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

+ CRL.L.P. 35/2014

STATE

..... Petitioner

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector
Dharmender Kumar, Spl. Cell.

versus

PARVEZ AHMED RADOO @ RAJU@TAHIR Respondent

Represented by: Mr.Manu Sharma, Ms.Ridhima
Mandhar and Mr.Abhira Dutt,
Advts.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.09.2014

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1. The State is aggrieved by the judgment dated June 06, 2013 acquitting Parvez Ahmed Radoo @ Raju @ Tahir the respondent herein for the offences punishable under Sections 4 and 5 of the Explosives Act, 1884 (ES Act) and under Sections 17/18/20/23 of the Unlawful Activities (Prevention) Act (UAP Act).
2. The prosecution alleges that Parvez was apprehended on October 14, 2006 near Azadpur Fruit market having strolley bag which contained brown granulated oil based explosive weighing 3 kg and ₹10 lakhs besides the electronic detonator and timer.
3. Learned counsel for the State submits that the charges for the aforementioned offences stand proved against Parvez from the testimony of the witnesses, who made the recoveries from the bag. Further the account

maintained by Parvez wherein ₹10 lakhs were found to be transferred in short span would also lead to the conclusion that Parvez was in possession of hawala money meant for unlawful activities and the consignment and cash recovered at his instance was meant to be delivered to another accused for spreading terror and unlawful activities in Delhi and J&K. Since the other person, who was to take the delivery from Parvez could not be apprehended, the same would not lead to the inference that the charge against Parvez has not been proved.

4. Learned counsel for the Parvez on the other hand submits that the secret information was not noted in the daily diary. No public witness was associated with the recoveries. The prosecution has failed to establish any link between Parvez and Jaish-e-Mohammad (JeM) as no document in this regard has been proved. Out of the 15 members of the raiding party, only three witnesses have been examined and there are discrepancies in the testimony of these three witnesses as well. Though PW-10 is stated to have translated the matrix, however he did not depose about the same. Despite having gone to search to Pune for the hawala operator, the police officials came back without arresting anybody as they found the shop closed due to a local festival. Thus, the prosecution has not been able to prove that Parvez was indulging in hawala transaction. Merely by proving that Parvez was maintaining his account with J&K Bank would not lead to the conclusion that Parvez indulged in hawala transaction. Further in the seizure memo, arrest memo and personal search memo, the dates have been added subsequently after the charge sheet was filed. The defence of Parvez is that he was apprehended from IGI Airport on September 12, 2006 while he came from Srinagar to Delhi and falsely implicated in this case.

5. We have heard learned counsel for the parties and perused the record.
6. We however find no merit in the contention that the prosecution is required to prove the alliance of Parvez with JeM by documentary evidence. JeM being a terrorist organization banned in the Country, there would be no documentary evidence available for the same and only by proving that the accused professes the said activities, the prosecution can prove the alliance to the banned organization.
7. Though learned counsel for Parvez has sought to contend that the documents like the seizure memo, personal search memo and the arrest memo were fabricated, however, we note that the documents on the first page bear the same date. There is no authenticity that the photocopies being handed over by the learned counsel for Parvez were the once given to him on filing of the charge sheet. Thus, we need not delve into the same. Further the witnesses ought to have been cross-examined in this regard.
8. The defence of Parvez is that he was apprehended on September 12, 2006 at the IGI Airport. Though an order was passed by the learned Trial Court for preserving the CCTV footage to the IGI Airport however the said order was not communicated and the CCTV footage could not be preserved and thus there is no evidence that Parvez was apprehended on September 12, 2006 from IGI Airport. Moreover, the mobile phone call records of mobile phone No.09960565152 have been produced from which the accused said that phone calls were made to his parent's house, however the record shows that the same was in roaming from September 06, 2006 to September 15, 2006 and October 03, 2006 to October 11, 2006 in Pune. It is not even the case of Parvez that he was apprehended before September 12, 2006 and thus we find no merit in this contention.

9. The prosecution on the basis of possession of ₹10 lakhs has sought to prove that Parvez was in possession of Hawala money. Though possession of ₹10 lakhs and bank transactions have not been proved by Parvez however, his not being able to explain the source of money would not lead to an inference that Parvez was involved in hawala transaction.

10. In the present case, the main issue which has to be determined is whether Parvez can be convicted for the recoveries allegedly made from him and thus liable to be convicted for offence punishable under Section 4 and 5 ES Act. In this regard the prosecution has examined PW-5 SI Dharmender Kumar, PW-9 HC Statender Kumar and PW-11 Mr. Sanjeev Kumar Yadav, ACP, Mehrauli.

11. PW-5 SI Dharmender Kumar has deposed that in the last week of September, 2006 a secret information was received that one Raju R/o Sopore, Baramula, J&K and active member of JeM used to ferry arms and ammunitions and explosive substances as well as money for terrorist outfits on the directions of one Sherjil resident of Pakistan. On this a team was constituted and technical surveillance was mounted. On October 14, 2006 at about 6.30 PM Inspector Mohan Chand Sharma received information through the informer that Raju resident of Sopor would come near “in-out” gate of Azadpur Fruit Market to deliver the consignment of explosive substance to some other terrorists at about 9.30 PM. This information was reduced in writing in the daily dairy and a team was constituted to conduct the raid. At about 9.45 PM Raju was noticed coming from G.T. Karnal Road carrying a strolley bag in his right hand. Inspector Mohan Chand Sharma alerted the staff and gave a specific signal to overpower/apprehend Raju. PW-5 along with HC Statender and other staff managed to apprehend Raju

when he was asked about the contents of his bag but he could not give any satisfactory explanation. On opening the bag, it was found to be containing clothes and one cardboard box with "BATA" written on it and sealed with a brown colour tape. Inside the cardboard box there was a small thermocol box with "6920" written on both sides and "O.K." on one side. The cardboard box contained one black coloured polythene bag in which there was another transparent polythene bag. From this thermocol box, one timer and electronic detonator were recovered. The canvas bag was found containing Indian currency notes of ₹500/- denomination in 20 wads totalling to ₹10 lakhs. The granulated explosive substance weighed 3 kg. Out of which two samples of 10 gms each were taken and they were duly sealed. Similarly, the other articles were also sealed and rukka was sent. Pursuant to the disclosure of Parvez, raids were conducted in Srinagar and Pune, however, nothing further could be revealed.

12. Though PW-9 HC Satender Kumar and PW-11 Sanjeev Kumar Yadav, ACP deposed in sync with PW-5, however there are certain contradictions in their testimonies which we will note hereinafter.

13. SI Dharmender Kumar stated that the thermocol box was not part of cardboard box but was lying in strolley bag, however HC Satender Kumar stated that the thermocol box was wrapped in clothes. SI Dharmender Kumar, who had opened the bag, was not aware whether it was locked or not nor did he mention the colour of the bag in the memo. Besides Inspector Rajender Sehrawat has given two versions of the colour of thermocol bag as white at one place and khakhi at other place. As per the investigating agency, the recovered article was in granulated form, however as per the FSL report Ex.PW-3/A the substance was brownish colour putti. It is not

clear whether the timer was with two white colour wires or was a time pencil. Though translation of the matrix was got done, however the witness who translated the same was not produced in the witness box. The daily dairy recording secret information was not produced. Though the entire information was developed by Inspector Mohan Chand Sharma however he was not cited as a witness nor his statement was recorded under Section 161 Cr.PC. SI Dharmender Kumar stated that the entire writing was done by the investigating officer i.e. ACP Sanjeev Yadav however ACP Sanjeev Yadav stated that he had not carried out any writing work.

14. It is well settled that when the prosecution seeks conviction on the basis of recoveries, they must prove the same cogently and convincingly. In view of the material contradictions in the testimonies of the three witnesses and evidence on record as noted above, we have no hesitation in coming to the conclusion that Parvez is entitled to benefit of doubt. Hence we find no reason to grant leave to appeal.

14. Petition is dismissed.

15. Trial Court record be sent back forthwith.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

SEPTEMBER 08, 2014
‘v mittal’