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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.05.2017

PRONOUNCED DATED: 20.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.95 of 2017

A.Murugan : Petitioner/Accused

Vs.

The Deputy Superintendent of Police,
'Q' Branch CID,
Chennai. : Respondent /Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the impugned order dated 08.01.2017 passed by the learned Principal District & Sessions Judge, Karur, in Crime No.1 of 2016, on the file of the Inspector of Police, 'Q' Branch CID, Karur and set aside the same.

For Petitioner : Mr.S.Sankarasubbu
For Mr.A.Jayaramachandran

For Respondent : Mr.R.Rajaratnam
State Public Prosecutor

Assisted by
Mr.P.Kannithevan
Govt.Advocate (crl.side)

O R D E R

The present Criminal Revision is filed to set aside the impugned order, dated 08.01.2017, passed by the learned Principal District & Sessions Judge, Karur, in Crime No.1 of 2016, on the file of the Inspector of Police, 'Q' Branch CID, Karur.

2. The Criminal Revision is taken up for final disposal at the admission stage itself, with the consent of either side.

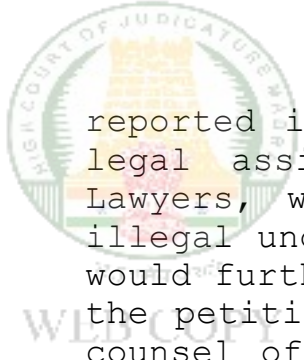
3. FIR has been registered in Crime No.1 of 2016, under Sections 18(A), 18(B), 20 & 38 of Unlawful Activities (Prevention) Act, 1967 r/w. Section 120(b) of IPC., by the Inspector of Police, 'Q' Branch CID, Karur, based on the special report submitted by the Inspector of Police, 'Q' Branch CID, Coimbatore District, against (1) Kala @ Janaki @ Bhanumathi W/o. Manivasagam and (2).



Chandra W/o.Sundaramurthy, on an information that members of the banned CPI (Maoist) Organization were staying at Vengamedu, Karur and indulging in recruitment of new cadres for their Organization for imparting training to them to wage war against the established democratic Central and State Governments. The above said FIR was registered on 21.07.2016, after the arrest and production of the above accused persons, who are arrayed as active members of CPI (Maoist) by the Special Team on 21.07.2016. A1 is stated as State Committee Member of the banned CPI (Maoist) Organization and her husband is also an active member of the said Organization and also an absconding accused in several cases and A2 is also stated as member of the said Organization. They and other members of the said Organization conspired and indulged to recruit new cadres for the Organization for imparting armed training to them in the Tri Junction of Western Ghats, where the borders of Tamil Nadu, Kerala and Karnataka meet and in furtherance to the conspiracy, A1 and A2 stayed at Vengamedu in Karur. After their arrest and based on their confessions, many incriminating documents and fabricated bogus I.D., having the photo of A1, in the name of Banumathi W/o. Balakrishnan and other items including 11 mobile phones and SIM cards were seized from the residence of A1 and both the accused are now detained at Central Prison for Women, Trichy.

4. During the course of investigation, the other accused persons viz., Kuppu Devaraj and Ajitha @ Kaveri, practicing advocates, were arrayed as accused in this case and both the accused were killed during an exchange of fire between them by Kerala Police on 24.11.2016 at Nilambur Forest, Kerala. It is stated that during the investigation of the case, the petitioner herein is also included as an accused, on the basis of the materials collected and the house of the petitioner was also searched, subsequent to the search warrant issued by the Court, in the presence of the petitioner and also independent witnesses. Many incriminating documents and material objects were seized from his residence on 08.01.2017 and the petitioner was also arrested on the same day and was produced before the learned Principal District & Sessions Judge, Karur, for remand and he was remanded to judicial custody and the petitioner is also in judicial custody from 08.01.2017 onwards. The present Criminal Revision is filed on behalf of the petitioner / A5, challenging the order of remand made on 08.01.2017, by the learned Principal District & Sessions Judge, Karur, in Crime No.1 of 2016.

5. The learned counsel appearing for the petitioner / accused would submit that the petitioner is a practicing advocate and he was discharging his professional duty, as a defence Lawyer, and he was not heard before remanding him to judicial custody and he was remanded mechanically without application of mind and without considering the existence of prima facie materials and also without complying the principal laid down by the Hon'ble Apex Court in the Judgment in D.K.Basu v. State of West Bengal

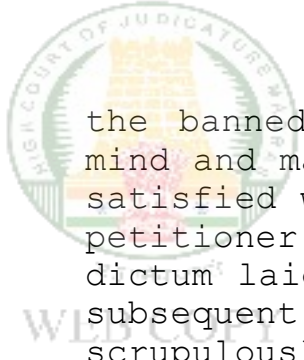


reported in (1997) 1 SCC 416 : (1997 Cri LJ 743) and that the legal assistance to the petitioner was not provided and the Lawyers, who were present, were not heard and the detention is illegal under Articles 21 and 22 of the Constitution of India. He would further contend that the grounds of arrest was not served on the petitioner and he was not informed about his right to have a counsel of his choice to address the Court and there is no nexus between the petitioner and terrorist activities and a Lawyer, who appeared for terrorist cases could never be dubbed as terrorist and booked under the Act and also the order of remand and detention are illegal and it is violation of Article 21 of the Constitution of India and hence, the impugned order made on 08.01.2017 by the learned Principal District & Sessions Judge, Karur, in Crime No.1 of 2016, on the file of the Inspector of Police, 'Q' Branch CID, Karur, is liable to be set aside.

6. The learned counsel, in support of his contentions, has relied on the following decisions of the Hon'ble Supreme Court and various High Courts:

- (1). Arup Bhuyan Vs. State of Assam reported in (2011 (3) SCC 377)
- (2). State of Kerala Vs. Raneef reported in (2011 (1) SCC 784)
- (3). Indra Das Vs. State of Assam reported in (2011 (3) SCC 380)
- (4). Joginder Kumar Vs. State of U.P., and Others reported in 1994 (4) SCC 260.
- (5). Govind Prasad Vs. The State of West Bengal reported in (1975 CRI. L.J. 1249)
- (6). Elumalai Vs. State of Tamil Nadu reported in 1983 L.W.(Crl.)121.
- (7). M.A.Dharman Vs. State of Andhra Pradesh reported in (1991 (1) Crimes 637)
- (8). D.Veerasekaran Vs. State of Tamil Nadu, rep.by D.S.P. Q Branch, CID Madras reported in (1992 L.W. (Crl.) 1)

7. The learned State Public Prosecutor assisted by the Government Advocate (Crl.side) would submit based on the counter statement filed by the respondent herein that the learned Principal District & Sessions Judge, Karur, has acted judicially and followed all legal formalities before issuing the remand order for remanding the petitioner to judicial custody; that the complicity and culpability of the petitioner to the crime prima facie evidences to substantiate the culpable role of the accused / petitioner are sufficient to remand the petitioner / accused in judicial custody; that the petitioner was remanded based on sufficient document evidences placed before the learned Judge and he was remanded on merits; that the learned Principal District & Sessions Judge, Karur has gone through all the materials available in establishing the culpable role of the petitioner in supporting



the banned CPI (Maoist) Organization before her and applied her mind and made the order of remand, dated 08.01.2017, after getting satisfied with the facts and circumstances of the case against the petitioner / accused and the respondent had complied with the dictum laid down in D.K.Basu Case. During the time of arrest and subsequent to remand of the petitioner, all legal formalities were scrupulously followed.

8. He would further submit that the petitioner / accused was arrayed as A5 based on the strength of the evidence collected by the respondent and the evidence collected during the course of investigation would prove the nexus of the petitioner to the offences under Sections 18(A), 18(B), 20 and 38 of Unlawful Activities (Prevention) Act, 1967 r/w 120(B) IPC; that the petitioner / Accused and A1 / Kala @ Janaki @ Bhanumathi having one to one contact for which separate SIM Cards and Mobile Phones were used by both of them and despite knowing the fact that A1 is an absconding accused against whom NBW was issued and was pending, the petitioner used to have regular contact with her through phone as well as in person and used to discuss about the arranging shelter for absconding CPI (Maoist) Cadres in the State including mobilisation of funds for day-to-day functioning of the Organization and thereby, he indulged in further activities of CPI (Maoist) Organization in the State and based on the confession of A1 and A2 on their custodial interrogation, they have stated that the petitioner used to convey the information received from the High Command of their Organization at Delhi and other parts to them and vis versa and the SIM Cards used by A1 for contacting the petitioner exclusively was also seized from him at the time of arrest and the security of Call Date Record shows that the said accused has exclusively used this number to contact the petitioner / accused; that in the technical surveillance of the mobile No.7092755385 used by A1 to contact the petitioner / accused in his mobile No.9094221779 regularly and exclusively used for transfer of message between them and though there are many conversation between them, the transcription of one of such conversation, dated 20.07.2016 revealed many incriminating facts evidencing the pivotal role played by the petitioner / accused in furthering activities of the banned CPI (Maoist) Organization. In that conversation, A1 asked the petitioner / accused to arrange accommodation to an absconding active CPI (Maoist) Reena Joice Mary, for which, the petitioner replied that during his visit to Delhi, the top brass of the banned CPI (Maoist) Organization had instructed him to send Reena Joice Mary into the forest at Tri-junction for about six months to one year and on the very next day, Reena Joice Mary was arrested near Kancheepuram, when she was trying to leave the place to Madurai and the petitioner / accused had acted in support of the Maoist cadres by arranging shelter and services to the absconded CPI (Maoist) to flee away from the hands of justice and remain as absconding and the entire remand proceedings of the learned Principal District & Sessions Judge,



Karur, is legal and protected by law and there is no violation of Article 21 of the Constitution, as alleged by the petitioner / accused and hence, this Criminal Revision is liable to be dismissed, as devoid of merits.

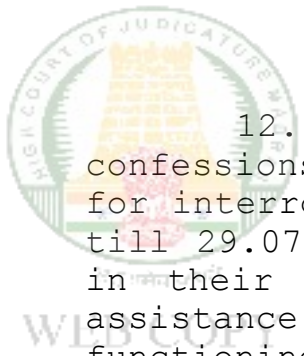
9. Perused the materials available on records. Heard and considered the rival submissions made by either side. The records produced by the petitioner and the case diary of this case produced by the respondent before this Court are also perused and considered.

10. Admittedly, CPI (Maois) Organization has been declared as Terrorist Organization and banned under the provisions of the the Unlawful Activities (Prevention) Act, 1967, as per the Gazette Notification in No.954, dated 22.06.2009. The petitioner herein is a practicing Advocate and also defending the cases in various Courts to the Members of the Organization. The petitioner has been arrayed as A5 in Crime No.1 of 2016 registered by the Inspector of Police, Q. Branch CID, Karur, against CPI (Maoist) accused Kala @ Janaki @ Bhanumathi and 2. Chandra, based on the special report and also arrest and confessions of A1 and A2 on 21.07.2016, during the investigation of the said case. The petitioner was arrested on 08.01.2017, after conducting a search of his house on that date and incriminating materials and material objects were seized and he was produced before the learned Principal District & Sessions Judge, Karur for remand on the same date and the petitioner was also remanded to judicial custody on 08.01.2017 and he is still in custody. The petitioner was produced along with remand report filed under Sections 43(B)(2) of the Unlawful Activities (Prevention) Act, 1967 r/w 167(2) IPC., submitted by the respondent on 08.02.2017 before the learned Principal District & Sessions Judge, Karur, who is the competent authority to remand and also passed an order of remand on 08.01.2017, after hearing the petitioner, as follows:

"Accused produced. No complaints against Police. Perused the remand report and other records. Remanded till 06.02.2017"

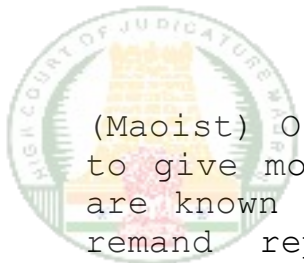
The above said order of remand passed on 08.01.2017 is under challenge in this Criminal Revision Case.

11. The main contention of the petitioner in this revision is that there is no prima facie case made out to remand the petitioner / accused to the judicial custody warranting detention and the learned Judge failed to comply with the dictum laid down by the Hon'ble Apex Court in D.K.Basu's case and hence, the remand and detention are illegal and also the same is against Articles 21 and 22 of the Constitution of India.



12. The petitioner is implicated in this case as per the confessions made by A1 and A2, who were taken under police custody for interrogation for the period from 26.07.2016 at 12.30 p.m., to till 29.07.2016 at 12.30 p.m., for 3 days. A1 and A2 had stated in their confessions that the petitioner used to render all assistance including mobilisation of funds for day-to-day functioning of the organization and the petitioner used to convey the information received from the high command of their organization and A1 used to contact the petitioner / accused in his Mobile No.9094221779 from his Mobile No.7092755385 and the said mobile number was used exclusively for the purpose of exchanging messages between them. It is further revealed that the petitioner / accused has also actively guided cadres at urban and also mobilizing the funds and also catering the needs of the cadres in cities and also participating in committee meetings and act according to the direction of the central committee. One witness viz., Pandi Selvam @ Taylor Pandi, who was one of the earlier member of the said CPI (Maoist) Organization, was examined during investigation and his statement was also recorded which reveals the fact that several CPI (Maoist) cadres including A1 and A2 used to meet and stay in the office of the petitioner / accused, who is having the office in the same area and he has been clandestinely doing several activities related to CPI (Maoist) Organization and he is having close link with the party high command and he is also mobilizing funds for facilitating the urban activities and for recruitment of new cadres to the said organization. The SIM Cards seized from A1 have been found that he obtained these SIM cards fraudulently in various names by forging KYC documents and concealing the original identification. The CDR details pertaining to the Mobile No. 9094221779, which is said to be used for contacting A1, were received from the Nodal Officer, Air Cellular Limited, which reveals that the said SIM Card number was obtained in the name of Divaseelan in the address No.83/18, Velavan Nagar, Chennai and almost all the calls made / received / from by this number are to the mobile No.7092755385, which was seized from the possession of A1 at the time of his arrest and also revealed that after 21.07.2016, no out going and incoming calls have been found from this number and hence, it reveals that after the arrest of A1, the Mobile No.9094221779 has not been used by the petitioner / accused.

13. The another witness viz., Vennila wife of Mahalingam @ Nondi Mahalingam @ Nondi Palani was examined during investigation she has given a statement about the role of the petitioner herein. She has stated that the petitioner / accused arranged bail for her husband and her husband came out of bail; he is not willing to participate in any activities related to the banned CPI (Maoist) Organization and due to the pressure given by the petitioner / accused, her husband went on absconding and the petitioner / accused came to her house and informed that her husband had again gone to the forest to involve actively in the activities of CPI



(Maoist) Organization and he will take of her husband and he used to give money for her monthly expenses for some time. The facts are known to the Court only after perusal of the case diary. The remand report submitted by the respondent at the time of production of the petitioner for remand also contains such facts.

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14. This Court also finds that there are certain materials prima facie available at the time of arresting and remanding the petitioner establishing culpable role of the petitioner in supporting the banned CPI (Maoist) Organization, including mobilisation of funds from the collected evidence. The petitioner has categorically admitted in the grounds of Revision that the Lawyers were also present at the time of remanding the petitioner to judicial custody. The impugned order of remand explicitly reveals the fact that the petitioner was heard and remanded. On perusal of the remand report and also records, the petitioner has also not asked the concerned Judge for filing return objection against the order of remand at the time of remand. Arrest of the petitioner was also made in terms of D.K.Basu's case, as rightly, contended by the prosecution. The arrest memo was also signed by the petitioner / accused herein and was intimated to the wife of the petitioner herein, who was also put the signature in the arrest memo. There is no violation in arresting and remanding the petitioner on 08.01.2017. The decisions referred by the petitioner will not help him at the stage of remanding the petitioner, since the investigation is pending on initial stage against the petitioner herein and the remand was made only on perusal of the case put forward by the respondent herein in the remand report and also the connected records. Now, the investigation has been completed and final report was also filed and taken on file and pending as S.C.No.8 of 2017, on the file of the learned Principal District & Sessions Judge, Karur.

15. Considering the above facts and circumstances of the case, this Court does not find any errors in passing the impugned order of remand, remanding the petitioner / accused to judicial custody by the learned Principal District & Sessions Judge, Karur, on 08.01.2017. Hence, this Court is not inclined to interfere with passing of the impugned remand order, dated 08.01.2017 for the reasons stated in this Revision.

16. In the result, this Criminal Revision Case stands dismissed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/



To

1.The Principal District & Sessions Judge,
Karur.

2.The Deputy Superintendent of Police,
'Q' Branch CID,
Chennai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper,
Criminal Record Section
Madurai Bench of Madras High Court.

+1CC to Mr.A.Jeya Ramachandran, Advocate, SR.No. 93951

Cr1.RC(MD)No.95 of 2017

Dated:-

20.12.2017

MPK

AM/KKR/SAR 3/02.01.2018/8P/6C