag which was brought in by the respondent No. 1-Mehrunisa from Pakistan was found to be in possession of three accused with counterfeit Indian currency.
- (6) This bag is visible in the CD when the respondent no.1Mehrunisa crossed the Customs barrier.
- (7) Telephone call details of number 9811761991 of accused Mohd. Jameel are relied upon.

13. Section 120A, IPC reads

“120-A. Definition of criminal conspiracy.

— When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

14. In *Halsbury's Laws of England*¹, the English law as to conspiracy has been defined thus:

“58. *Meaning of conspiracy.*—Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.’”

15. Thus one of the elements of criminal conspiracy is an agreement or understanding between two or more accused persons whereby they become definitely committed to cooperate for accomplishing the object by the means embodied in the agreement or by any effectual means. For an offence under Section 120B, IPC the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an

¹ 4th Edn., Vol. 11, p.44, para 58

illegal act; the agreement may be proved by necessary implication. In cases of conspiracy direct evidence is rarely available. Circumstantial evidence is normally relied upon. Therefore circumstances proved before, during and after the occurrence have to be considered to decide whether there was an agreement, expressed or implied.

16. In ***Yogesh vs. State of Maharashtra***, (2008) 10 SCC 394 it has been held :

“20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in *Shivnarayan Laxminarayan Joshi v. State of Maharashtra*² a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

21. In *Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra*³ it was observed that for an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do and/or cause to be done the illegal act, the agreement may be proved by necessary implication.

22. In *Kehar Singh v. State (Delhi Admn.)*⁴ the gist of the offence of the conspiracy has been brought out succinctly in the following words: (SCC p. 731, para 271)

“271. ... ‘The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.’ ”

23. Again in *State of Maharashtra v. Som Nath Thapa*⁵ a three-Judge Bench of this Court held that to establish a charge of conspiracy knowledge about

²(1980) 2 SCC 465

³(1981) 2 SCC 443

⁴(1988) 3 SCC 609

⁵(1996) 4 SCC 659

indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use.

24. More recently, in *State (NCT of Delhi) v. Navjot Sandhu*⁶, making exhaustive reference to several decisions on the point, including *State v. Nalini*⁷ Venkatarama Reddi, J. observed thus: (*Navjot Sandhu case*, SCC p. 689, para 97)

“97. Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (*per* Wadhwa, J. in *Nalini case* at p.516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and ‘the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible’ (*Tanviben Pankajkumar case*⁸, SCC p.185, para 45). G.N. Ray, J. in *Tanviben Pankajkumar* observed that this Court should not allow suspicion to take the place of legal proof.”

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.”

17. On the point of charge, scrutiny of allegations and evidence relied upon by the prosecution is made to decide whether there are sufficient grounds to proceed against the accused. The object is not to decide the case on merits after evaluating the possible defense and make judgmental assessment of the prosecution evidence; but to decide whether there are sufficient grounds for the court to proceed with the trial or not. Probative value of the material is not gone into in depth. Materials brought on record

⁶ (2005)11SCC600

⁷ (1999) 5 SCC 253

⁸ 1997) 7 SCC 156

by the prosecution have to be accepted as true at this stage. The material is evaluated on the face value to decide whether it discloses existence of all ingredients constituting the alleged offence. At this stage even a strong suspicion founded on material which leads the court to form presumptive opinion on existence of factual ingredients constituting the offence alleged would justify framing of charge. If the evidence which the prosecution proposes to adduce even if fully accepted, before it is challenged in cross examination or rebutted by defense evidence, does not show that the alleged offence was committed then there is no sufficient ground for proceeding with the trial. The accused is entitled to discharge. The reasoning in the order dated 3rd April, 2008 quoted above accepts that material on record requires explanation from respondent No.1 but she has been discharged.

18. In view of the aforesaid evidence and allegations, it cannot be said that prima facie case is not made out against the respondent no.1-Mehrunisa for offences under Sections 489A, 489B, 489C and 120B of the IPC.

19. As far as offence under Section 121A IPC is concerned, the two provisions Sections 121 and 121A read;

“121. Waging or attempting to wage war or abetting waging of war against the Government of India.—Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Illustration

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

121-A. Conspiracy to commit offences punishable by Section 121.—Whoever within or without India conspires to commit any of the offences punishable by Section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.”

20. Section 121- A deals with two kinds of conspiracies: (i) Conspiring within or outside India to commit any of the offences punishable by Section 121 IPC; (ii) Conspiring to overawe the Government by means of Criminal force or the show of criminal force. The essence of the offence under Section 121-A of the Code is the agreement to do all or any of the unlawful acts mentioned in the Section 121, IPC.

21. The Supreme Court has examined the expression “waging war” in Sections 121/121A IPC in ***State (NCT of Delhi) vs. Navjot Sandhu, (2005) 11 SCC 600***, has observed as under:

“274. The conspiracy to commit offences punishable under Section 121 attracts punishment under Section 121-A and the maximum sentence could be imprisonment for life. The other limb of Section 121-A is the conspiracy to overawe by means of criminal force or the show of criminal force, the Central Government or any State Government. The Explanation to Section 121-A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence.

275. War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war embedded in Section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the Illustration to Section 121 itself makes it clear that “war” contemplated by Section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war. “Insurrection” as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. “Rebellion, revolution and civil war” are progressive stages in the development of civil unrest the most rudimentary form of which is “insurrection” — vide *Pan American*

*World Air Inc. v. Aetna Cas & Sur Co.*⁹ An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression “war” and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or the Government.”

22. In the subsequent portion of the said judgment it has been clarified in paragraphs 277, 282 and 283 as under:-

277. To this list has to be added “terrorist acts” which are so conspicuous now-a-days. Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.

X X X X

X X X X

282. On the analysis of the various passages found in the cases and commentaries referred to above, what are the highlights we come across? The most important is the intention or purpose behind the defiance or rising against the Government. As said by Foster, “The true criterion is *quo animo* did the parties assemble?” In other words the intention and purpose of the warlike operations directed against the governmental machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of government troops or armed personnel deployed to maintain public tranquillity. Though the *modus operandi* of preparing for the offensive act against the Government may be quite akin to the preparation in a regular war, it is often said that the number of force, the manner in which they are

⁹ [505 F.R. 2d 989].

arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or firearms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war.

283. While these are the acceptable criteria of waging war, we must dissociate ourselves from the old English and Indian authorities to the extent that they lay down a too general test of attainment of an object of general public nature or a political object. We have already expressed reservations in adopting this test in its literal sense and construing it in a manner out of tune with the present day. The court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression “waging war” should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression “waging war” irrespective of how it was viewed in the long long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war. We doubt whether such construction is in tune with the modern day perspectives and standards. Another aspect on which a clarification is called for is in regard to the observation made in the old decisions that “neither the number engaged, nor the force employed, nor the species of weapons with which they may be armed” is really material to prove the offence of levying/waging war. This was said by Lord President Hope in *R. v. Hardie*¹⁰ in 1820 and the same statement finds its echo in many other English

¹⁰ (1820) 1 State Tr NS 609

cases and in the case of *Maganlal Radhakishan v. Emperor*.¹¹ But, in our view, these are not irrelevant factors. They will certainly help the court in forming an idea whether the intention and design to wage war against the established Government exists or the offence falls short of it. For instance, the firepower or the devastating potential of the arms and explosives that may be carried by a group of persons — may be large or small, as in the present case, and the scale of violence that follows may at times become useful indicators of the nature and dimension of the action resorted to. These, coupled with the other factors, may give rise to an inference of waging war.”

(emphasis supplied)

23. Applying the above ratio, the allegations made in the charge sheet even if admitted and accepted as correct do not make out a case under Section 121/121A IPC. The averments do not disclose that the respondents were “waging war” as interpreted above.

24. Respondent No.1- Mehrunisa was granted bail by the trial court vide order dated 11.1.2008. She shall continue to remain on bail on the same terms and conditions. She shall furnish or renew the personal bond with surety within one month to the satisfaction of the trial court.

25. The Revision Petition is disposed of.

26. It is clarified that the observations made in this judgment are for the purpose of disposal of the present revision petition and will not be construed as observations on merit binding on the trial court.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 10, 2010
VKR/P

¹¹ AIR 1946 Nag 173