IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 369 OF 2017

The State of Maharashtra
National Investigation Agency, Mumbai .....Appellant
versus
Areeb Ejaj Majeed @ Guddu @ Abu Ali Al Hindi ......Respondent

Mr. Prakash Shetty, Spl.P.P. along with Mr. Godambe i/b. Mr. A. P. Sukhadeve, advocates for the appellant.
Mr. Mubin Solkar i/b. Mr. Yusuf S. Mithi, advocate for the respondent No.1.

CORAM : RANJIT MORE &
SMT.SADHANA JADHAV, JJ.

DATE : 9th AUGUST, 2017.

P. C. :

Heard Mr. Shetty, learned counsel for the appellant and Mr. Solkar, learned counsel for the respondent.

2. The appellant is aggrieved by non-framing of charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967 (for short "the said Act"). The application of the accused in the subject crime to discharge him came to be rejected. Simultaneously, the learned Trial Judge framed charges against the accused under Sections 16 and 18 of the said Act and Section 125 of the Indian Penal Code, 1860(for short "the IPC"). The Trial Judge refused to frame charge under Section 20 of the said Act and, therefore, the appellant is before this Court.

3. Mr. Shetty, learned counsel for the appellant, invited our attention to the discussion of the learned trial Court in paragraph 18 of the impugned order and submitted that the accused being a member of terrorist gang, a charge under Section 20 of the said Act ought to have been framed.

4. Mr. Solkar, learned counsel for the respondent, supported the impugned order and submitted that the National Investigation Agency (NIA) now for the first time has alleged that the accused is a member of terrorist gang and earlier, it was their case that the accused was a member of terrorist organisation and therefore now, no fault can be found in the impugned order.

5. Section 20 of the Unlawful Activities (Prevention) Act, 1967 deals with punishment for being member of terrorist gang or terrorist organisation. Under this Section, any person who is a member of a terrorist gang or terrorist organisation which is involved in terrorist act, shall be punishable with imprisonment for a term which may be extended to imprisonment for life, and shall also be liable to fine. The terms "terrorist gang" and "terrorist organisation" are defined under clauses (l) and (m) of Section 2 of the said Act, which reads as follows :

"2. Definitions – (1) In this Act, unless the context

otherwise requires,-

(a)....

(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;"

The above definitions makes distinction between the terms "terrorist gang" and "terrorist organisation". It is clear from the definition that "terrorist gang" means any association other than "terrorist organisation". The appellant's case, since inception, was that the accused is a member of the terrorist organisation viz. Islamic State of Iraq and Levant (ISIL).

6. Admittedly, ISIL was included in the schedule only on 16th February, 2015. This is subsequent to the registration of the subject FIR. Obviously, the accused cannot be termed as a member of terrorist organisation within the meaning of clause (m) of Section 2 of the said Act. It appears that now the appellant is shifting their stand and alleging that the accused is a member of terrorist gang. However, in support of this stand, there is no material.

7. The learned Trial Judge rightly came to the conclusion that since the ISIL was declared as "Terrorist Organisation" only on 16th February, 2015, charge cannot be framed against the accused under Section 20 of the said Act. We do not find any fault in the impugned order. The appeal is without any merit and the same is dismissed as such.

(SMT. SADHANA JADHAV, J.) **[RANJIT MORE, J.]**