Mukhtiar Ahmed Ansari vs State (N.C.T. Of Delhi) on 21 April, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2804, 2005 (5) SCC 258, 2005 AIR SCW 2379, (2005) 4 JT 503 (SC), (2005) 31 ALLINDCAS 396 (SC), 2005 ALL MR(CRI) 1775, 2005 (4) JT 503, 2005 (4) SCALE 269, 2005 SCC(CRI) 1037, 2005 (4) SLT 8, 2005 (31) ALLINDCAS 396, (2006) SC CR R 1428, (2005) 2 EASTCRIC 301, (2005) 3 ALLCRILR 153, (2005) 2 CRIMES 107, (2005) 2 RECCRIR 863, (2005) 4 SCJ 526, (2005) 2 CURCRIR 151, (2005) 4 SCALE 269, (2005) 52 ALLCRIC 767, (2006) 1 CALLT 98, (2005) 119 DLT 340, (2005) 31 OCR 257, (2005) 3 SUPREME 370, (2005) 2 ALLCRIR 1763, (2005) 2 CHANDCRIC 173, 2005 (2) ANDHLT(CRI) 168 SC, 2005 (2) ALD(CRL) 25

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Bench: B.N. Agrawal, C.K. Thakker

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           CASE NO.:
Appeal (crl.)  325 of 2003

PETITIONER:
Mukhtiar Ahmed Ansari

RESPONDENT:
State (N.C.T. of Delhi)

DATE OF JUDGMENT: 21/04/2005

BENCH:
B.N. Agrawal & C.K. Thakker

JUDGMENT:
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JUDGMENT C.K. Thakker, J.

This appeal is directed against an order of conviction and sentence passed by the Designated Court, New Delhi on February 4, 2003 and February 5, 2003 in Sessions Case No. 49 of 2001. The said case was registered against the appellant under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as `TADA') as also under the Arms Act, 1959 (hereinafter referred to as `Arms Act'). For the offence under the Arms Act, the appellant was sentenced to undergo rigorous imprisonment for three years and a fine of Rs.50,000, in default to undergo R.I. for one year more. For the offence under TADA, he was ordered to undergo rigorous imprisonment for ten years and a fine of Rs.5,00,000, in default to undergo R.I. for one year more. Both the sentences were to run concurrently. He was given benefit under Section 428 of Code of

Criminal Procedure, 1973 for the period already undergone by him as set off.

The case of the prosecution was that the appellant was found in possession of several fire arms and ammunitions near Bahai Temple, Kalkaji, New Delhi, on 11th December, 1993. The case was closely linked with another case of kidnapping for ransom. According to the prosecution version, one Ved Prakash Goel was a businessman of Gauhati, Assam. He was dealing in coal in Gauhati and was doing business at Gauhati as well as at Calcutta. Mainly supply of coal was to cement plants of Birla. His son Sanjay Goel was having a factory of preparing paper drums in the name and style of Tushar Packaging Private Limited, Siraspur, Delhi. According to the prosecution, one Gandhi was also having business in Gauhati, where Ved Parkash Goel used to do his business. The allegation of the prosecution was that said Gandhi was a "Badmash" person and used to extract money (Chauth) from other businessmen. According to Sanjay Goel, his father protested against extraction of money and did not pay anything to Gandhi with the result that there was tussle between Ved Prakash Goel and Gandhi. Ulfa extremists also learnt about flourishing business of Ved Prakash Goel and they were also behind him. Due to all those reasons, prior to three months from December, 1993, Ved Prakash Goel closed this business in Gauhati and continued to operate from Delhi and Calcutta. He had, however, a feeling that he was being chased in Delhi and Calcutta also.

On December 7, 1993, Ved Prakash Goel had gone to one of his friends Dr. Surjit Mittra at D-11/70, Pandara Road, New Delhi, to attend birthday party. He left his house at about 7 p.m. informing his servant that he was going to Dr. Mittra's house. He went there in his red Maruti car bearing registration No. DL 2C E 1517. He did not come back till late night but the family members were not worried since he used to get late in such parties. Wife of Ved Prakash Goel, however, kept on waiting for him. For the whole night Ved Prakash Goel did not turn up. In the morning of December 8, 1993, therefore, Mrs. Goel, inquired Dr. Mittra who replied that Ved Prakash Goel had left his place the previous night i.e. on December 7, 1993 around 9.15 p.m. Thereafter several telephone calls were made to friends of Mr. Goel but he could not be traced. At about 7.30 a.m., a telephone call was received at the residence of Mr. Goel. The caller wanted to talk to Mrs. Goel. He told her that Mr. Goel was kidnapped from Dr. Mittra's residence and a ransom of Rs. one crore should be arranged if he was wanted alive. The caller also stated that when and where the money would be paid would be told later on. From the voice it sounded as if it was Punjabi Jat voice. The caller also stated that Ved Prakash Goel had harassed kidnapper's friend in Gauhati and had earned lot of money from Assam. A threat was administered that if ransom is not paid or if the police is informed, Mr. Goel would be killed. Sanjay Goel, son of Mr. Ved Prakash Goel informed the police about the telephone call and expressed his doubt that `Goondas' of Gandhi had hatched up a conspiracy and his father had been kidnapped. He also stated that if money is not paid, his father might be killed. He further stated that the Maruti car in which his father had gone was found parked outside the house of Dr. Mittra. The report was lodged on December 8, 1993 and First Information Report (FIR) was registered on the basis of that report. Sub-Inspector Ram Mehar Singh sent report (rukka) at 11.00 p.m. after making an endorsement and the case was registered at about 11.30 p.m. on same day.

The kidnapper of Ved Prakash Goel made other calls at the residence of Mr. Goel. The police mounted surveillance to know from which place calls were made and came to know that they were being made from STD booth in Sector 7, Panchkula, Haryana. After tracing the location of caller,

police party of Crime Branch of Delhi Police went to Panchkula on December 10, 1993 and started keeping watch on the STD booth of Sector 7. At about 2 p.m., police found that Mr. Goel was brought to STD booth by two persons. The moment those two persons took Mr. Goel to STD booth, police immediately nabbed them. They were Ata-ur-Rehman and Afroz Khan. The police also rescued Ved Prakash Goel. Those two persons were interrogated and they disclosed that Mr. Goel was kept in house No. 142, Sector 8, Panchkula, Haryana. The house was then raided. Police recovered a rope, some tape, a stitched coffin, some injection needles, distilled water, chemical panthalene, etc. from the house. The two persons also stated that their gang leader was Mukhtiar Ahmed Ansari (appellant herein) who had gone to Delhi and was staying in a Guest House. As stated earlier, the place of receiving ransom amount was to be informed to family members of Mr. Goel. The police, therefore, brought those two persons to Delhi in the night of December 10, 1993.

On next morning, i.e. December 11, 1993, police made Ata-ur-Rehman talked to the appellant - gang leader on telephone and got fixed Bahai Temple as the place where ransom amount would be delivered at 12.00 noon. A red colour Maruti car, bearing No. DL 2 CE 1517 belonged to Ved Prakash Goel was obtained by Police. Two private Maruti cars were also arranged by the Investigating Officer. The Police then went to Bahai Temple in civil clothes. At about 12.00 noon, the appellant came in a silver colour Maruti car to receive the ransom amount. The police had already laid a trap and the appellant was apprehended. He was holding loaded rifle in his right hand which was checked and found to contain one cartridge. It was seized. He was interrogated. He produced one bag of green colour from his car which was checked. One rifle of 22 bore, made in England, on the chassis of which KD 05488 was written, one double barrel gun of 12 bore made in Italy, one single barrel gun, in two parts were found in the said bag. One another bag of black colour containing 50 cartridges of 12 bore and 20 cartridges of 306 calibre and 41 cartridges of .22 bore was also recovered. All weapons and ammunitions were seized by police. Police also found one uniform set of DSP of Haryana with cap, belt etc. from the car. The appellant-accused was arrested and weapons were seized. Since they were recovered in a notified area, accused was booked under the Arms Act as well as under TADA by FIR No. 508 of 1993, Police Station, Kalkaji, New Delhi. The investigation showed that accused was the master mind and gang leader in kidnapping Mr. Ved Prakash Goel for ransom. Police checked the Guest Register of the hotel in which the accused had stayed in Delhi. They also sent arms and ammunitions to CFSL for examination and prepared challan and filed a case under the Arms Act and also under TADA. Accused was separately challaned for the offences punishable under Sections 364A, 365, 387 read with 120B of the Indian Penal Code for kidnapping Mr. Goel in FIR No. 456 of 1993 of Police Station, Tilak Marg, New Delhi. Challan was filed in the present case on April 19, 1994 under the Arms Act. On July 11, 1996, the Designated Court held that the provisions of Section 5 of TADA were not attracted and the accused was, therefore, not charged under TADA. The case remained only under Section 25 of the Arms Act. Since the case was triable by a Court of Magistrate, the Designated Court sent the case to the Court of Metropolitan Magistrate who framed charge against the accused on September 4, 1996 under Section 25 of the Arms Act. The prosecution, however, appealed against the order of Designated Court and this Court vide order dated September 16, 1996, allowed the appeal filed by the prosecution and held that provisions of TADA were attracted and Designated Court was not justified in observing that TADA was not applicable. The Designated Court was, therefore, directed to decide the case on merits. The case thus came back to the Designated Court from the Court of Metropolitan Magistrate on December 5, 1997.

The charge was thereafter framed against the accused on January 16, 2001 under Section 5 of TADA and the trial proceeded.

It may be stated at this stage that the appellant along with two others were charged in the kidnapping case (Sessions Case No. 93 of 1997) which resulted into acquittal on July 16, 1997 by the Additional Sessions Judge, New Delhi.

The Designated Court after considering the evidence of prosecution witnesses, defence witnesses and documents produced by the parties, held that the appellant-accused was guilty of possessing fire arms and ammunitions without licence and thereby he had committed an offence punishable under Section 25 (1B) of the Arms Act. He was also held guilty for consciously possessing fire arms and ammunitions without licence in the "notified area" punishable under Section 5 of TADA and accordingly he was convicted. After hearing appellant-accused and his counsel on the question of sentence, the Designated Court awarded sentence as stated earlier.

The present appeal was placed for hearing on May 1, 2003 and it was ordered that the appeal would be finally heard on re-opening of Court after summer vacation. Hearing of bail application was adjourned. On July 22, 2003, when the matter appeared on board, the learned Additional Solicitor General prayed for time to supply paper books. On August 19, 2003, when the matter appeared on board, it was submitted on behalf of the appellant that the charge under TADA could not be substantiated and so far as conviction under the Arms Act was concerned, the appellant had already undergone sentence of three years. Taking into account the above facts, the Court passed the following order :

> "In the abovesaid circumstances, the application for suspension of sentence is allowed and it is directed that during the hearing of this appeal, the execution of sentence of imprisonment and recovery of fine shall remain suspended subject to the appellant depositing half of the amount of fine imposed on him and furnishing a solvent surety in the amount of Rs.5 lakhs (Rupees five lakhs only) with two sureties each in an amount of Rs.2.50 lakhs (Rupees two lakhs fifty thousand only) to the satisfaction of the trial court requiring the appearance of the appellant as directed by this Court. The personal bond and the bail bonds to be furnished by the appellant shall incorporate the following conditions also :-
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> 1. That the appellant shall not leave the country and shall deposit his passport, if any, with the trial court.
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> 2. The appellant shall not leave the State of U.P. and the U.T. of Delhi without informing the local police station of the place where he is a resident.
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> 3. The appellant shall not commit any offence during the pendency of this appeal or misuse the liberty given to him in any other manner whatsoever.

The learned counsel for the appellant states that within a period of two weeks, he shall furnish a list of documents which are also required to be included in the paper book, under copy to the learned counsel for the State, whereupon the State shall provide an additional paper book containing those documents."

On February 21, 2005, an order was passed to list the matter for final hearing in the end of March, 2005 or in April, 2005. That is how the matter has been placed for final hearing.

We have heard learned counsel for the parties.

Mr. Sushil Kumar, learned senior counsel, appearing for the accused, submitted that the Designated Court was clearly wrong and wholly unjustified in holding the appellant guilty under TADA as also under the Arms Act. He submitted that there was no evidence worth the name to connect the appellant with the crime. The Designated Court has also erred in convicting the accused relying on the prosecution case in kidnapping of Mr. Goel in which he was acquitted by a competent criminal court. The grievance of the counsel is that the Designated Court re-appreciated evidence in the kidnapping case of Mr. Goel and observed that acquittal of the appellant- accused was wrong and convicted him in the present case. The counsel also contended that no prior approval as required by sub-section (1) of Section 20A of TADA had been obtained and proceedings were vitiated. The counsel urged that counter version of the appellant-accused that he was neither arrested from Delhi nor arms and ammunitions were found from him was equally probable. From the evidence on record, it is clear, submitted the counsel, that the accused was picked up from his residence at Panchkula and was brought to Delhi. No arrest memo/panchnama was prepared when the appellant was said to have been arrested which goes to support the case of the accused that he was not arrested from Delhi. Prosecution witnesses also supported the defence version. They were not declared "hostile" by the prosecution. On their evidence also, the appellant could not have been convicted. The evidence of defence witnesses was not appreciated in its proper perspective by the Designated Court from which it was proved that the day on which the alleged incident took place, the appellant was not present at or near Bahai Temple, New Delhi. The investigation was not `above board'. The complainant himself was the investigating officer. Recovery, seizure and sealing of weapons created serious doubts in the light of the fact that they were shown to Press. It was, therefore, submitted that the appellant-accused deserves to be acquitted.

The learned counsel for the respondent, on the other hand, supported the order of conviction and sentence passed by the Designated Court. It was submitted that the provisions of TADA had been complied with. The kidnapping-case which resulted into acquittal of the appellant had nothing to do with conscious possession of arms and ammunitions by the appellant at Bahai Temple, New Delhi on December 11, 1993. The Designated Court considered the facts of kidnapping case as the `background' in which arms and ammunitions were found from the appellant. It, therefore, cannot be said that allegations of the prosecution had weighed with the Designated Court in the present case. The Court, according to the respondent, considered the evidence of prosecution witnesses as also defence witnesses and found that the evidence of prosecution witnesses was reliable and accordingly convicted him. The said order deserves no interference by this Court.

So far as proceedings under TADA are concerned, in our opinion, the learned counsel for the appellant is right in submitting that the proceedings could not have been initiated in view of sub-section (1) of Section 20A of TADA. The said provision reads thus :

> "20A. Cognizance of offence - (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
>
> (emphasis supplied) The provision begins with a non-obstante clause and declares that notwithstanding anything contained in the Code of Criminal Procedure, no information about commission of an offence under TADA "shall be recorded by the police without the prior permission of District Superintendent of Police". It is not in dispute that Authority to exercise power under sub- section (1) of Section 20A in Delhi is the Deputy Commissioner of Police. The learned counsel for the appellant submitted that prior approval as required by law had not been obtained and hence the proceedings were vitiated and the appellant could not have been prosecuted. The learned counsel for the respondent, on the other hand, submitted that prior approval had been granted by the Deputy Commissioner of Police and the prosecution was legal and lawful. The counsel on both sides in this connection invited our attention to a few decisions of this Court.
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> In Anirudhsinhji Karansinhji Jadeja and Anr. v. State of Gujarat, [1995] 5 SCC 302, the District Superintendent of Police had not granted prior approval `on his own'. Instead, he requested the Chief Secretary to accord permission to proceed against the accused under TADA. That action was challenged by the accused. Upholding the contention and observing that the provision of the statute is clear and unambiguous, a three-Judge Bench of this Court held that the power to grant approval under the Act has been vested in the District Superintendent of Police and he alone must exercise the said power. Referring to an earlier decision of this Court in Commissioner of Police v. Gordhands Bhanji, [1952] SCR 135, the Court observed that when the power is conferred by a statute on a particular authority, that authority alone must exercise such power. In the opinion of the Court, the exercise of power was on the basis of "external dictation".

Such dictation came on the prayer of District Superintendent of Police did not make any difference in principle. The fact was that the District Superintendent of Police did not exercise jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA. The proceedings were, therefore, vitiated.

The Court stated;

> "The case against the appellants originally was registered on 19.3.1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he

> made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all."

In Mohd. Yunus v. State of Gujarat, [1997] 8 SCC 459, a similar question came up for consideration before a two-Judge Bench of this Court. Following Anirudhsinhji, this Court held the provision for prior approval of the authority under sub-section (1) of Section 20A mandatory and ruled that in absence of such approval, proceedings under TADA were not maintainable. It was contended by the prosecution that when the investigation had been made, the Commissioner of Police, was present and he had given "oral" permission under Section 20A (1) of TADA. This Court, however, indicated that "considering the serious consequences in a criminal case initiated under the provision of TADA, oral permission cannot be accepted".

We may now refer to a decision of two-Judge Bench in Kalpnath Rai v. State (Through CBI), [1997] 8 SCC 732. There prosecution was launched against several persons under TADA. It was contended on behalf of the accused that the provisions of sub-section (1) of Section 20A of TADA had not been complied with and hence they stood vitiated. The Court negatived the contention and held that prior approval envisaged by Section 20A (1) of TADA need not be in writing.

The Court stated :-

> "Then the question is whether prior approval envisaged in Section 20-A(1) of TADA should necessarily be in writing. There is nothing in the sub- section to indicate that prior approval of the District Superintendent of Police should be in writing. What is necessary is the fact of approval which is sine qua non for recording the information about the commission of the offence under TADA. The provision is intended to operate as a check against the police officials of lower ranks commencing investigation into offences under TADA because of the serious consequences which such action befalls the accused. However, the check can effectively be exercised if a superior police official of the rank of DSP first considers the need and feasibility of it. His approval can be obtained even orally if such an exigency arises in a particular situation. So oral approval by itself is not illegal and would not vitiate the further proceedings."

In our opinion, the learned counsel for the respondent is right in relying upon a three-Judge Bench decision in State of A.P. v. A. Sathyanarayana and Ors., [2001] 10 SCC 597. In that case, a Sub-Inspector of Police seized certain explosive substances and contacted Superintendent of Police being appropriate authority for getting prior approval as required under Section 20A (1) of TADA

before registering a case. The Superintendent of Police instructed the Sub-Inspector of Police to register the case and book the accused under TADA. The case was registered. The Superintendent of Police himself recorded in writing to register a case but the writing reached the Sub-Inspector on the next day. When the charge sheet was filed, the Designated Judge took the view that there was no approval in writing of the Competent Authority and the registration of case under TADA was bad in law. The State approached this Court. The Court considered Mohd Yunus and Kalpanath Rai and held that Section 20A (1) of TADA did not require prior approval in "in writing".

The Court stated that prior approval is no doubt condition precedent for registering a case under TADA but it may either be in writing or oral. The Court proceeded to state that in Mohd. Yunus, a two-Judge Bench considered the question and held that such approval must be in writing so that there is transparency in the action of the statutory authority and there is no occasion for any subterfuge subsequently by introducing oral permission. That judgment was delivered on October 15, 1997. The Court further observed that another two Judge Bench in Kalpnath Rai considered a similar question of prior approval and held that such approval need not be in writing. The Court noted that though Kalpnath Rai was decided subsequently on November 6, 1997, the attention of the Court was not invited to Mohd. Yunus and apparently there was inconsistency between the observations in Mohd. Yunus and Kalpnath Rai. The Bench, however, held that the statute itself nowhere made it imperative that the so called prior approval must be in writing. The Court said that innumerable cases may arise where it may not be possible to obtain approval in writing before registering the case and without registering the case the officer concerned would not be entitled with the investigation of the matter. Such situation may lead to obliteration of the evidence of the case.

The Court, therefore, concluded;

> "Having applied our mind to the aforesaid two judgments of this Court, we are in approval of the latter judgment and we hold that it is not the requirement under Section 20A(1) to have the prior approval only in writing. Prior approval is a condition precedent for registering a case, but it may be either in writing or oral also, as has been observed by this Court in Kalpnath Rai case and, therefore, in the case in hand, the learned Designated Judge was wholly in error in refusing to register the case under Sections 4 and 5 of TADA. We, therefore, set aside the impugned order of the learned Designated Judge and direct that the matter should be proceeded with in accordance with law."

(emphasis supplied) Reference was also made to Ahmad Umar Saeed Sheikh v. State of U.P., [1996] 11 SCC 61. In that case, the prosecution alleged that the accused had committed offences under TADA as also under the Indian Penal Code. According to the accused, since there was no prior approval of District Superintendent of Police for recording FIR under TADA, which was essential, the proceedings were vitiated. Negativing the contention, this Court held that prior approval of District Superintendent of Police was required for initiating proceedings only under TADA. Since the allegations were for commission of other offences also, such approval was not needed in respect of those offences. In the circumstances, grant of approval during the investigation involving the accused under TADA was sufficient compliance.

In the instant case, as already noted earlier, initially it was alleged by the prosecution that the appellant accused had committed offences punishable under the Arms Act as well as under TADA. The Designated Court, however, held that the provisions of TADA could not be invoked and hence no charge was framed under TADA. The matter was then taken to this Court by the State and the order passed by the Designated Court was set aside. It was only after the order passed by this Court that the proceedings were initiated under TADA. For such proceedings, compliance of Section 20A (1) of TADA and prior approval was necessary.

The learned counsel for the appellant-accused, however, stated that even today when all the proceedings are over, the appellant is convicted under TADA and the matter is pending before this Court, there is nothing to show that prior approval as required by Section 20A (1) had ever been granted. The counsel in this connection stated that the only order which was passed by the Deputy Commissioner of Police is of April 5, 1994. The learned counsel for the respondent admitted the said position. That order dated April 5, 1994 is on record (Ex.P4/1). Bare reading of the order makes it clear that the Deputy Commissioner of Police granted sanction only in respect of an offence punishable under the Arms Act.

The learned counsel for the respondent stated that on December 11, 1993, the accused was apprehended and the weapons were found by police. PW 11 Ram Mehar Singh had stated in his evidence that after the weapons were recovered, seized and sealed, the Deputy Commissioner of Police had come on the spot and after satisfying himself, he gave a direction to register a case under TADA against the accused. It was, therefore, submitted that prior approval had been granted as required under Section 20A(1) of TADA. Reference was also made by the counsel to Section 60 of the Evidence, 1872 which declares that if oral evidence refers to a fact, which could be heard, it can be proved by the evidence of a witness who says he heard it.

We are unable to uphold the argument. In this case, Deputy Commissioner of Police himself had been examined as prosecution witness (PW4). In his deposition, he had not stated that he had given any such direction to PW 11 Ram Mehar Singh to register case against the accused under TADA. On the contrary, he had expressly stated that he had granted sanction (which was in writing) which is at Ex.P4/1. As already adverted earlier, it was under

> the Arms Act and not under TADA.
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> In our opinion, therefore, from the facts of the case, it cannot be held that prior approval as required by Section 20A (1) has been accorded by the competent authority under TADA. All proceedings were, therefore, vitiated. The contention of the appellant-accused must be upheld and the conviction of the appellant-accused under TADA must be set aside.
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> The learned counsel for the appellant is also right in submitting that even on merits, the Designated Court committed an error in convicting the appellant. The counsel submitted that kidnapping-case of Ved Prakash Goel resulted into acquittal by a competent court. The said decision is final. In view of acquittal of the appellant, it

was not open to the Designated Court to reconsider the matter by doubting the decision or commenting upon it observing that the acquittal was undeserved or unwarranted and the appellant-accused had committed the offence with which he was charged.

In support of the argument, the learned counsel referred to a decision of this Court in Pritam Singh and Anr v. State of Punjab, AIR (1956) SC 415. In that case, one P was prosecuted under the Arms Act for possessing a revolver without holding valid licence. He was, however, acquitted by a competent court. Subsequently, he was tried on the charge of murder. The prosecution wanted to rely on recovery and factum of possession of revolver which resulted in acquittal in an earlier case. It was held that the doctrine of autrefois acquit would apply.

Referring to a leading decision of the Judicial Committee of the Privy Council in Sambasivam v. Public Prosecutor Federal of Malaya, (1950) AC 458, this Court said;

"The acquittal of Pritam Singh Lohara of that charge was tantamount to a finding that the prosecution had failed to establish the possession of the revolver Ex. P-56 by him. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged."

The counsel is right in contending that once the appellant-accused was acquitted in kidnapping-case the doctrine of autrefois acquit gets attracted. The Designated Court had proceeded on the allegation of the prosecution and observed that it was M.A. Ansari who master minded the kidnapping of Ved Prakash Goel.

The Court stated :-

"In view of my discussion made above and after considering the entire evidence and the documents proved on record and documents placed by accused on record, I come to the conclusion that it was accused M.A. Ansari who master minded the kidnapping of V.P. Goel. For this he took a house on rent in sector 8, Panchkula on 25.10.93 (it is possible that he had done this kidnapping for ransom at the instance of Gandhi who was enimical to V.P. Goel). After keeping V.P. Goel at Panchkula with his two goons calls were made for ransom of one crore to the family of V.P. Goel and threat to kill V.P. Goel was given if the amount was not given. He was in guest house in Delhi on 10.12.93 when police raided the rented house taken by accused in Sector 8 Panchkula after arresting two of his goons and rescuing V.P. Goel. Unaware of this arrest of his two goons and rescue of V.P. Goel, he came to receive ransom amount opposite Bahai Temple gate and he fell in trap laid by the police, who had got telephone made to him from one of his accomplices. He came to Bahai temple with four fire arms and lot of ammunition. He was arrested there with arms and ammunitions. He, under threat made to V.P. Goel and his son Sanjay Goel forced them to testify in his favour in the

> Session court where his kidnapping case was tried. He got TIP held deliberately as he knew that he has got V.P. Goel under his terror and V.P. Goel stated that he has not seen accused M.A. Ansari at any point of time before the TIP. He was acquitted in the kidnapping case due to the witnesses turning hostile under his fear. He thereafter forced the same V.P. Goel and Sanjay Goel to depose in this court that he was apprehended from Panchkula. I have no doubt in mind that accused was apprehended by the Delhi Police from opposite Bahai temple along with fire arms and ammunitions. He tried to create evidence of his presence in Panchkula by his money power and muscular power both."

The learned counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He, however, did not support the prosecution. The prosecution never declared PW1 "hostile". His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.

A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan, JT (2000) 7 SC 549. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

In the present case, evidence of PW1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, accused can rely on that evidence.

The counsel also raised an objection against investigation by PW 11 ASI, Ram Mehar Singh. He is the complainant as well as Investigating Officer.

In Megha Singh v. State of Haryana, [1996] 11 SCC 709, the investigation was conducted by the very same police official who had lodged the complaint. Deprecating the practice, this Court observed that in the absence of independent corroboration, no conviction can be recorded in such cases. In the opinion of this Court, it was a "disturbing feature of the case". The conviction of the accused was, therefore, set aside and he was ordered to be acquitted.

The learned counsel for the appellant also argued that from the defence evidence as a whole, there is probability that the accused was not present at Delhi on the previous night i.e. December 10, 1993 and was not apprehended from Bahai Temple, New Delhi on December 11, 1993 but was arrested from Panchkula. For that reason, four telegrams were sent by the wife of the appellant accused to the President of India, Prime Minister of India, Chief Justice of India and Chief Justice of Punjab & Haryana. Though the Designated Court refused to believe it on the ground that the original record was not produced, it cannot be ignored that a certificate from the telegram office had been produced and a witness from Chandigarh Telegram office had also been examined.

The learned counsel also submitted that the weapons were not recovered from Delhi but from Panchkula. PW 4 Maxwell Pareria and PW 5 M.B. Kaushal (both police officials) stated that they could not state whether arms and ammunitions were recovered from Delhi or Panchkula. The Designated Court, however, did not consider that point by stating that the witnesses `deposed in a very casual manner in the court'. "They did not bother to look into the matter and very casually stated that they could not admit or deny the recovery of arms from Panchkula".

One more circumstance was also pressed into service by the defence. According to the case of the prosecution, on December 10, 1993 when police went to Panchkula, the accused was not found but his wife and children were there. The two persons arrested by police informed the police party that the accused was in Shangrila Guest House in Delhi. Telephone number of the Guest House was also given. The wife of the accused was present at that time. The police authorities took no step to inform anyone to arrest the accused by contacting Delhi police, nor immediately rushed to Delhi nor had gone to Shangrila Guest House in the morning of December 11 and waited near Bahai Temple upto 12.00 noon. It is also rightly submitted that in that case, the wife should have immediately informed the accused that the police was in search of him as she was made aware of whereabouts of the accused and even telephone number. Thus, there is every possibility of accused having been arrested from Panchkula on December 10, 1993 and not from Delhi on December 11, 1993 as asserted by the prosecution.

Thus, on overall consideration of the matter, in our opinion, it cannot be concluded that the case against the appellant accused can be said to have been proved beyond reasonable doubt and the accused, in our considered opinion is entitled to benefit of doubt.

For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order of conviction and sentence passed against the appellant accused under TADA as also under the Arms Act is liable to be set aside and is accordingly set aside. The appellant is said to have been on bail. The bail bond stands discharged. Amount of fine, if paid, is to be refunded to the accused.