

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 26.12.2024

Pronounced on: 31.12.2024

CRANo.17/2010

Farid Ahmad, age 45 years

Son of Sh. Abdul Gaffar Sheukh,

R/o vill. Nuhouch, Tehsil Mahore, District Reasi ...Appellant(s)

Through:- Mr. Shafiq Ur Rehman, Advocate

V/s

State of Jammu & Kashmir

...Respondent(s)

Through:- Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar J

1. This appeal by the convict-Farid Ahmed filed under Section 34 of the Prevention of Terrorism Act, 2002 ["POTA"] is directed against the judgment dated 19th July, 2010 and order dated 20th July, 2010 passed by the Designated Court for Jammu Province under POTA, whereby the appellant herein has been convicted for commission of offence punishable under Section 3(4) of the POTA and sentenced to undergo imprisonment for three years with fine of Rs.1000/- and in default of making the payment of fine, for further imprisonment of six months.

2. Before we advert to the grounds of challenge urged by the learned counsel appearing for the appellant, we deem it appropriate to set out material facts relevant to the disposal of this appeal.

3. The prosecution case, in brief, as set up against the appellant, is that the appellant while he was serving in the police as Constable in District Udhampur remained absent from duty w.e.f. 29th September, 2001 till 11.11.2001. The appellant joined back his duties on 15.11.2001. The police seized some photographs of militants from the possession of the appellant. On questioning, the appellant divulged that the film/negatives were given to him by the militants for developing into photographs. During investigation, it also came to be established that the appellant was harbouring the militants of Mahore area to spread militancy. The investigation was concluded following a confessional statement made by the appellant before the Senior Superintendent of Police, Poonch. The appellant was found to have committed offence punishable under Section 3(4) of POTA and was challaned before the trial Court. The appellant was charged for offence under Section 3(4) of the POTA. The charge was read over to the appellant, the appellant denied his guilt and claimed trial.

4. With a view to establish charge against the appellant the prosecution examined PW-1 Dr. Kamal Saini, the then SSP, Poonch, PW2 Jatinder Raina, Constable District Police, Poonch, PW-3 Mohd. Sharief, PW-4 Mohd. Yucoob, PW-5, Ashok Kumar PW-6 Surjit

Kumar Dutta, PW-7 Shabir Ahmed, PW-8 Khaliq Hussain, PW-9 Manjit Singh, PW-10, Jamal Din, PW-11 Ghulam Mohd and PW-12 Sh. S.K.Bhagat, the then Chief Judicial Magistrate, Poonch. The incriminating evidence brought on record by the prosecution during trial was put to the appellant and his statement under Section 342 Cr.P.C. was recorded. The appellant submitted that he was not absent from duty but was on leave and that he had no connection with the militants nor had he given any photo to Jaswant Singh for developing. He also denied having made any confession before the SSP, Poonch, Dr. Kamal Saini. He claimed to have been produced by the Investigating Officer before the Chief Judicial Magistrate, Poonch but submitted that he was not asked any question by the Magistrate. The trial Court having considered the prosecution evidence, more particularly the confessional statement made by the appellant before the SSP, Poonch under Section 32 of the POTA held the case set up by the prosecution against the appellant proved and accordingly convicted the appellant for commission of offence under Section 3(4) of POTA. Upon hearing both the sides on the quantum of sentence to be awarded to the appellant, minimum punishment of three years with fine of Rs.1,000/- was imposed.

5. The impugned judgment is challenged by the appellant primarily on the ground that the confession recorded by the police is not in conformity with the provisions of Section 32 of the POTA and, therefore, could not have been made the sole basis for convicting the

appellant. The confessional statement recorded under the supervision of Senior Superintendent of Police, Poonch, PW-1 Dr. Kamal Saini is attacked by the learned counsel for the appellant on the following grounds:-

- a) That the police was not competent to record any confession, as such, the confession recorded by the police while the accused is in custody is hit by Section 25 of the Evidence Act.
- b) That under Section 32 of the POTA, confession is required to be recorded after administering a warning to the accused and making him aware that he was not bound to make confession and that if he would do so, it would be used against him. The appellant in the instant case was not administered any such warning.
- c) That the confession under Section 32 of POTA could have been recorded only by an officer not below the rank of Superintendent of Police and in the instant case the confession was recorded by the reader of the Senior Superintendent of Police and, therefore, not admissible in evidence.

6. It is trite law that confession made by an accused to the police under Section 32 of the POTA can be used as evidence in the Court of Law provided it meets the following conditions:-

- i) Confession is made to a police officer not below the rank of Superintendent of Police.

- ii) The confession is recorded in writing or by mechanical or electronic device by such officer i.e. officer not below the rank of Superintendent of Police.
- iii) The confession is recorded in an environment free from threat or inducement.
- iv) The confession is recorded in the language in which the person makes it.
- v) That the person making confession is produced along with original statement of confession before the Chief Judicial Magistrate within forty eight hours.

7. The constitutional validity of Section 32 of POTA was upheld by the Hon'ble Supreme Court in **People'S Union For Civil Liberties & Anr. vs Union Of India, (2004) 9 SCC 580**. Later a note of caution was sent by the Hon'ble Supreme Court that before a confession recorded under Section 32 of POTA is relied upon and accepted admissible in evidence, it must be of sterling value inspiring confidence of the Court. As a matter of prudence, the Court relying upon such confession must insist for corroboration.

8. In the light of aforesaid legal position, let us examine the case on hand. The trial Court has indeed based the conviction of the appellant on the confessional statement made by him before the Senior Superintendent of Police, Poonch but not before it is corroborated by the oral evidence on record. The appellant in his confessional statement has admitted that the terrorists had visited his house on 02.11.2001 and gave him a negative film to be developed. He gave the

film to Sainik Studio for developing. The Police apprehended the appellant immediately after he took delivery of the photographs is also stated by the appellant in his confessional statement. This testimony of the appellant was corroborated by PW-Jatinder Raina and PW-Manjit Singh. PW-Jatinder Raina has categorically deposed that the negative film and photographs were seized by him vide seizure Memo EXPW-JR.

9. From reading of the confessional statement made by the appellant, it clearly transpires that before making the actual confession before the Superintendent of Police, he answered few questions put to him. The questions and answers recorded as part of the confessional statement would indicate that he was warned about the consequences of making the voluntarily confession. The appellant was given two hours time to think over and make the statement. He was also informed that he was not bound to make any such statement and the statement would be recorded only if he volunteers for it. After the statement was recorded, the Senior Superintendent of Police appended his certificate that the provisions of Section 32 of POTA were complied with before recording the statement. The statement was recorded in Urdu in which the appellant had made it. There is no dispute with regard to the fact that within forty eight hours, the appellant was also produced before the Chief Judicial Magistrate, Poonch. The Statement of Chief Judicial Magistrate was also recorded during trial, in which Mr. S.K.Bhagat, the then CJM, Poonch has clearly stated that the appellant was

produced before him on 31.12.2001 along with recorded confessional statement, the appellant did not complain of any torture for extracting confessional statement from him. PW-S.K.Bhagat has also proved the certificate issued by him in this regard i.e. EXPW-SK.

10. Viewed in this context, it is not correct to say that the confessional statement made by the appellant before the Superintendent of Police, Poonch was recorded in violation of Section 32 of POTA. There is no dispute with regard to the fact that the confessional statement was made before the Senior Superintendent of Police, Poonch and was recorded by his Reader under his directions. It cannot be, therefore, said that the statement has been recorded by an officer below the rank of Superintendent of Police. The statement has been recorded in Urdu, the language in which it was made by the appellant. We are saying so because no grievance has been raised by the appellant on this score.

11. There is no evidence on record suggesting that the confessional statement of the appellant was not recorded in an environment free from threat or inducement. The appellant had an opportunity to make statement before the Chief Judicial Magistrate when he was produced before him on 31.12.2001 alongwith original statement of confession recorded by the Senior Superintendent of Police, Poonch Dr. Kamal Saini.

12. As a matter of fact, no complaint of any torture during his custody in police was made by the appellant. In these circumstances, it is evident that the confession was made by the appellant voluntarily without any threat or inducement and, therefore, was capable of being relied upon for convicting the appellant.

13. The corroborative evidence like seizure of photographs and negatives is not disputed by the appellant. There was an effort made by the learned counsel for the appellant to suggest that as per the statement of PW-1 Dr. Kamal Sani, who recorded the confessional statement of the appellant, the signatures of the appellant had been taken on blank papers on which the statement attributed to the appellant was recorded by the Senior Superintendent of Police, as per his own will.

14. We have read the statement of PW-1 Dr. Kamal Saini in its entirety and are of the view that last two lines of the statement of Dr. Kamal Saini cannot be read in isolation and out of context. As a matter of fact, at the end of cross-examination of Mr. Saini, a suggestion was put to him that he had taken the signatures of the appellant on blank papers and recorded the statement of his own. To this suggestion, Mr. Saini replied that it is false but the word false was not recorded by the Court. The statement as written in Urdu reads thus:-

“Yet Baat hai ki muljam se hum ne korey kaagaz per dastkhat liye they aur us per humne apni marji se iqbalia zurm kalamband kia, jaise ki pucha geya hai.”

15. It does not, in any manner, convey that the prosecution witness Dr. Kamal Saini had, in his deposition before the Court, admitted that he had got blank papers signed by the appellant and that the confessional statement was written by him on his own. The trial Court has correctly appreciated the evidence on record and has come to a right conclusion with regard to the guilt of the appellant.

16. For the foregoing reasons, we dismiss the appeal and uphold the judgment of conviction and the order of sentence passed by the trial Court. The bail bonds of the appellants are cancelled. The appellant, who is on bail, shall surrender before the trial Court within ten days and upon his surrender, he shall be sent to jail for serving the remaining sentence. In case the appellant fails to surrender before the trial Court within the period prescribed, the trial Court shall secure his presence through coercive measures and send him to jail for serving the remaining sentence.

17. Record be sent to the trial Court alongwith a copy of this judgment

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
31.12.2024
Vinod,PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes