

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.01.2019	Delivered on 24.01.2019
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CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.31999 of 2018

I.Tamilmaran @ Regan

...Petitioner

.Vs.

The Inspector of Police,
Hosur Town Police Station,
Hosur,
Krishnagiri District.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Certiorarified Mandamus to call for the records of the proceedings of the respondent in Na.Ka.No.321/Hosur PS/FC/2018, dated 24.11.2018 and to quash the same, consequently direct the respondent to permit the petitioner to conduct a Blood Donation Camp in a future date to mark the birth anniversary of LTTE leader Velupillai Prabhakaran.

For Petitioner : Mr.P.Sesubalan Raja
Mr.T.Raj Kumar

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This writ petition has been filed challenging the order passed by the respondent, denying permission to the petitioner to conduct a Blood Donation Camp to mark the birth anniversary of LTTE leader Velupillai Prabhakaran.

2. The petitioner is the District Secretary of a political party. This party wanted to celebrate the Birth anniversary of Mr.Prabhakaran, by conducting Public Meetings and by organizing Blood Donation Camp. The petitioner made an application on 12.11.2018, requesting the respondent to grant permission to conduct the Blood Donation Camp. The said application was rejected by the respondent by means of the impugned order dated 24.11.2018. Aggrieved by the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the respondent Police has rejected the permission primarily on the ground that Section 30(2) of the Police Act [Police Act - hereinafter referred as "the Act"] is in force and the camp is conducted in the name of Prabhakaran who was the leader of LTTE, which is a banned organization. The learned counsel submitted that Section 30 of the Act is merely regulatory in nature, and the same cannot be used to make a blanket ban of all meetings and to conduct Blood Donation Camps. The learned counsel further submitted that merely supporting or propagating a banned organization is not an unlawful Act, and therefore, that cannot be stated as a ground for the rejection of the permission, by the respondent Police.

4. The learned counsel for the petitioner in order to substantiate his submissions relied upon the following judgments:

- i) Sou.Sundaramoorthi .Vs. The Commissioner of Police & Others reported in CDJ 2011 MHC 2238.
- ii) S.Rangarajan .Vs. P.Jagajivan Ram and Others reported in (1989) 2 SCC 574.
- iii) Arup Bhuyan .Vs. State of Assam reported in (2011) 3 SCC 377.
- iv) Pugazendhi Thangaraj .Vs. The Commissioner of Police, Chennai City Police, Chennai & Another reported in CDJ 2011 MHC 1549.

5. The learned Additional Public Prosecutor representing the respondent Police submitted that the respondent has given sufficient reasons for denying permission to conduct the Blood Donation Camp. The learned counsel would further submit that admittedly LTTE is a banned organization under the Unlawful Activities (Prevention) Act, 1967, [Unlawful Activities (Prevention) Act, 1967 - hereinafter referred as "the Act"]. Therefore permitting any person to conduct any Meeting or Camp in the name of a banned organization will amount to giving support to a terrorist organization. The learned counsel submitted that once an organization is banned and it is declared as unlawful, the consequences automatically follows under the Act. The learned counsel specifically relied upon Section 39 of the Act, which deals with offences relating to support given to a terrorist organization.

6. In reply to the submissions made by the learned Additional Public Prosecutor, the learned counsel for the petitioner submitted that merely conducting a Blood Donation Camp during the birth anniversary of Prabhakaran, who was a LTTE leader, will not attract the provisions of Section 39 of the Act. The learned counsel submitted that the very provision itself states the various activities which will attract the commission of the offence and the Blood Donation Camp planned to be conducted by the petitioner by no stretch will amount to an

offence under Section 39 of the Act.

7. The learned counsel for the petitioner in order to substantiate his submission also brought to the notice of this Court, Section 21 of the Prevention of Terrorism Act, 2002 [POTA] which is in pari materia with Section 39 of the Act. The learned counsel brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in Peoples Union for Civil Liberties & Another .Vs. Union of India reported in CDJ 2004 SC 213, where the Hon'ble Supreme Court had an occasion to deal with Section 21 of the Prevention of Terrorism Act, 2002 [POTA].

8. This Court has carefully considered the submissions made on either side. The only point for consideration is whether conducting a Blood Donation Camp to mark the Birth anniversary of LTTE leader Prabhakaran, will amount to contravening the provisions of the Act.

9. It will be useful to rely upon the judgments cited by the learned counsel for the petitioner.

(i) S.Rangarajan .Vs. P.Jagajivan Ram and Others reported in (1989) 2 SCC 574. The relevant portions of the judgment is extracted hereunder:

40. The State cannot prevent open discussion and open expression, however hateful to its policies. As Professor Freund puts it: "The State may not punish open talk, however hateful, not for the hypocritical reason that Hyde Parks are a safety valve, but because a bit of sense may be salvaged from the odious by minds striving to be rational, and this precious bit will enter into the amalgam which we forge."

41. "When men differ in opinion, both sides ought equally to have the advantage of being heard by the public." (Benjamin Franklin). If one is allowed to say that policy of the Government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponent not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue.

42. Alexander Meiklejohn perhaps the foremost American philosopher of freedom of expression, in his wise little study neatly explains:

"When men govern themselves, it is they – and no one else – who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones unfair as well as fair, dangerous as well as safe, unAmerican as well... American. ... If then, on any occasion in the United States it is allowable, in that situation, to say that the Constitution is a good document it is equally allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. If it may be said that American political institutions are superior to those of England or Russia or Germany, it may with equal freedom, be said that those of England or Russia or Germany are superior to ours. These conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant.... To be afraid of ideas, any idea, is to be unfit for self-Government." [Political Freedom (1960) at 27].

He argued, if we may say so correctly, that the guarantees of freedom of speech and of the press are measures adopted by the people as the ultimate rulers in order to retain control over the Government, the people's legislative and executive agents.

43. Brandies, J., in *Whitney v. California* [274 US 357, 375-78 (1927) : 71 L Ed 1045] propounded probably the most attractive free speech theory:

"... that the greatest menace to freedom is an inert people; that public discussion is a political duty;. .. It is hazardous to discourage thought, hope and imagination; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."

44. What Archibald Cox said in his article though on "First Amendment" is equally relevant here:

"Some propositions seem true or false beyond rational debate. Some false and harmful, political and religious doctrine gain wide public acceptance. Adolf Hitler's brutal theory of a 'master race' is sufficient example. We tolerate such foolish and sometimes dangerous appeals not because they may prove true but because freedom of speech is indivisible. The liberty cannot be denied to some ideas and saved for others. The reason is plain enough: no man, no committee, and surely no Government, has the infinite wisdom and disinterestedness accurately and unselfishly to separate what is true from what is debatable, and both from what is false. To license one to impose his truth upon dissenters is to give the same licence to all others who have, but fear to lose, power. The judgment that the risks of suppression are greater than the harm done by bad ideas rests upon faith in the ultimate good sense and decency of free people".

45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

46. Our remarkable faith in the freedom of speech and expression could be seen even from decisions earlier to our Constitution. In *Kamal Krishna Sircar v. Emperor* [AIR 1935 Cal 636 : 36 Cri LJ 1370] , the Calcutta High Court considered the effects of a speech advocating a change of Government. There the accused was convicted under Section 124-A of Penal Code for making a speech recommending "Bolshevik" form of Government to replace the then existing form of Government in Calcutta. While setting aside the conviction and acquitting the accused. Lord Williams, J., who delivered the judgment observed: (AIR p. 637)

"... All that the speaker did was to encourage the youngmen, whom he was addressing, to join the Bengal Youth League and to carry on a propaganda for the purpose of inducing as large a number of people in India as possible to become supporters of the idea of communism as represented by the present Bolshevik system in Russia.

It is really absurd to say that speeches of this kind amount to sedition. If such were the case, then every argument against the present form of Government and in favour of some other form of Government might be alleged to lead to hatred of the Government, and it might be suggested that such ideas brought the Government into contempt. To suggest some other form of Government is not necessarily to bring the present Government into hatred or contempt."

47. To the same effect is the observation by the Bombay High Court in *Manohar Damodar Patil v. Government of Bombay*. [AIR 1950 Bom 210 : 51 Cri LJ 829 : 52 Bom LR 275] . There the writer of an article in a newspaper was convicted for an offence under the Press (Emergency Powers) Act, 1931, for incitement to violence. The writer had suggested the people to follow the example of China by rising against Anglo-American Imperialism and their agents. He had also suggested his readers to pursue the path of violence, as the Chinese people did in order that Anglo-American Imperialism should be driven out of this country. Chagla, C.J.,

while quashing the conviction said: (AIR p. 213)

"It is true that the article does state that the working class and the toiling masses can get hold of power through the path of revolution alone. But the expression 'revolution' is used here, as is clear from the context, in contradistinction to reformism or gradual evolution. The revolution preached is not necessarily a violent revolution.... As the writer has not stated in this article that the toiling masses should take up arms and fight for their rights and thus achieve a revolution we refuse to read this expression as inciting the masses to violent methods."

48. In Niharendu Dutt Majumdar v. Emperor [AIR 1942 FC 22 : 43 Cri LJ 504 : 46 CWN 9] the Federal Court examined the effects of a vulgar and abusive outburst against the Government made by the accused for which he was convicted under Rule 34 of the Defence of India Rules. Gwyer, C.J., while acquitting the person commented more boldly: (AIR p. 27)

"There is an English saying that hard words break no bones; and the wisdom of the common law has long refused to regard as actionable any words which, though strictly and liberally defamatory, would be regarded by all reasonable men as no more than mere vulgar abuse."

* * *

The speech now before us is full of them.... But we cannot regard the speech, taken as a whole as inciting those who heard it, even though they cried 'shame shame' at intervals, to attempt by violence or by public disorder to subvert the Government for the time being established by law in Bengal or elsewhere in India. That the appellant expressed his opinion about that system of Government is true, but he was entitled to do so; and his reference to it were, we might almost say, both commonplace and in common form, and unlikely to cause any Government in India a moment's uneasiness. His more violent outbursts were directed against the then Ministry in Bengal and against the Governor in Bengal in his political capacity but we do not

feel able to say that his speech whatever may be thought of the form in which it was expressed, exceeded the legal limits of comment or criticism."

49. Even the European Court's approach in protecting the freedom of expression is not different although they have the extensive list of circumstances for limiting the freedom. Article 10 of the European Convention of Human Rights and Fundamental Freedom provides:

(1) Everyone has the right to freedom of expression.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

It appears that the second paragraph of Article 10 virtually removes the right purportedly guaranteed by the first paragraph. However, the European Court in *Handyside v. United Kingdom* [1976 EHRR 737] observed: (EHRR p. 754)

"The court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter to indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no

'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued."

ii) Arup Bhuyan .Vs. State of Assam reported in (2011) 3 SCC 377. The relevant portions of the judgment is extracted here under:

" 8. For the reasons stated above, we are in agreement with the impugned judgment so far as it has taken the view that the confessional statement in question cannot be acted upon as the sole basis for conviction of the appellant. However, the TADA Court has convicted the appellant under Section 3(5) of the TADA which makes mere membership of a banned organisation criminal. Although the appellant has denied that he was a member of ULFA, which is a banned organisation. Even assuming he was a member of ULFA it has not been proved that he was an active member and not a mere passive member.

9. In State of Kerala Vs. Raneef, we have respectfully agreed with the U.S. Supreme Court decision in Elfbrandt Vs. Russell, which has rejected the doctrine of 'guilt by association'. Mere membership of a banned organisation will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence (See : also the Constitution Bench judgment of this Court in Kedar Nath Vs. State of Bihar, AIR 1962 SCC 955 para 26).

10. In Brandenburg Vs. Ohio, the U.S. Supreme Court went further and held that mere "advocacy or teaching the duty, necessity, or propriety" of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal

syndicalism, or to voluntarily assemble with a group formed "to teach or advocate the doctrines of criminal syndicalism" is not per se illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First and Fourteenth Amendments to the U.S. Constitution.

11. In United States Vs. Robel, the U.S. Supreme Court held that a member of a communist organisation could not be regarded as doing an unlawful act by merely obtaining employment in a defence facility.

12. We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution. In our opinion, Section 3 (5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. Hence, the conviction of the appellant under Section 3(5) of TADA is also not sustainable.

iii) Pugazendhi Thangaraj .Vs. The Commissioner of Police, Chennai City Police, Chennai & Another reported in CDJ 2011 MHC 1549. The relevant portions of the judgment is extracted hereunder:

1. The short question that arises for consideration in the present writ petition is whether the order of the respondent Commissioner of Police, Chennai City in denying the request made by the petitioner for conducting a "signature campaign" with reference to an appeal to the Government of India to remove the ban on "Liberation Tigers of Tamil Eelam" (LTTE) in a public place, by the exercise of his power under Section 41 of the Chennai City Police Act is justified?

2. The petitioner is a freelance journalist and a film director. He had started an organization called "Karuthurimaikkalam", a forum for right of expression in the year 2008. According to the petitioner, "Liberation Tigers of Tamil Eelam" (for short LTTE) was prohibited under the Unlawful Activities (Prevention) Act, 1967 (for short UAPA). The petitioner finds the said ban was repugnant to democracy and wanted to send a joint representation to the Governor of Tamil Nadu expressing the opinion of general public. Therefore, in order to mobilise opinion of the public on the said issue, he organized a signature campaign on 19.10.2010 from 4.00 p.m. to 7.00 p.m. By the said campaign, an appeal will be made to the people who are passers by to express their opinion by signing a joint memorandum. The venue was fixed near Panagal Maligai at Saidapet.

3. The petitioner gave a representation on 15.10.2010 seeking permission to conduct the campaign. However, by the impugned order, the petitioner's request was denied mainly on two reasons. The first was that under Section 41, an application will have to be made before five days of the programme for which permission was sought for. Since the petitioner's request was made only four days before, the application was not in order. Not stopping with that, the respondents had also stated that any meeting, demonstration or signature campaign in support of the banned organization is an offence under law. Therefore, permission was refused. Challenging the said order, the present writ petition came to be filed.

6. Mr.S.Doraisamy, learned counsel appearing for the petitioner submitted that the impugned order passed by the respondent police was illegal and violative of Articles 14, 19(1)(a), 19(1)(c) and 21 of the Constitution of India. The programme organized by the petitioner is only to make a joint appeal to the Governor and that the denial order stultify the democracy. The signature campaign was intended to reflect the voice of

public at large and by no stretch of imagination, by the signature campaign any disturbance to the public peace will arise. The impugned order is also contrary to various judgments of this court.

7. Reference was made to a judgment of this court in P.Nedumaran Vs. State of Tamil Nadu and others reported in 1999 (1) LW (Cr1.) 7 and also a division bench judgment of this court in C.J.Rajan Vs. Deputy Superintendent of Police reported in (2008) 3 MLJ 926. He also referred to a division bench judgment of this court made in H.C.P.No.260 of 2009, dated 17.04.2009 in S.James Peter Vs. The Government of Tamil Nadu, The Secretary to Government, Public (Law and Order-F) Department and another, wherein it was held that a mere support or participation in public meeting by itself will not attract the provisions of Unlawful Activities (Prevention) Act, 1967 (for short UAPA Act). He referred to the following passages found in paragraphs 29 and 30, which reads as follows:

29....Therefore, if there is any consequential unlawful activity in pursuance of the speech delivered by the detenu, the provisions of Section 13(1)(b) and 13(2) are attracted.

30.....Further, it is not at all the case of the respondents that except delivering the alleged speech, the detenu, has in any manner acted in a manner prejudicial to the sovereignty of the country. In the absence of any proof that any such law and order problem has arisen pursuant to the speech delivered by the detenu and in the absence of any material to show that the detenu has taken part in any unlawful activities or committed any unlawful activity, so as to fall within the ambit of Section 13(1)(a) of the Unlawful Activities (Prevention) Act, 1967 and further in the absence of any material to show that the detenu has assisted any unlawful association, so as to say that he has committed the offence under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967, the ingredients of Section 13(1)(a) and 13(2) are not attracted."

8. Per contra, Mr.M.Dhandapani, learned Special Government Pleader referred to the counter affidavit, dated 10.1.2011 filed by the second respondent, wherein a reference was made to Section 13(2) of the UAP Act. He further contended that any assistance to unlawful activities of the association is an offence under the Act. Taking signature in support of the banned organization will also amount to an offence. It is a reasonable restriction imposed on the petitioner. Hence the question of any violation of fundamental right of the petitioner will not arise. It is also stated that restriction imposed is lawful.

9. In view of the above, two questions arises in the present case. One was that the petitioner being an Indian Citizen whether the right guaranteed by Part III will enure to his benefit. Secondly, whether he is entitled to express his opinion is governed by the provisions of the Constitution? If that is so, whether in exercise of power under the Madras City Police Act, the respondents can prohibit the campaign organized by the petitioner?

12. On the question of support to a banned organization, the Supreme Court very recently in State of Kerala Vs. Raneef reported in (2011) 1 SCC 784 referred to several judgments of the US Supreme Court with approval. In paragraphs 11 to 14, it was stated as follows:

"11. In *Scales v. United States*³, 367 U.S. 203, Harlan, J. of the US Supreme Court while dealing with the membership clause in the McCarran Act, 1950 distinguished between active knowing membership and passive, merely nominal membership in a subversive organisation, and observed:

The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the defendant specifically intends to

accomplish the aims of the organization by resort to violence.

12. In *Elfbrandt v. Russell*⁴, 384 US 17-19 (1966), Douglas, J. of the US Supreme Court speaking for the majority observed: (L Ed pp. 325-26) Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. A law which applies to membership without the specific intent to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of guilt by association which has no place here.

13. In *Joint Anti-Fascist Refugee Committee v. McGrath*⁵, 341 US 123 at 174 (1951) Mr. Douglas, J. of the US Supreme Court observed: (L Ed p.855) In days of great tension when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within.

14. We respectfully agree with the above decisions of the US Supreme Court, and are of the opinion that they apply in our country too. We are living in a democracy, and the above observations apply to all democracies."

13. Subsequently, the Supreme Court in *Arup Bhuyan Vs. State of Assam* reported in 2011 (2) Scale 210, once again referred to several other US Supreme Court judgments and quoted with approval in interpreting Section 3 (5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The following passages found in paragraphs 13 to 16 may be usefully extracted below:

"13. In *Clarence Brandenburg Vs. State of Ohio*, 395 U.S. 444 (1969) the U.S. Supreme Court went further and held that mere "advocacy or teaching the duty, necessity, or propriety" of violence as a means of accomplishing political or industrial reform,

or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed "to teach or advocate the doctrines of criminal syndicalism" is not per se illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First and Fourteenth Amendments to the U.S. Constitution.

14. In United States Vs. Eugene Frank Robel, 389 U.S. 258, the U.S. Supreme Court held that a member of a communist organisation could not be regarded as doing an unlawful act by merely obtaining employment in a defence facility.

15. We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution.

16. In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence."

14. Once again the Supreme Court in Sri Indra Das Vs. State of Assam reported in 2011 (2) Supreme 67 quoted with approval the case of Arup Bhuyan's case (cited supra) and made a further reference to certain other decisions of the Us Supreme Court. The following passages found in paragraphs 13 to 18 and 20 to 26 may be usefully extracted below:

13. In Noto vs. U.S. 367 US 290 (297-298) Mr. Justice Harlan of the U.S. Supreme Court observed :

".....The mere teaching of Communist theory, including the teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action. There must be some substantial direct or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend colour to the otherwise ambiguous theoretical material regarding Communist Party teaching."

14. In Noto's case (supra) Mr. Justice Hugo Black in a concurring judgment wrote :

"In 1799, the English Parliament passed a law outlawing certain named societies on the ground that they were engaged in 'a traitorous Conspiracy in conjunction with the Persons from Time to Time exercising the Powers of Government in France'. One of the many strong arguments made by those who opposed the enactment of this law was stated by a member of that body, Mr. Tierney :

'The remedy proposed goes to the putting an end to all these societies together. I object to the system, of which this is only a branch; for the Right Hon. gentleman has told us he intends to propose laws from time to time upon this subject, as cases may arise to require them. I say these attempts lead to consequences of the most horrible kind. I see that government are acting thus. Those whom they cannot prove to be guilty, they will punish for their suspicion. To support this system, we must have a swarm of spies and informers. They are the very pillars of such a system of government.' The decision in this case, in my judgment, dramatically illustrates the continuing vitality of this observation. The conviction of the petitioner here is being reversed because the Government has failed to produce evidence the Court believes sufficient to prove that the Communist Party presently advocates the overthrow of the Government by force." (emphasis supplied)

15. In Communist Party vs. Subversive Activities Control Board, 367 US 1 (1961) Mr. Justice Hugo Black in his dissenting judgment observed :

"The first banning of an association because it advocates hated ideas - whether that association be called a political party or not -- marks a fateful moment in the history of a free country. That moment seems to have arrived for this country..... This whole Act, with its pains and penalties, embarks this country, for the first time, on the dangerous adventure of outlawing groups that preach doctrines nearly all Americans detest. When the practice of outlawing parties and various public groups begins, no one can say where it will end. In most countries such a practice once begun ends with a one party government."

16. In Joint Anti-Fascist Refugee Committee vs. McGrath, 341 US 123, 174 (1951) Mr. Justice Douglas in his concurring judgment observed :

"In days of great tension when feelings run high, it is a temptation to take short cuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within." (emphasis supplied)

17. In Keyishian vs. Board of Regents of the University of the State of New York, 385 US 589, 606 (1967) the U.S. Supreme Court struck down a law which authorized the board of regents to prepare a list of subversive organizations and to deny jobs to teachers belonging to those organizations. The law made membership in the Communist Party prima facie evidence for disqualification from employment. Mr. Justice Brennan, speaking for the Court held that the law was too sweeping, penalizing "mere knowing membership without a specific intent to further the unlawful aims."

18. In Yates vs. U.S., 354 US 298 (1957), Mr. Justice Harlan of the U.S. Supreme Court

observed :

"In failing to distinguish between advocacy of forcible overthrow as an abstract doctrine and advocacy of action to that end, the District Court appears to have been led astray by the holding in Dennis that advocacy of violent action to be taken at some future time was enough. The District Court apparently thought that Dennis obliterated the traditional dividing line between advocacy of abstract doctrine and advocacy of action."

20. In *Whitney vs. California* (supra) Mr. Justice Brandeis, the celebrated Judge of the U.S. Supreme Court in his concurring judgment (which really reads like a dissent) observed :

"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of free speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent... .. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind." (emphasis supplied)

21. Mr. Justice Brandeis in the same judgment went on to observe :

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence."

22. In *Gitlow vs. New York*, 268 US 652 (1925) Mr. Justice Holmes of the U.S. Supreme Court (with whom Justice Brandeis joined) in his dissenting judgment observed :

....."If what I think the correct test is applied, it is manifest that there was no present danger of an attempt to overthrow the government by force on the part of the admittedly small minority who shared the defendant's views. It is said that this Manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

If the publication of this document had been laid as an attempt to induce an uprising against government at once, and not at some indefinite time in the future, it would have presented a different question. The object would have been one with which the law might deal, subject to the doubt whether there was any danger that the publication could produce any result; or, in other words, whether it was not futile and too remote from possible consequences. But the indictment alleges the publication and nothing more."

23. In *Terminiello vs. Chicago*, 337 US 1 (1949) Mr. Justice Douglas of the U.S. Supreme Court speaking

for the majority observed

"....[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute,...is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest....There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups."

24. In *DeJonge vs. Oregon*, 299 US 353 (1937) Chief Justice Hughes of the U.S. Supreme Court wrote that the State could not punish a person making a lawful speech simply because the speech was sponsored by a subversive organization.

25. In *Abrams vs. U.S.*, 250 US 616 (1919) Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment wrote :

"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to

believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas, -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the government that the 1st Amendment left the common law as to seditious libel in force. History seems to me against the notion."

(emphasis supplied)

26. It has been submitted by the learned counsel for the Government before the TADA Court that under many laws mere membership of an organization is illegal e.g. Section 3(5) of Terrorists and Disruptive Activities, 1989, Section 10 of the Unlawful Activities (Prevention) Act 1967, etc. In our opinion these statutory provisions cannot be read in isolation, but have to be read in consonance with the Fundamental Rights guaranteed by our Constitution."

15. After agreeing with all those opinions of the US Supreme Court in Sri Indra Das case (cited supra), the Supreme Court held that the constitution being Supreme no statute can be violated. In paragraphs 27 to 31 it was observed as follows:

"27. The Constitution is the highest law of the land and no statute can violate it. If there is a statute which appears to violate it we

can either declare it unconstitutional or we can read it down to make it constitutional. The first attempt of the Court should be try to sustain the validity of the statute by reading it down. This aspect has been discussed in great detail by this Court in Government of Andhra Pradesh vs. P. Laxmi Devi 2008(4) SCC 720.

28. In this connection, we may refer to the Constitution Bench decision in Kedar Nath Singh vs. State of Bihar AIR 1962 SC 955 where the Supreme Court was dealing with the challenge made to the Constitutional validity of Section 124A IPC (the law against sedition).

29. In Kedar Nath Singh's case this Court observed(vide para 26):

....."If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.".....

30. Section 124A which was enacted in 1870 was subsequently amended on several occasions. This Court observed in Kedar Nath's case (supra) observed that now that we have a Constitution having Fundamental Rights all statutory provisions including Section 124A IPC have to be read in a manner so as to make them in conformity with the Fundamental Rights. Although according to the literal rule of interpretation we have to go by the plain

and simple language of a provision while construing it, we may have to depart from the plain meaning if such plain meaning makes the provision unconstitutional.

31. Similarly, we are of the opinion that the provisions in various statutes i.e. 3 (5) of TADA or Section 10 of the Unlawful Activities (Prevention) which on their plain language make mere membership of a banned organization criminal have to be read down and we have to depart from the literal rule of interpretation in such cases, otherwise these provisions will become unconstitutional as violative of Articles 19 and 21 of the Constitution. It is true that ordinarily we should follow the literal rule of interpretation while construing a statutory provision, but if the literal interpretation makes the provision unconstitutional we can depart from it so that the provision becomes constitutional."

16. As seen from the above, the Supreme Court also dealt with Section 10 of the Unlawful Activities (Prevention) Act and held that mere support to a banned organization will not by itself can become an offence.

17. In the present case, the petitioner had expressed his intention very clear. He wants to send a petition to the Governor of Tamil Nadu. For this purpose, he wants signatures from public collected from a public place. The entire exercise was to express to the Government of India through the office of the Governor of Tamil Nadu that the people in the State are opposing the ban order imposed by the Government of India under the UAP Act. It is not clear as to how the said activity can be either illegal or unlawful, especially in the context of the constitution guarantee given to the citizens of India. In the counter affidavit, the stand taken by the respondents did not justify the impugned order.

10. From the above judgments, it is clear that in a democracy, it is not necessary that every one should sing the same song. The democratic form of Government itself demands its citizens an active and intelligent participation in the affairs of the community. The State cannot prevent upon discussion and upon expression, however hateful to its policies. The expression of thought should be intrinsically dangerous to the

public interest.

11. The Hon'ble Supreme Court has gone to the extent of saying that a mere membership in a banned organization will not make a person a criminal, unless he resorts to violence or incites people to violence or does an act intended to create disorder or incitement to violence.

12. This Court also considered a very similar case in *Pugazendhi Thangaraj*, referred supra, and after considering the entire law on the point, categorically held that mere support to a banned organization will not by itself become an offence. This Court further held that mere signature campaign in support of LTTE will not amount to an illegal or unlawful activity. This Court is in complete agreement with the said judgment and the same will also apply to the facts of the present case.

13. Insofar as the point raised by the learned Additional Public Prosecutor with regard to Section 39 of the Unlawful Activities Prevention Act, 1967, the provision is extracted hereunder for a better understanding.

"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 organisation, 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 organisation, or

(ii) to further the activity of the terrorist organisation, 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.

14. It is clear from the above provision that there must be an overt act falling within the requirements of the said provision, in order to constitute an offence under the said provision. Conducting a Blood Donation Camp to mark the Birth Anniversary of Prabhakaran who was the leader of the LTTE, will not amount to promoting or advancing the activity of the terrorist organisation. At the best it can only amount to expressing a support to a banned organization, which has already been held to be not an offence by this Court.

15. At this juncture it will also be useful to rely upon the judgment of the Hon'ble Supreme Court in People's Union for Civil Liberties & Another .Vs. Union of India reported in CDJ 2004 SC 213 wherein, the Hon'ble Supreme Court dealt with Section 21 of the [POTA], which is in pari materia with Section 39 of the Act. The relevant portions of the judgment are extracted hereunder:

47. Petitioners assailed Section 20, 21 and 22 mainly on the ground that no requirement of mens rea for offences is provided in these Sections and the same is liable to misuse therefore it has to be declared unconstitutional. The Learned Attorney General argued that Section 21 and its various sub-sections are penal provisions and should be strictly construed both in their interpretation and application; that on a true interpretation of the Act having regard to the well settled principles of interpretation Section 21 would not cover any expression or activity which does not have the element or consequence of furthering or encouraging terrorist activity or facilitating its commission; that support per se or mere expression of sympathy or arrangement of a meeting which is not intended or designed and which does not have the effect to further the activities of any terrorist organization or the commission of terrorist acts are not within the mischief of Section 21 and hence

is valid.

48. Here the only point to be considered is whether these Sections exclude mens rea element for constituting offences or not. At the outset it has to be noted that Sections 20, 21 and 22 of POTA is similar to that of Sections 11, 12 and 15 of the Terrorism Act, 2000 of United Kingdom. Such provisions are found to be quite necessary all over the world in anti-terrorism efforts. Sections 20, 21 and 22 are penal in nature that demand strict construction. These provisions are a departure from the ordinary law since the said law was found to be inadequate and not sufficiently effective to deal with the threat of terrorism. Moreover, the crime referred to herein under POTA is aggravated in nature. Hence special provisions are contemplated to combat the new threat of terrorism. Support either verbal or monetary, with a view to nurture terrorism and terrorist activities is causing new challenges. Therefore Parliament finds that such support to terrorist organizations or terrorist activities need to be made punishable. Viewing the legislation in its totality it cannot be said that these provisions are obnoxious.

49. But the Petitioners apprehension regarding the absence of mens rea in these Sections and the possibility of consequent misuse needs our elucidation. It is the cardinal principle of criminal jurisprudence that mens rea element is necessary to constitute a crime. It is the general rule that a penal statute presupposes mens rea element. It will be excluded only if the legislature expressly postulate otherwise. It is in this context that this Court said in Kartar Singh's case (supra) (at page 645 para 115 of SCC) that:

"Unless a statute either expressly or by necessary implication rules out 'mens rea' in case of this kind, the element of mens rea must be read into the provision of the statute."

50. Mens rea by necessary implication could be excluded from a statute only where it is absolutely clear that the implementation of the object of the Statute

would otherwise be defeated. Here we need to find out whether there are sufficient grounds for inferring that Parliament intended to exclude the general rule regarding mens rea element. (See: State of Maharashtra V. M H George, AIR 1965 SC 722, Nathulal V. State of MP, AIR 1966 SC 43, Inder Sain V. State of Punjab, (1973) 2 SCC 372, for the general principles concerning the exclusion or inclusion of mens rea element vis-à-vis a given statute). The prominent method of understanding the legislative intention, in a matter of this nature, is to see whether the substantive provisions of the Act requires mens rea element as a constituent ingredient for an offence. Offence under Section 3(1) of POTA will be constituted only if it is done with an -'intent'. If Parliament stipulates that the 'terrorist act' itself has to be committed with the criminal intention, can it be said that a person who 'profess' (as under Section 20) or 'invites support' or 'arranges, manages, or assist in arranging or managing a meeting' or 'addresses a meeting' (as under Section 21) has committed the offence if he does not have an intention or design to further the activities of any terrorist organization or the commission of terrorist acts? We are clear that it is not. Therefore, it is obvious that the offence under Section 20 or 21 or 22 needs positive inference that a person has acted with intent of furthering or encouraging terrorist activity or facilitating its commission. In other words, these Sections are limited only to those activities that have the intent of encouraging or furthering or promoting or facilitating the commission of terrorist activities. If these Sections are understood in this way, there cannot be any misuse. With this clarification we uphold the constitutional validity of Sections 20, 21 and 22. "

16. From the above judgment, it is clear that in order to attract an offence under Section 39 of the Act, any expression

or activity which does not have the element or consequence of furthering or encouraging terrorist activity or facilitating its commission, will not be covered. A support per se or a mere expression of sympathy or arrangement of a meeting which is not intended or designed and which does not have the effect to furthering the activities of any terrorist organization or the commission of terrorist acts, will not fall within the mischief of Section 39 of the Act.

17. In view of the above discussion, this Court is not in agreement with the submissions made by the learned Additional Public Prosecutor to the effect that conducting a Blood Donation Camp in the name of Prabhakaran, who was the leader of LTTE, will amount to an offence under Section 39 of the Act.

18. The impugned proceedings also states that in view of the Police order under Section 30 of the Act, being in force, no permission can be granted. This stand taken by the respondent Police in the impugned proceedings is also totally unsustainable. The said provision at the best is only regulatory in nature, and the same cannot be used to put a complete restriction to conduct public meetings and demonstrations. Useful reference can be made to the judgment of this Court in Jeevanandham and Others .Vs. State rep. by Inspector of Police and Another reported in 2018 (2) LW CrI 606.

19. The above discussion leads to the inevitable conclusion that the impugned proceedings passed by the respondent is illegal and opposed to law, and the same has to be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

20. In the result, the impugned proceedings of the respondent Police, dated 24.11.2018 is hereby quashed. The Respondent Police is directed to grant permission to the petitioner to conduct the Blood Donation Camp at any future date fixed by the petitioner. The petitioner shall make a fresh representation in this regard to the respondent by indicating the date, venue and time during which the Blood Donation Camp is going to be conducted. The petitioner shall also get a consent letter from the Health Officer of the Primary Health Centre, Hosur, and submit the same before the respondent Police. On receipt of the representation, the respondent Police shall permit the petitioner to conduct the Blood Donation Camp by imposing any reasonable condition in order to ensure that the event goes on peacefully without giving rise to any law and order problem, and the petitioner has to comply with the conditions.

Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

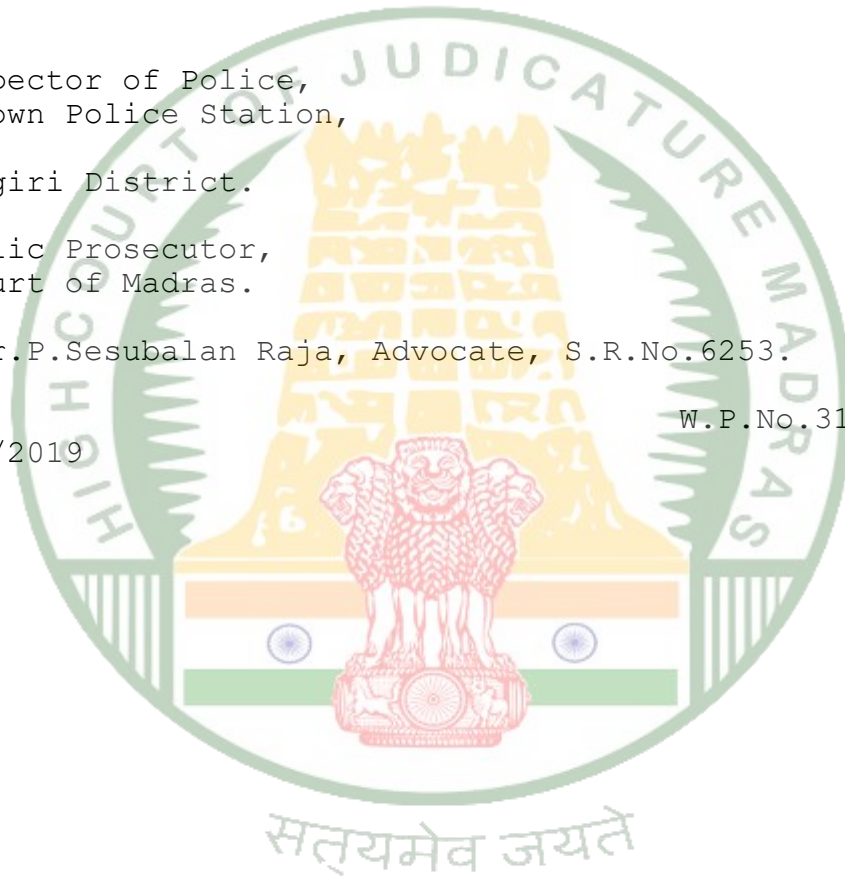
1.The Inspector of Police,
Hosur Town Police Station,
Hosur,
Krishnagiri District.

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.P.Sesubalan Raja, Advocate, S.R.No.6253.

W.P.No.31999 of 2018

rrs 08/02/2019



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