

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

Crl.MC.No. 6110 of 2014 ()

CRIME NO. 780/2014 OF KATHIRUR POLICE STATION , KANNUR

PETITIONER(S)/PETITIONER/ACCUSED:

VIKRAMAN AGED 43 YEARS
S/O BALAN, KATTIALMEETAL HOUS E, PATIAM AMSOM
KIZHAKKE KADIRUR, KANNUR.

BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.P.N.SUKUMARAN
SRI.ABHISHEK KURIAN

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. DEPUTY POLICE SUPERINTENDENT
CRIME BRANCH C.I.D., HHW-3, KANNUR SUB UNIT-670001.
3. THE CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS DIRECTOR, NEW DELHI-110001.

R3 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
R1 & R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
9-01-2015, THE COURT ON 03-02-2015 PASSED THE FOLLOWING:

Crl.MC.No. 6110 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: CERTIFIED COPY OF THE F.I.R. IN CRIME NO.780/2014 OF KADIRURPOLICE STATION.

ANNEXURE A2: CERTIFIED COPY OF THE STATEMENT SASIDHARAN.

ANNEXURE A3: TRUE COPY OF THE REPORT DATED 1.9.2014.

ANNEXURE A4: TRUE COPY OF THE REPORT FILED BY THE 2ND RESPONDENT DATED 11.9.2014 OF THE ADDL. CHIEF JUDICIAL MAGISTRATE'S COURT, THALASSERY.

ANNEXURE A5: TRUE COPY OF THE NOTIFICATION G.O.(RT)NO.2446/2014/HOME DATED 12.9.2014.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

“C.R.”

P.UBAID, J.

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**Crl.M.C No.6110 of 2014**

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Dated this the 3rd February, 2015

ORDER

Crime No.780 of 2014 of the Kadirur Police Station of Kannur District relates to the brutal political murder of one Manoj, a political activist, at about 11 a.m. on 1.9.2014, by a terrorizing bomb explosion, in prosecution of a criminal design to kill him, made by the rival political group. The case is now being investigated by a special team of the CBCID constituted by the Government. The crime was registered under Sections 143, 147, 148, 324, 307, 302 read with Section 149 of Indian Penal Code, under Sections 3 and 5 of the Explosive Substances Act, and also under Section 13 (a) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “U.A.P.A”) Section 307 was incorporated on the allegation that attempt on the life of one Pramod was also made by the accused in the said incident. The petitioner herein was arrested as the 1st

accused in the crime, and he has been in judicial custody since the date of arrest. During investigation, the Investigating Team found that the correct and proper penal section of the U.A.P.A involved in this case is Section 16(1) (a) and that Section 13 (1) (a) will have application only in cases of unlawful activity as defined under the law. Finding that this is an instance of terrorist activity as defined under Section 15 of the U.A.P.A, the Investigating Officer filed a report in court to that effect, and proceeded for investigation under Section 15 (1) (a) (i) read with Section 16 (1)(a) of the U.A.P.A. Section 15 of the U.A.P.A defines terrorist activities, and Section 16 of the U.A.P.A provides punishment for terrorist activities. The report submitted by the Investigating Officer before court, reporting the process of investigation under Section 15 (1) (a) (i) read with Section 16 (1) (a) of the U.A.P.A is under challenge in this proceeding brought under Section 482 of the Code of Criminal Procedure. The petitioner seeks orders quashing that part of the F.I.R incorporating the sections of the U.A.P.A, and also the Annexure A3 report to that effect filed

by the Deputy Superintendent of Police, District Crime Branch, Kannur.

2. The scope and extent of the powers of this Court to intrude into the process of investigation is the legal issue involved in this proceeding. Judicial interference cannot, in any circumstance, cross the limits and borders drawn by the Constitution of India and the various legislations made thereunder on criminal law. Within the constitutional and legal constraints and limits, and also without crossing the border lines, judicial interference in exercise of the extra-ordinary constitutional powers under Article 226 of the Constitution of India, or in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure is possible only in cases of extreme violation and breach of the provisions of any law. This is the settled position as regards judicial powers for interference in investigation. Investigation into an offence is, no doubt, the exclusive realm reserved for the investigating agency, whose powers under the law, including the Code of Criminal Procedure, are unfettered, and when such investigation

progresses into a cognizable offence of serious nature, courts can interfere when breach of the provisions of any law, or violation of constitutional or legal rights is brought to the notice of the court. It stands settled by judicial precedents that interference by courts in the process of investigation, or intrusion into the realm of investigation, is possible only when the Investigating Agency transgresses the limits and borders prescribed by the law, and illegally and improperly does the process of investigation in breach of any statutory provision providing or guaranteeing rights to the persons facing prosecution.

3. In **State of Haryana & Others v. Bhajanlal & Others**[1992 SCC (Crl) 426], the Hon'ble Supreme Court considered the scope of interference by courts into the process of investigation and held thus:

“The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with

the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any

recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.”

4. The above legal position settled by the Hon'ble Supreme Court is even now the law as regards judicial powers of intrusion into the process of investigation. In this case, the petitioner seeks orders challenging the decision of the Investigating Officer to proceed for investigation under the provisions of the U.A.P.A on the ground that such a step will amount to gross violation and breach of the provisions of the U.A.P.A because the alleged act of offence will not amount to terrorist act as defined under Section 15 of the U.A.P.A.

Section 15 (1) of the U.A.P.A reads as follows:

“15. Terrorist act”- (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.

(a) by using bombs, dynamites or other explosive substances or inflammable substances or firearms or other lethal

weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause:

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act;

commits a terrorist act.

5. Relying on some decisions of the Hon'ble Supreme Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which stands now repealed, the learned counsel for the petitioner submitted that the provisions in Section 15 of the U.A.P.A defining terrorist activity are similar to the provisions in Section 3 of the repealed TADA defining terrorist act. In **Hitendra Vishnu Thakur v. State of Maharashtra and others [1994 SCC (Crl) 1087]**, the Hon'ble Supreme Court considered the definition of terrorist act under Section 3 of the TADA and held that the said provision cannot be applied to places where the alleged act of offence, however grave, can be dealt with under the criminal law. In the said case, the Hon'ble Supreme Court held thus:

“Thus unless the act complained of falls strictly within the letter and spirit of Section 3 (1) of TADA and is committed with the intention as envisaged by that section *by means of the weapons etc*, as are enumerated therein *with the motive* as postulated thereby, an accused cannot be tried or convicted for an offence

under Section 3 (1) of TADA. When the extent and reach of the crime committed with the *intention* as envisaged by Section 3 (1) transcends the local barriers and the effect of the criminal act can be felt in other States, or areas or has the potential of that result being felt there, the provisions of Section 3 (1) would certainly be attracted. Likewise, if it is only as a *consequence* of the criminal act that fear, terror or/ and panic is caused but the *intention* of committing the particular crime cannot be said to be the one strictly envisaged by Section 3 (1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the *intention* to achieve the result as envisaged by the Section and not merely where the *consequence* of the crime committed by the accused create that result would attract the provisions of Section 3 (1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality, but if it was not committed with the *requisite intention* as contemplated by the section, the offence would not attract Section 3 (1) of TADA. On the other hand, if a crime was committed with the intention to cause terror or panic or to alienate a section of

the people or to disturb the harmony etc, it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc has been caused to the property, the provisions of Section 3 (1) of TADA would be squarely attracted.”

6. On a careful analysis of the two provisions, I find that the provisions in the two acts are not exactly similar. The definition of terrorist act under the U.A.P.A in fact gives wider scope to bring in different situations of such activities under the definition of terrorist act. Even the likelihood of causing terror in the people or any section of the people by using bombs, dynamite, or explosive substances, or inflammable substances, or firearms or other lethal weapons or poisonous, or noxious gases or other chemicals, or any other substance of a hazardous nature . will constitute a terrorist activity defined under Section 15 of the U.A.P.A. Such a wider definition bringing in even likelihood of causing terror in the mind of the people by using bombs etc was not there in Section 3 of the repealed TADA.

7. In this Case, the definite allegation of the prosecution is that Manoj was killed brutally in prosecution of a criminal design made by the political opponents to eliminate him, and thus weaken the strong holds of the rival political party. The said brutal murder was done by a heavy bomb explosion. The prosecution contends that such a bomb explosion will definitely strike terror or cause alarm and terror in the mind of the people of the locality. There is reason to believe that the intention of the accused was not merely to eliminate Manoj. The alleged act of murder was done as part of a design to eliminate the opponents one by one, and thus weaken the other political party in its strong holds. When such a situation is alleged, and when materials are there to show that such act was done with such an intention, the court will be justified in coming to a finding that the alleged act of offence will attract the definition of terrorist activity under Section 15 of the U.A.P.A.

8. In view of the finding made above regarding the scope of investigation into the suspected terrorist activity as defined under Section 15 (1) (a) of the U.A.P.A, made

punishable under Section 16 (1) (a) of the U.A.P.A, it cannot be now held or found that such an investigation will be in breach of the provisions of the U.A.P.A or in violation of the rights given to citizens under the constitution and other laws. When the investigation process is totally unjustifiable or illegal, or in breach of the provisions of any law, thus causing serious prejudice and hardship to the person facing such investigation or prosecution, this Court can definitely interfere under Section 482 of the Code of Criminal Procedure. But here, I do not find such a situation of breach of the provisions of the U.A.P.A. As already observed, any act likely to strike terror in the mind of the people by bomb explosion or by use of explosives or other substances in the process of causing murder or causing injury or causing damage or destruction of property in prosecution of some criminal design, will definitely attract Section 15 of the U.A.P.A and such activity will satisfy the definition of terrorist act as defined under Section 15 of the U.A.P.A. In such a situation, it cannot be said that the Investigating Agency in this case has transgressed the limits, or has

travelled beyond the border line fixed under the law, or has in any manner committed breach of the provisions of any law, or has acted in gross violation of the rights given to the accused. When this Court is called upon to interfere under Section 482 of the Code of Criminal Procedure, this Court must be conscious of the limits of such powers and also the scope and extent of interference in the investigation process under Section 482 of the Code of Criminal Procedure. I find that that the alleged act of murder by bomb explosion, likely to cause terror in the mind of the people, will have to be investigated into, on the broader possibilities of act of political terrorism designed to eliminate political opponents and weaken the rival political party.

9. When investigation is possible under the law, and when the court cannot find any serious breach of any provisions of law or any violation of the legal rights, interference cannot be made on the ground that such investigation will have serious consequences affecting the personal liberty and freedom of the person facing

investigation or prosecution. I find that at this stage interference by this Court under Section 482 of the Code of Criminal Procedure by way of intrusion into the process of investigation is not possible, and that investigation now in progress under the U.A.P.A will have to proceed. Here, I find no situation of any serious breach of any law to quash the F.I.R partly as regards the provisions of the U.A.P.A incorporated therein, or to quash the Annexure-A3 report submitted by the Investigating Officer. Thus, I find that there is no merit in this proceeding brought under Section 482 of the Code of Criminal Procedure and it is liable to be dismissed *in limine* without being admitted to files.

In the result, this Crl.M.C is dismissed *in limine* without being admitted to files.

**SD/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge