

PETITIONER:
R.K.KRISHNA KUMAR ETC. ETC., SAYEED KIDWAI, K. SRIDHAR

Vs.

RESPONDENT:
STATE OF ASSAM & ORS.

DATE OF JUDGMENT: 03/12/1997

BENCH:
M.K. MUKHERJEE, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:
THE 3RD DAY OF DECEMBER, 1997
Present:

Hon'ble Mr.Justice M.K.Mukherjee
Hon'ble Mr.Justice K.T.Thomas
Soli J.Sorabjee, Shanti Bhushan, Arun Jaitley, Sr. Advs.,
Mahesh Jethmalani, Arvind Kumar, Upamanyu Hazarika,
R.N.Karanjawala, Ms.Nandini Gore, Ms. Karanjawala, Advs.
with them for the appellants.
K.T.S.Tulsi, Sr.Adv., Sunil Jain, Vijay Hansaria, Vikas
Pawha, Advs. for M/s. Jain hansaria & Co., Advs. with him
for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

WITH
CRIMINAL APPEAL NO. 1158 OF 1997.
(Arising out of SLP (Crl.) No. 3500 of 1997)

WITH
CRIMINAL APPEAL NO. 1159 OF 1997
(Arising out of SLP (Crl.) No. 3502 of 1997)

WITH
CRIMINAL APPEAL NO. 1160 OF 1997
(Arising out of SLP (Crl.) No. 3508 of 1997)

J U D G M E N T

M.K. MUKHERJEE, J.

Leave granted in all these petitions Heard the learned
counsel for the parties.

2. On a First Information Report (F.I.R.) lodged by the
Superintendent of Police, Special Operation Unit (SOU),
Assam, a case under Sections 120 B, 121, 121A and 122 of the
Indian Penal Code and 10 and 13 of the Unlawful Activities
(Prevention) Act, 1967 ('Act' for short) was registered by
the SOU Police Station. The F.I.R. was based the State of
Assam regarding secessional activities of some militant
organisations including United Liberation Front of Assam
(ULFA). In connection with that case three ULFA activists
were arrested by the police at Mumbai Airport on August 23,
1997. It is alleged that their interrogation revealed that
their hotel bills and the medical bill of one of them,
namely Mrs. Pranati Deka, who was admitted in a hospital for
child birth, were borne by TATA Tea Company Ltd. ('Company'

for short) under instructions from, amongst others, Shamsher Singh Dogra, the General Manager of the Company. A few days later, a report appeared in various newspaper circulating throughout the country of a Press Conference held by the Director General of Police, Assam to the effect that the Company had not only paid the personal bills of top ULFA militants but had also paid money, which ran to several lakhs, to ULFA on various occasion. On perusal of the report Shri R.K. Krishna Kumar, Shri S. Kidwai and Shri K. Sridhar, the Managing Director, Executive Director and a Consultant of the company respectively, (the three appellants before us) apprehended that they might be arrested in connection with the above case. They then filed separate applications before the Bombay High Court under Section 438 of the Code of Criminal Procedure praying that they might be directed to be released for with in the event of their, arrest at the instance of the Director General of Police of Assam in connection with the above case, or any other case that may be filed concerning the allegations of funding of ULFA militants. Their prayer was allowed by the Bombay High Court; and aggrieved thereby the State of Assam preferred appeal in this Court after obtaining special leave. This Court set aside the order of the Bombay High Court as it was passed ex parte and transferred the anticipatory bail applications filed by the appellants to the Gauhati High Court for disposal by a Division Bench. This Court, however, permitted the appellants to continue on the anticipatory bail granted by the Bombay Court till November 7, 1997. Pursuant to the said direction the applications for anticipatory bail were heard on November 7, 1997 by a Division Bench of the Gauhati High Court and the prayer of the appellants was rejected. Hence these appeal at their instance.

3. Briefly stated, the case of the appellants, as can be culled out from the affidavits (and the annexures thereto) filed before this Court, is as under:

(a) The Company owns 21 tea gardens in the State of Assam and has 21,000 employees in its roll. The company have had been the targets of extortion, killing and kidnapping by the militant organisations, including ULFA. In the post several attempts had been made to intimidate the employees of the Company and make ransom demands on it. In the year 1993, Mr. B Bordoloi, a Senior Executive of the Company stationed at Gauhati, was captured by one of those militant organisations and kept in detention for a period of eleven months. Though the Company was pressurized by the public, and the family of Mr. Bordoloi in particular, to pay the ransom demanded by the militant organisation for securing his release it refused to do so. Later on ULFA repeatedly made several demands on the Company in the forms of a tax for each of the tea estates owned by it, walkie talkie sets etc.. On each of such occasions the Company brought the demands to the notice of the appropriate authorities of the Central Government either personally through their officers or by letters and the Central Government had put the Company in touch with its Intelligence Bureau.

(b) According to the Company it was the Central Intelligence Agency which advised it to continue negotiations with the militants but not to pay ransom/protection money to them. Though the Company insisted that it would not make any payment of unlawful money to the militants it formulated several social and community welfare schemes for the people of Assam. The Company assets that all negotiation with militant organisations took place with the knowledge and guidance of Central Government agencies.

(c) While admitting that the Company negotiated with the ULFA, that some of its officers met some leaders of that organisation in Bangkok in connection with their demands, and that it paid the hospital bill and hotel bills of their members in Mumbai it has submitted that to protect the larger interest of the employees of the Company and its tea gardens, it was compelled to yield to some of the demands of the organisations. The Company, however, categorically denied to have paid any ransom to the ULFA or any other militant organisation.

4. On the basis of the above facts and circumstances Mr. Shanti Bhushan who appeared for the Company, contended that it could not be said that any officer of the Company and committed any offence, far less the offences alleged against them.

5. Mr. Tulsi appearing for the respondent-State of Assam, however, refuted the contentions of the Company and submitted that investigation has revealed the involvement of a number of officers of the Company, including the appellants, in the illegal and unlawful activities of ULFA and other militant organisations and, therefore, the appellants should not be granted anticipatory bail. Mr. Tulsi further submitted that denial of an opportunity to have Investigating Agency to interrogate the appellants in custody, confronting them with the information available with the Investigating Agency, obtaining their version pursuant to the leads gained through interrogation by conducting raids and searches of the hide-outs of the militants has put the Investigating Agency at serious handicap in being able to discover the extent and manner of the involvement of the employees of the Tata Tea Company in 'unlawful activities' within the meaning of the Act. To bring home his contentions Mr. Tulsi handed over to us the case diary prepared and maintained under Section 172 Cr.P.C.

6. On a careful perusal of the case diary we find that the investigation has revealed that some of the officers of the Company did meet top leaders of ULFA within and outside India in which negotiations were held between them over the various demands made by the latter and that the Company has expressed its willingness to accede to some of those demands. The investigation has further revealed that the Company has funded the organisation and the appellants had a role to play in it.

7. On the basis of the above materials collected during investigation, it is now to be seen whether the appellants have committed the offences for which they are sought to be made liable. Coming first to the offences under the Indian Penal Code Section 120 B related to criminal conspiracy to commit any offence and Sections 121, 121 A and 122 specifically relate to offences against the State. While Section 121 provides for punishment of those engaged in waging war against the Government of India, the other two Sections relate to conspiracy and preparation to commit such offence by collecting arms etc., respectively.

8. To ascertain the nature of offence envisaged under Sections 10 and 13 of the Act, it would be necessary to first refer to the definition of 'unlawful activity' in Section 2 (f) of the Act which reads as under:

"Unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation

or otherwise), -

(i) Which is intended, or supports any claim, to bring about, or any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;"

'Unlawful association' has been defined in Section 2(g) to mean any association :

"(i) which has for its object any unlawful activity, or which encourages or aids, persons to undertake any unlawful activity, or of which the members undertake such activity; or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A of Section 153-B of the Indian Penal Code, 1860 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu & Kashmir."

9. Section 10 provides that whoever is and continues to be a member of an association declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that Section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of any such unlawful association or in any way assists the operation of any such unlawful association shall be punishable with imprisonment for a term may extend to two years and shall also be liable to fine.

10. Section 13 speaks of punishment for 'unlawful activities' and it reads as follows: material allegations levelled against the appellants are considered vis-a-vis the 'unlawful activities' envisaged under the Act it cannot be said that they are liable for an offence under Section 13 of the Act, much less under the aforesaid offences under the Indian Penal Code. Resultantly, the question of granting anticipatory bail to the appellants under Section 438 of the Code of Criminal Procedure cannot and does not arise for an offence under Section 10 of the Act is bailable; and a direction under the former can be issued only in respect of a non-bailable offence. Viewed in that context the merits of the appellants' contention that they have not committed any offence alleged against them need not be gone into.

10. With the above observations we dispose of these appeals.