



2024:KER:70802

CrI.A.Nos.433 & 443 of 2017

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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

CRL.A NO.443 OF 2017

CRIME NO.1622/2012 OF MAVELIKKARA POLICE STATION, ALAPPUZHA

AGAINST THE JUDGMENT DATED 29.04.2017 IN SC NO.2 OF 2015 OF

SPECIAL COURT FOR NIA CASES, ERNAKULAM

APPELLANTS/ACCUSED NOS.1 TO 4:

- 1 RAJESH MADHAVAN
AGED 37 YEARS
S/O. MADHAVAN, RAJESH BHAVANAM, KARUVELIL HOUSE, VETTIYAR
MURI, VETTIYAR VILLAGE, KURATHIKAD, MAVELIKKARA, ALAPPUZHA
DISTRICT, KERALA STATE.
- 2 GOPAL
AGED 55 YEARS
S/O. T.SUNDARAN, DOOR NO.92, ROYAL ENCLAVE, MADAPPAKKAM
ROAD, NO.6 SELLAIYUR, CHENNAI, TAMILNADU.
- 3 DEVARAJAN
AGED 54 YEARS
S/O. NARAYANAN, KAIPPUZHAVILA VEEDU, DAVALAKUZHIU BHAGAM,
MAYYANADU CHERIYIL, MAYYANADU VILLAGE, KOLLAM, KERALA.
- 4 BAHULEYAN
AGED 52 YEARS
S/O. PARAMESWARAN, THOTTASSERIL VEEDU, CHIRYINKEEZHU TALUK,
THIRUVANANTHAPURAM, KERALA.



2024:KER:70802

Crl.A.Nos.433 & 443 of 2017

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BY ADVS.
SRI.C.K.SAJEEV
SRI.VINCENT JOSEPH

RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY NATIONAL INVESTIGATION AGENCY, KOCHI
REPRESENTED BY THE SPECIAL PROSECUTOR, NIA,
HIGH COURT OF KERALA, ERNAKULAM.

ADV.SRI.A.R.L.SUNDHARESHAN, ASGI

ADV.SRI.M.AJAY, SPL.PUBLIC PROSECUTOR FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
24.09.2024, ALONG WITH CRL.A.433/2017, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2024:KER:70802

CrI.A.Nos.433 & 443 of 2017

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

CRL.A NO.433 OF 2017

CRIME NO.1622/2012 OF MAVELIKKARA POLICE STATION, ALAPPUZHA

AGAINST THE JUDGMENT DATED 29.04.2017 IN SC NO.2 OF 2015 OF

SPECIAL COURT FOR NIA CASES, ERNAKULAM

APPELLANT/PETITIONER:

AJAYAKUMAR @ AJAYAN @ MANNOOR AJAYAN
AGED 53 YEARS, S/O BALAKRISHNAN NAIR, KURIYANNUR HOUSE,
MANNADI KEEZHILLAM, AIRAPURAM VILLAGE, MUVATTUPUZHA, KERALA.

BY ADVS.

SRI.K.S.MADHUSOODANAN

SMT.S.JESSIN ; SRI.K.S.MIZVER

SRI.P.K.RAKESH KUMAR ; SRI.THUSHAR NIRMAL SARATHY

SRI.M.M.VINOD KUMAR

RESPONDENT/COMPLAINANT:

UNION OF INDIA

REPRESENTED BY THE NATIONAL INVESTIGATION AGENCY, KOCHI.

ADV.SRI.A.R.L.SUNDHARESHAN, ASGI

ADV.SRI.M.AJAY, SPL.PUBLIC PROSECUTOR FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
24.09.2024, ALONG WITH CRL.A.443/2017, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



'CR'

JUDGMENT**G.Girish, J.**

Both these appeals are filed against the judgment dated 29.04.2017 of the Special Court for NIA Cases, Ernakulam in S.C.No.2/2015 NIA. The accused Nos.1 to 4 are the appellants in Crl.A.No.443/2017, and the 5th accused is the appellant in Crl.A.No.433/2017. The Special Court had found all the appellants guilty of commission of offence under Sections 10, 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and convicted them thereunder. They were sentenced to undergo rigorous imprisonment for one year and fine Rs.2,000/- under Section 10, rigorous imprisonment for three years and fine Rs.3,000/- under Section 13, rigorous imprisonment for three years under section 38 and rigorous imprisonment for three years under section 39 of the Unlawful Activities (Prevention) Act, 1967. Aggrieved by the aforesaid conviction and sentence, the appellants are before this Court with these appeals.

The Prosecution Case

2. Accused Nos.1 to 5 are activists of a terrorist outfit by name RDF which is a frontal organisation of CPI (Maoist). They organised a meeting in a lodge room at Mavelikkara on 29.12.2012 for the formation and commencement of activities of the students' wing of the above organisation. The objective for the



formation of the students' organisation of RDF in the aforesaid meeting was for questioning and disrupting the sovereignty and territorial integrity of India and to cause disaffection towards the Government of India. The 1st accused enticed PW3 and PW4, the minor girl children of Maoist leaders Roopesh and Shyna, and brought them to the above lodge room on 29.12.2012 for the said meeting. Thus the 1st accused committed the offence under sections 363, 120(B) and 124A of the Indian Penal Code and Sections 10, 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967. The accused Nos.2 to 5 committed the offence punishable under Sections 120(B) and 124A of the Indian Penal Code, and Sections 10, 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

Detection of the offence

3. Upon getting secret information about the meeting organised by RDF in Room No.17 of Cherumadom Lodge, Mavelikkara, the Additional Sub Inspector of Police, Mavelikkara Mr.K.Y.Damien along with C.P.O Baiju (PW25), C.P.O Anilkumar (CW4) and W.P.C Seema (CW6) went to that lodge room at about 12.50 p.m on 29.12.2012 and found the accused Nos.1 to 4, PW1 (accused turned approver), PW3 and PW4 engaged in a meeting there. Upon searching the bag of the 1st accused, the police recovered Ext.P2, the copy of the manifesto of RDF. Ext.P1 note book containing the page Ext.P1(a) stating the names of the participants of that meeting of 'students' coalition' (വിദ്യാർത്ഥി കൂട്ടായ്മ), presided



over by the 1st accused, was recovered from the bag of PW1. The accused Nos.1 to 4 and PW1 were arrested and taken into custody. PW3 and PW4 were taken to a shelter home and later on released to the custody of their grandmother (PW10).

Investigation by Kerala Police

4. Within a couple of weeks after the detection of the crime, the Additional Sub Inspector Mr.K.Y.Damien who detected the offence, is said to have committed suicide. The investigation was thus taken over by PW44, the C.I of Police, Mavelikkara who arraigned Ajayakumar as the 5th accused and incorporated the offences under Section 109 I.P.C and Sections 18, 18B and Section 20 read with Section 30 of the Unlawful Activities (Prevention) Act, 1967 (for short referred as 'UAPA' hereafter). Later on, the investigation was taken over by PW40, the Dy.S.P, Chengannur who arrested accused No.5 on 18.12.2013 and conducted a search at the house of the 5th accused leading to the seizure of numerous documents and material objects relating to the activities of RDF. Following the investigation of PW40, the Deputy Superintendents of Police Mr.D.Mohanan and Mr.Prasannan Nair also conducted the investigation.

Investigation by National Investigating Agency and filing of final report

5. Taking into account the nature of the crime which was related to insurgency and terrorism, the Ministry of Home Affairs, Government of India



passed orders directing the National Investigating Agency (for short 'NIA') to take over the investigation. Accordingly, the NIA registered Ext.P138 F.I.R under Sections 109, 120B, 143, 147, 149 and 361 I.P.C, Section 23 of Juvenile Justice Act and Section 3 read with Sections 10, 18, 18B and 20 read with Section 30 of the UAPA. The investigation conducted by PW48, the Dy.S.P of NIA, was taken over and completed by PW51, the Additional Superintendent of Police, NIA, Kochi. During the course of enquiry before the Special Court for NIA cases, Ernakulam, upon the recommendation of the investigating agency, proceedings were initiated for making Shiyas (PW1) who was originally arraigned as one among the accused, as an approver. Accordingly, the statements of the above said Shiyas were recorded by the Special Judge as well as the Magistrate concerned. Later on, PW51 laid the final report for the offences punishable under Sections 363, 120B and 124A of I.P.C and Sections 10, 13, 38 and 39 of UAPA as against accused Nos.1 to 5, before the Special Court for NIA cases, Ernakulam.

Framing of charges

6. The learned Special Judge for the Trial of NIA cases, after considering the prosecution records and hearing the arguments advanced by the learned Special Public Prosecutor and the counsel representing the accused, framed the charge under Sections 363, 120B, and 124A of I.P.C and Sections 10, 13, 38 and 39 of UAPA against the first accused. As against accused Nos.2 to 5,



charges under Sections 120B and 124A of I.P.C and Sections 10, 13, 38 and 39 of UAPA were framed.

Conspectus of Court charge

7. (a) Accused Nos.1 to 5 hatched a criminal conspiracy to form a students' constituent organization of Revolutionary Democratic Front (RDF), a front organization of Communist Party of India (Maoist), which was declared as Terrorist Organization by the Government of India; and convened a secret meeting of the said unlawful association in Room No.17 of Cherumadom Lodge, Mavelikkara under the Presidentship of 1st accused.

(b) In pursuance of the above criminal conspiracy, the 1st accused enticed two minor girls, the children of Maoists Roopesh and Shyna, and brought them, without the consent of the lawful guardian, to the above lodge room where the meeting attended by accused Nos.1 to 4 and one Shiyas was held with the intention to support the activities of the proscribed organization CPI(Maoist), threatening the sovereignty and territorial integrity of India, and inciting disaffection to the Government established by law in India.

Trial Before the Special Court

8. The prosecution examined 51 witnesses as PW1 to PW51 and marked 274 documents as Exts.P1 to P274. 32 Material Objects were identified as MO1 to MO32. After the close of prosecution evidence, the accused were



questioned under section 313(1)(b) of the Code of Criminal Procedure. All the accused took up the plea of total denial and stated that they were in no way associated with any terrorist organizations. The 2nd accused filed an additional statement contending that he was a retired Scientist engaged in the propaganda against the evil effects of nuclear projects. He stated that as part of the above campaign he had gone to Mavelikkara to render a speech in a meeting.

9. From the part of the accused, the sister of the 5th accused was examined as DW1, and one document was marked as Ext.D1.

Findings of the Trial Court

10. After evaluating the aforesaid evidence, the learned Special Judge found that there was no sufficient evidence to prove the offences under Sections 363, 120B and 124A of the I.P.C. However, it was held that the prosecution succeeded in establishing the offences punishable under Sections 10, 13, 38, and 39 of UAPA as against accused No.1 to 5. Accordingly, accused Nos.1 to 5 were convicted under the aforesaid provisions of UAPA. They were sentenced to rigorous imprisonment for one year and fine Rs.2,000/- with a default clause of rigorous imprisonment for two months under Section 10, rigorous imprisonment for three years and fine Rs.3,000/- with a default clause of rigorous imprisonment for three months under Section 13, rigorous imprisonment for three years under



Section 38 and rigorous imprisonment for three years under Section 39 of the UAPA.

Points of challenge raised by the appellants against the impugned judgment

11. The learned counsel for the appellants would contend that the offence under Sections 10 and 13 of the UAPA will not lie in view of the fact that there is no case for the prosecution that the RDF is an association declared unlawful under Section 3 of the UAPA. It is further contended that the organization by name RDF in which accused Nos.1 to 5 are said to be involved, has not been included in the First Schedule of UAPA, and hence, it cannot be termed as a terrorist organization for the purposes of Sections 38 and 39 of UAPA. According to the appellants, there is no evidence to show that RDF is the front organization of proscribed CPI(Maoist). Thus, according to the learned counsel for the appellants, the conviction of the appellants under the aforesaid offences, is having no legal basis. As regards the evidence adduced, the learned counsel for the appellants would contend that the Trial Court went wrong in placing reliance upon the evidence of PW1, the accused turned approver. It is the further contention of the appellants that there was no evidence to establish that the accused persons are the members of RDF. According to the appellants, there is no evidence on record to show that the alleged meeting at Mavelikkara on 29.12.2012 was one organized by the RDF and that it was intended to



promote and further the activities of the said organization. Finally, it is pointed out that, even if it is admitted that some publications or books containing the revolutionary ideas of Maoism are recovered from the custody of the appellants, that by itself does not constitute any terrorist or unlawful activity.

Counter argument of the learned Assistant Solicitor General

12. There is absolutely no illegality or impropriety committed by the Trial Court in relying on the evidence tendered by PW1, the accused turned approver. Accused Nos.1 to 4 assembled in room No.17 of Cherumadom Lodge at Mavelikkara for the formation of the students wing of RDF, an organization involved in terrorist and unlawful activities. The accused No.5 had also arrived at the venue, but before he could join the meeting, the Police apprehended A1 to A4. The said organization is the frontal organization of CPI(Maoist), which has been declared as a terrorist organization and included under Schedule-I of UAPA as item No.34. Therefore, the activities of RDF have been forbidden in India. Accused Nos.1 to 5, who are the activists of RDF, brought PW3 and PW4, the children of Maoists Roopesh and Shyna remaining under imprisonment, to the said meeting, for the purpose of commencement of the unlawful activities of the above organization among students. The objective of the above meeting was to incite individuals to bring about cession of a part of the territory of India or the secession of a part of the territory of India from the Union. The activities of the



accused are intended to disrupt the sovereignty and territorial integrity of India and to cause disaffection against India. Thus, the judgment rendered by the Special Court convicting and sentencing the appellants under Sections 10, 13, 38 and 39 of UAPA, does not suffer from any factual or legal shortcomings.

Whether there was a meeting convened by accused Nos.1 to 5 at Mavelikkara on 29.12.2012, in which PW1, PW3 and PW4 participated?

13. There is no serious dispute raised by any of the appellants against the meeting held in Room No.17 of Cherumadom Lodge, Mavelikkara on 29.12.2012 at the instance of accused Nos.1 to 5. PW1, the accused turned approver, tendered evidence before the Trial Court that he had participated in the above meeting under invitation from the 1st accused. PW3 and PW4, the children of Maoists Mr.Roopesh and Mrs.Shyna, who are said to be undergoing imprisonment in a jail at Coimbatore, also stated before the Trial Court about their participation in that meeting. According to PW3, the meeting was intended for conveying the propaganda against the Kudankulam Atomic Energy Project among the student community. PW4 had stated that the meeting was intended for the formation of a students organization at school level for creating awareness about the Koodankulam issue. The Manager and Cleaner of the said lodge, who was examined as PW2, and the owner of that lodge who was examined as PW5, also confirmed the aforesaid meeting. In addition to that, PW6 and PW7, the



reporters of Mathrubhumi and Rashtradeepika dailies stated before the Trial Court that they had the occasion to witness the Police intercepting the aforesaid meeting convened in that lodge. The evidence of PW24, the Civil Police Officer, who assisted the Additional Sub Inspector late Sri.K.Y.Damien, also throws light upon the Police action on that meeting.

Whether accused Nos.1 to 4 who participated in that meeting and accused No.5 who was one among the convenors of that meeting, are activists of RDF

14. As already stated in paragraph no.3 herein above, the police who arrived at the meeting venue at about 12:50 p.m on 29.12.2012, are said to have recovered Ext.P2, the copy of the manifesto of RDF from MO1, which is the bag of the 1st accused. This aspect has been stated by PW1, PW6 and PW24 in their testimonies before the Trial Court. The learned counsel for the appellants would contend that the evidence of PW1, the approver, is totally unreliable in the light of his wavering and inconsistent stands taken in Exts.P12 and P13 which are the statements tendered by him under section 164 Cr.P.C before the Magistrate. Ext.P12 statement dated 11.12.2014 is seen to have been wound up by the learned Magistrate at the very inception with the observation that the deponent was not willing to make a confession. It was so observed in view of the statement of PW1 before the Magistrate that he had not committed any crime.



However, the Magistrate had again summoned PW1 and recorded his statement marked as Ext.P13 on 27.01.2015. The learned Magistrate has observed in Ext.P13 that PW1 was again summoned since certain pertinent aspects could not be put to him on 11.12.2014 while recording Ext.P12 statement. In Ext.P13 statement, PW1 stated that he participated in the meeting at Cherumadom Lodge, Mavelikkara on 29.12.2012 as invited by the 1st accused, and that the said meeting was convened with the objective of forming a students' organization under RDF. He also stated that the above meeting was organized as per the instructions of the 5th accused, the State Secretary of RDF. It is his further statement in Ext.P13 that RDF is an organization propagating the ideas of Maoism. In the same breath, PW1 has stated in Ext.P13 that he participated in the meeting without knowing the above aspects, and that he would not have participated in that meeting if he knew that it was a program of RDF. PW1, in his testimony before the Trial Court, re-affirmed his participation in the said meeting in which accused Nos.1 to 4 and PW3 and PW4 were participants, and stated that the police intervened immediately after the accused No.1 wrote the names of the participants in Ext.P1(a) page of Ext.P1 note book handed over by him to the said accused. The statement of PW1 that he participated in the meeting without knowing that it was a programme of RDF, cannot be accepted without a pinch of salt. It is apparent from Ext.P13 that, after giving Ext.P12 statement asserting



that he had not committed any crime, he visited the NIA office, and that Ext.P13 statement was given after one week from such visit.

15. Another reason pointed out by the learned counsel for the appellants for assailing the credibility of the evidence of PW1 is that PW1 has made a wrong statement that he had not visited the NIA office after giving Ext.P12 statement and before appearing before the Magistrate for giving Ext.P13 statement. With regard to the above, when confronted with Ext.P13 about his visit to NIA office, PW1 has clarified in his testimony that it was due to a mistake that he had stated that he did not visit the NIA office after giving Ext.P12 statement. The above attempt of PW1 to conceal his visit to NIA office after giving Ext.P12 statement, and thereafter deposing about Ext.P13 statement in which he had stated about his participation in the meeting on 29.12.2012 without knowing that it was the meeting of RDF, arouses suspicion about his trustworthiness. However, it is pertinent to note that the evidence of PW6, a local reporter of Mathrubhumi daily, would establish that the police team consisting of Additional Sub Inspector K.Y.Damien and PW24 had recovered Ext.P2 from the bag of the 1st accused immediately after they intercepted the meeting. Thus, it has to be stated that the recovery of Ext.P2 from the bag of the 1st accused, itself shows that he is an activist of RDF.



16. The evidence tendered by PW2, the Manager cum Cleaner of the lodge, PW3 and PW4, the minor girls who participated in the meeting, and PW5, the proprietor of that lodge also throw light about the pivotal role played by the 1st accused in arranging the said meeting. The evidence of PW6 would reveal that the 1st accused had misused his acquaintance with him for recommending PW2 for the allotment of lodge room for the meeting. It is stated by PW6 that the 1st accused had misrepresented to him the purpose of the meeting as one intended for making arrangements of a football match. The above acts of the 1st accused arranging the meeting of 29.12.2012 at Mavelikkara in a clandestine manner would point to the active interest of the said accused in promoting the activities of RDF. It is also pertinent to note that the 1st accused had made the entries in the relevant register of the lodge misrepresenting the purpose of his visit. Ext.P16(a) which is the relevant entry in Ext.P16 register of the lodge would show that the 1st accused had stated the purpose of the visit as 'bank'. The act of the 1st accused making the aforesaid entries in Ext.P16 is proved by the evidence of PW2 as well as the scientific evidence adduced by the prosecution about the handwriting of the 1st accused, through Ext.P123 FSL report and the evidence of PW30, the Scientific Officer of Forensic Science Laboratory. Thus, the involvement of the 1st accused in the activities of RDF is writ large from the aforesaid evidence.



17. It is stated by PW1 that he came to know on interaction prior to the commencement of the meeting of 29.12.2012 that accused No.3 was the State Joint Secretary of RDF and accused No.4 was a member of RDF. Dehors the above evidence, Ext.P68 notice of the State Committee of RDF, issued by the 5th accused in his capacity as Secretary, contains the indication that the 3rd accused is the State Joint Secretary of RDF. However, there is no evidence brought out to show that the 2nd accused is an activist of RDF. Even PW1 has not stated anything other than the capacity of the 2nd accused as a retired Scientist. So also, there is no evidence other than the statement of PW1 with regard to the membership of the 4th accused with the RDF.

18. The various pamphlets, posters, notices, bulletins etc. of the RDF brought on record in this case, depict the email address and cell phone number of the 5th accused as its spokesperson. Even the Ext.P2 manifesto of the RDF contains the email ID and mobile number of the 5th accused. The evidence of PW40, the Dy.S.P, Chengannur who conducted a substantial portion of the investigation, would reveal that the search conducted by him at the residence of the 5th accused and at a press by name 'Cherry Printers' at Mannur, unearthed numerous documents containing the ideology and activities of RDF, with his name, email ID and mobile number inscribed in it. In addition to that, the testimony of PW9 who was a former activist involved in extreme left ideologies,



would reveal that he was aware of the capacity of the 5th accused as the State Secretary of RDF. Ext.P61 report about the first All India Conference of the RDF held at Hyderabad contains the indication that in the said meeting the 5th accused was selected as the Executive Committee Member of RDF. Having regard to the aforesaid evidence brought out by the prosecution, there is absolutely no room for any doubt about the role played by accused Nos.1, 3 and 5 as the office bearers of RDF. However, there is paucity of evidence to establish the capacity of accused Nos.2 and 4 as office bearers or members of the said organization.

Whether RDF is a front organization of CPI (Maoist) ?

19. The prosecution would rely on the oral evidence tendered by PW49, a protected witness who had stated before the Trial Court that he thinks RDF as a cover organization of CPI(Maoist). It is stated by the above witness that while he was working underground as a Maoist during the year 2007, he had the occasion to know about RDF. The opinion evidence adduced by PW49 in the above regard, is not enough to establish the alleged link of RDF with CPI(Maoist) as a front organization.

20. The evidence tendered by the prosecution through Ext.P261 and Ext.P262, the gazettes of Telangana and Orissa respectively, would go to show that RDF has been banned in the above States for the reason that it is a frontal organization of CPI(Maoist). But the above indication in those Gazette



notifications published for declaring the RDF as an unlawful association in the respective States, cannot be projected by the prosecution as a reason to consider the said organization as a front organization of CPI(Maoist) in the State of Kerala. If the NIA or the law enforcing agencies were of the view that the said organisation was a Terrorist Organisation or unlawful association, the necessary steps ought to have been taken for declaring the said organisation as an unlawful association under Section 3 of the UAPA, or issued the necessary notification including RDF in the 1st Schedule of UAPA as a Terrorist Organisation. Ext.P189, which is the certified copy of review of RDF works since its formation, refers to CPI(Maoist), and the atrocities perpetrated upon the above organization by the State Machinery. But, none of the records brought forth by the prosecution contain the indication that CPI (Maoist) is the parent organisation of RDF. Nor could the prosecution show that any of the office bearers of RDF were earlier working in CPI (Maoist), and that, after the banning of CPI (Maoist), they have surfaced with a new name. The oral evidence of PW1, which is found tainted for the reasons stated in paragraph nos.14 and 15 herein above, also could not improve the case of the prosecution in this regard. In the above circumstances, it is not possible to accept the argument of the prosecution that RDF is the front organization of CPI (Maoist) as stated in the Gazette publications of Telangana



and Orissa. Accordingly, we hold that the prosecution has failed to establish that the RDF is a front organization of CPI (Maoist).

Whether the offence under Section 10 of UAPA is brought out through the evidence adduced in this case ?

21. Section 10 of the UAPA reads as follows :

"10. Penalty for being member of an unlawful association, etc.—Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,—

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;



(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

22. It is clear from the wordings in the aforesaid Section that the culpability envisaged thereunder would come into play only when it is shown that the offender is a member, or involves in the activities of an association which is declared unlawful by a notification issued under Section 3(1), which has become effective under sub-section (3) of Section 3 of the UAPA. As far as the present case is concerned, the prosecution has not brought on record any document to show that RDF is an association declared unlawful by a notification issued under Section 3(1) of UAPA, which became effective under Section 3(3) of that Act. Therefore, the primary requirement for invoking Section 10 of UAPA against the appellants is seen lacking in this case. Needless to say that the Trial Court went wrong in convicting and sentencing the appellants for the commission of offence under Section 10 of UAPA.

Whether the offence under Section 13 of UAPA is attracted in the facts and circumstances of this case ?

23. Section 13 of the UAPA reads as follows :

"13. Punishment for unlawful activities.—

(1) Whoever—

(a) takes part in or commits, or



(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India.

24. Section 13 of the UAPA takes in its fold two offences. The first one is, taking part or commission, or advocating, abetting, advising or inciting the commission of any unlawful activity, punishable under section 13(1) with imprisonment for a term which may extend to seven years, and fine. The second one is assisting the unlawful activity of any association declared unlawful under Section 3, punishable under section 13(2) with imprisonment for a term which may extend to five years, or with fine or with both. Obviously the aforesaid two offences are distinct in its nature, and the punishments provided for also differ markedly. The Court Charge framed by the learned Special Judge does not reveal whether it is one under Section 13(1) or 13(2). However, it seems from the



wordings of the charge, giving emphasis to the purport of the controversial meeting as the formation of a student's wing of RDF, that the accusation pertains to assisting the unlawful activity of a terrorist organization, bringing it within the sweep of Section 13(2) of UAPA. The confusion created in this regard is seen carried over to the judgment as well. Nowhere in the judgment, had the trial court made it clear as to whether the conviction and sentence are under Section 13(1) or 13(2). Needless to say that the lack of clarity on this matter could be said to have misled the appellants about the exact accusation to which they are answerable.

25. Section 211 of the Code of Criminal Procedure, 1973 which deals with the contents of charge, reads as follows:-

"211. Contents of charge: (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.



(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed."

Thus, it is incumbent upon the trial court to mention the section of law against which the offence is said to have been committed, along with the other particulars stipulated above, in the charge framed against the accused.

26. Section 212 and Section 213 of Cr.PC., which mandate the requirement to state particulars as to time, place and person, and the manner of committing offence, are extracted hereunder:

"212. Particulars as to time, place and person.—(1) *The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*

(2) *When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:*



Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated.—*When the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.”*

The purport of the aforesaid provisions is that the accused should be made to understand from the charge what exactly is the accusation sought to be proved against him, so that he could set forth an effective defence against it.

27. The effect of errors in charge is dealt with in Section 215 Cr.PC., which reads as follows:

"215. Effect of errors.— *No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”*

Thus the decisive factor on the question of errors in charge vitiating the proceedings is whether the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. In that context, it is pertinent to note that even in the questions put to the accused under Section 313 Cr.P.C., the trial court had not disclosed whether the accusation against them are commission of unlawful activity as envisaged under Section 13(1), or assisting unlawful activity of RDF by taking efforts for the formation of a student’s wing of that organisation,



which would come under the sweep of Section 13(2) of UAPA. Thus the anomaly in the above regard has to be taken as material since, even after the judgment rendered by the trial court the appellants are not in a position to know whether they are convicted and sentenced for the offence under section 13(1) or section 13(2) of UAPA.

28. In ***Kalicharan v. State of U.P. (2023) 2 SCC 583***, the Apex Court observed as follows about errors and omissions in charge which could be taken as material, and causing failure of justice:-

“Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with the effect of error or omission made while framing charges on the finding and sentence of the competent court. The section provides that the finding and sentence of the court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the court of appeal, the error or omission has occasioned a failure of justice.

When the court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the court is duty-bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.”



29. Now, we may examine the evidence in this case to ascertain whether failure of justice has been occasioned due to the omission of the trial court to specify precisely in the charge about the offence for which the accused are put to trial. As regards the offence under Section 13(1) of UAPA, the point to be looked into is whether the evidence adduced by the prosecution in the instant case would bring out the commission of unlawful activity by any of the appellants. On that score, the purpose and objective of the meeting convened by accused Nos.1 to 5 on 29.12.2012 in a lodge room at Mavelikkara assume significance. The defence mooted by the appellants before the Trial Court, as well as the arguments advanced by them in this appeal are to the effect that the meeting of 29.12.2012 at Mavelikkara was intended to sensitize the student community about the evil effects of Koodankulam Atomic Energy Project, and thus the objective of the said meeting cannot be termed as unlawful. There is also a contention advanced by the appellants that the unhealthy trends of exploitation adopted by the banks advancing educational loans, were also intended to be exposed in the said meeting. However, there is absolutely no material coming up in this case which would give the indication that the Koodankulam Atomic Energy Project or the traps and pitfalls of educational loans were intended to be discussed in the said meeting. It is also pertinent to note that if the purpose of the meeting was to create awareness about the drawbacks of the above two



issues, there was no need for the 1st accused to hide this matter from PW6, the reporter of Mathrubhumi daily, whom he contacted for getting allotment of the lodge room. The testimony of PW6 that the 1st accused had contacted him through phone on 23.12.2012 seeking his help for getting allotment of a room in Cherumadam lodge, Mavelikkara for the purpose of deliberating upon a football tournament, remains unchallenged in cross-examination. The move made by the 1st accused in the above regard is further substantiated by the statement of PW6 that PW2, the manager of the lodge had come to his room along with the 1st accused in the morning of the meeting day, and told that 1st accused was the person who approached him for getting allotment of lodge room by mentioning his acquaintance with PW6. There was absolutely no need for the 1st accused to misrepresent the purpose of the meeting to PW6 if it was intended only to discuss the pros and cons of the Kudankulam project and educational loans. The fact that the 1st accused mentioned the purpose of visit in Ext.P16(a) register of the lodge as 'Bank', also confirms the case of the prosecution that the meeting of 29.12.2012 was intended for some dubious purposes for discussing plans to destabilize the country. As already stated above, nothing could have prevented the 1st accused from stating in the relevant column of Ext.P16(a) register of the lodge that the room was needed for convening a meeting to discuss some social issues.



30. It is, in this context, that the recovery of Ext.P2 from the MO1 bag belonging to the 1st accused, has to be looked into. A reading of Ext.P2, the manifesto of RDF, would reveal that its contents are highly volatile and dissipative in the sense that it propagates hatred and ill will against the system and State Machinery functioning under the Constitution of India. There is indication in Ext.P2 that the State Machinery is mounting brutal repression upon all democratic movements and that the leaders and cadres of the trade unions and civil liberties' organizations and even journalists are being killed. It is stated that, after Telangana, the great peasant movement in Naxalbari once again dealt a death blow against reformism and revisionism, and it illuminated the path of Indian revolution. It further reads that Naxalbari opened a new chapter in the history of the peasant struggle in India and held aloft the banner of agrarian revolution and the politics of seizure of State power. Under the head 'Indian Parliamentary System', it is stated in Ext.P2 that the State Machinery developed by the ruling classes consists of a corrupted bureaucracy, anti-people judiciary, a police force and a well equipped modern army and armed forces, and that the role of parliamentary system is to cover this ruthless rule and to delude the people. It is also stated that parliamentary elections as a way for democratic rule in the country is a false notion projected by the ruling class parties and their sycophants, and that elections are conducted by the force of muscle power which



shatters the myth of democratic character of the Indian Parliamentary Electoral System. About judiciary, it is stated that the process of judiciary is not consistent with the provisions of the Indian Constitution and that mass movements for the fulfillment of minimum demands of people are brutally suppressed with lathi, bullets and bayonets. It is also stated that the consciousness of the people is rapidly developing about the bluff of the parliamentary system. On a full reading of Ext.P2, it could be said that its venomous contents are intended to cause disaffection against India as a nation, and to disclaim and question the sovereignty and territorial integrity of India. So also, if the persons adopting Ext.P2 as their course of action, are found indulging in a secret meeting, and if no other material other than the aforesaid manifesto which propounds hatred and ill will against the Nation are found in the meeting place, it could be said that those persons who hold Ext.P2 as their *magna carta* are indulging in unlawful activity punishable under Section 13(1) of the UAPA, in their individual capacities. However, there cannot be a successful prosecution for the aforesaid offence, in the absence of a specific charge under Section 13(1) of UAPA, setting forth the particulars as to how the said offence is attracted as against individual participants of the meeting, when the items recovered from one of the participants of that meeting included printed matter with anti-national contents, inciting treason.



31. It is true that for making out the offence under Section 13(1)(a) and (b) of UAPA the mere participation of an individual in any unlawful activity is sufficient. It is also true that the act of an individual spreading disaffection to the Nation or challenging the territorial integrity and sovereignty of the Nation will constitute unlawful activity. But, in the instant case, the accused were not called upon to answer a charge under Section 13(1)(a) & (b) of UAPA. The charge does not contain the indictment that the accused, by their mere participation in the meeting of 29-12-2024, had indulged in individual acts of unlawful activity since Ext.P2 document recovered from the bag of first accused contained highly inflammatory anti-national literature. On the other hand, the wordings of the Court Charge were couched in such a fashion to give the impression that it is one under Section 13(2) of UAPA, leaving the accused to speculate what actually was in the mind of the learned Special Judge. It is thus apparent that the accused were misled by the ambiguity in the above regard, leading to prejudice caused due to their inability to understand what exactly is the indictment to which they are answerable. That being so, the prosecution cannot be heard to say that the accused are to be found guilty of Section 13(1)(a) & (b) of UAPA since their mere participation in the said meeting could be termed as the commission of an unlawful activity in their individual capacities.



32. As already stated above, the charge against the appellants is presumably under Section 13(2) of UAPA, if the wordings giving emphasis to association of the appellants with RDF are taken into account. For the sustainability of the above charge, it has to be established that the RDF was an organization declared unlawful under Section 3 of UAPA. As the prosecution has failed to bring out anything to show that the RDF has been declared unlawful under Section 3 of UAPA, the evidence regarding the participation of the appellants in the meeting at Mavelikkara is not enough to bring home the offence under Section 13(2) of UAPA. Thus, it is not possible to say that the offence under Section 13 of UAPA is attracted in this case.

Whether the commission of the offence under Sections 38 and 39 of the UAPA by the appellants is established from the evidence adduced in this case

33. Sections 38 and 39 of the UAPA are extracted as follows:

"38. Offence relating to membership of a terrorist organisation.—

(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—



(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the (First Schedule] as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both."

"39. Offence relating to support given to a terrorist organisation.—

(1) A person commits the offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organization; and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organization; or

(ii) to further the activity of the terrorist organization; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.



(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both."

34. The term 'terrorist organisation' employed in Sections 38 and 39 of UAPA, is defined under Section 3(m) of the said Act, as an organisation listed in the First Schedule, or an organisation operating under the same name as an organisation so listed. RDF is not enlisted as a terrorist organization in the First Schedule to UAPA. Ext.P274 gazette notification would reveal that the CPI (Maoist) and its front organisations are banned by the Government of India and included in the first schedule of UAPA as item No.34. We have already found in the discussions aforesaid that the prosecution failed to establish that RDF is a front organisation of UAPA. Thus the essential requirement of Sections 38 and 39 of UAPA, which is the status of the organization as 'terrorist organization,' is lacking in the case on hand. Therefore, it is not possible to say that the offence under Sections 38 and 39 of the UAPA are established by the evidence adduced in this case.

The Conclusions and Findings

(a) The prosecution failed to establish the commission of offences charged against the appellants.



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(b) The appellants are found not guilty of the offences under Sections 10, 13, 38 and 39 of UAPA, and they are acquitted thereunder.

(c) The impugned judgment of the Trial Court stands set aside.

**Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE**

**Sd/-
G.GIRISH,
JUDGE**

jsr/vgd/ded