

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1163 of 2020
and Crl.M.P.No.8136 of 2020

Veeramani @ Eswar @ Sara
@ Sunilkumar

... Petitioner/Accused

Vs.

State Rep. by
Deputy Superintendent of Police
Gobichettipalayam Rural Sub-Division
Gobichettipalayam Police Station
(Crime No.363 of 2015)

... Respondent/Complainant

PRAYER : Criminal Revision filed u/s.397 r/w.401 Cr.P.C., to set aside the order in Crl.M.P.No.196 of 2017 in C.C.No.2 of 2016 on the file of Principal Sessions Judge, Erode.

For Petitioner : Mr.R.Sankara Subbu

For Respondent : Mr.R.Suryaprakash
Govt.Advocate(Criminal Side)

O R D E R

The respondent police registered the case in Crime No.363/2015 against the petitioner for the offence punishable under Sections 419, 447, 468, 471 and 420 IPC and sections 18, 18A, 18B, 20, 38(1), 39(1)(a)(i) and 40(1)(c) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA Act').

2. The respondent police, after investigation, laid the charge sheet before the Principal Sessions Judge, Erode and the learned Principal Sessions Judge, taken cognizance of the case in C.C.No.2 of 2016. After completing the formalities, the case came for framing of the charge. At that time, the petitioner filed the petition u/s.227 Cr.P.C., to discharge the petitioner from the said case in Crl.M.P.No.196 of 2017.

3. The learned Principal Sessions Judge, after enquiry, dismissed the said petition. Challenging the said order of the learned Principal Sessions Judge passed in Crl.M.P.No.196 of 2017 in C.C.No.2 of 2016, dated 13.08.2020, the petitioner has filed this Criminal Revision case.

4. (a) The learned counsel for the petitioner would submit that sanction accorded by the sanction authorities is bad in law and the mandatory provisions of Section 45 of UAPA Act has not been followed and after the recommendation, sanction order has to be passed within 7 days. Whereas in this case, charge sheet has not been filed for prosecution of the accused within 7 days. Therefore, it is clear violation of the statutory provisions.

(b) Further he would submit that purchase of SIM card has nothing to do with the day to day activities of the petitioner.

(c) the learned trial Judge failed to consider the fact that during the enquiry, the defacto complainant told the respondent police that the said mobile number does not belong to him and he has not purchased the said mobile number with his ration card. It is also the case submitted by the respondent police that the petitioner/accused collected the ration card belonging to the defacto complainant along with a sum of Rs.150/- from the defacto complainant's wife Sampal by stating that the same is necessary for obtaining loan for the said person two years back. He came to know that the said document was misused by the said person who had obtained the SIM Card by impersonating him. Hence, he gave a complaint to the respondent police. The respondent police examined 37 witnesses and seized 17 items under seizure mahazar and also obtained confession statements from the accused. The petitioner has no connection with the case in FIR.No.363/2015 registered by Kadathur Police Station. The present case has been filed by the prosecution in order to harass the petitioner for political vendetta. There is no material produced by the prosecution to show that the mobile number concerned is in the custody or the use of the petitioner herein. The final report does not disclose any of the ingredients or materials to charge a person under the UAPA Act. Even if the entire statements of the witnesses under Section 161(3) Cr.P.C., is taken into consideration, there is no materials to show that the petitioner is involved in the said offence. The documents and books seized from the petitioner are not banned by any legislation but are legally permitted and legitimate documents. The witnesses identified the accused only through photographs and they have not identified the petitioner and there was no identification parade and identified the accused and so it is not admissible in evidence and the sanction of the prosecution is not in accordance with law and the mandatory provisions of Section 45 of UAPA Act has not been followed. Therefore, the trial Judge failed to consider the fact and by non application of mind, the learned trial Judge, simply dismissed the petition filed u/s.227 Cr.P.C. All the above facts can be decided only after trial and not at this stage. He also placed reliance on the judgment of Honourable Supreme Court in the case of State of Gujarat Vs. Anwar Osman Sumbhaniya and others reported in (2020) 3 Supreme Court Cases (crl) 618. Further, he would

submit that in the case of Roopesh Vs. State of Kerala rep. by Public Prosecutor, High Court of Kerala, Ernakulam and 3 others [Crl.Rev.Petition. No.732 of 2019] arising out of Crime No.11 of 2014 of Valayam Police Station, Kozhikode, the High Court of Kerala held that the Sessions Judge had no jurisdiction to take cognizance of the offence u/s.124A of IPC without a valid sanction order under Section 196(1) of the Cr.P.C. Challenging the said order, the State of Kerala filed appeal before the Honourable Supreme Court. The Honourable Supreme Court while passing interim order, held that "We are told that discharge petitions on similar grounds and relying on the impugned judgment have been filed in several other matters. As the special leave petitions are pending before this court, the High Court/Trial Court would not proceed with the discharge petitions/application till the decision of these special leave petitions."

Therefore, until it is decided by the Honourable Supreme Court, this Revision Petition can be kept in abeyance till the disposal of the SLP.

5. (a) The learned Government Advocate (Criminal Side) would submit that the respondent police registered the case and investigated the matter and after completing investigation, after obtaining sanction of the prosecution, they laid charge sheet before the Sessions Judge, Erode. The Principal Sessions Judge, after completing formalities, applied his mind, taken cognizance of the case and posted the matter for framing of the charges. At this stage, the petitioner, in order to protract the trial proceedings, filed the petition u/s.227 of the Cr.P.c., for discharging him from the said case.

(b). The respondent filed counter and contested the matter after hearing the same, the learned Principal Sessions Judge, dismissed the same.

(c). The ground taken by the petitioner is not legally sustainable. Even otherwise it can be decided necessarily after trial and not at this stage. Prima facie, materials are available from the statement of witnesses and also the mandatory provisions of Section 45(2) of UAPA Act duly complied with and within 7 working days, the sanction was obtained and filed the charge sheet and there is no delay on the part of the prosecution and there is no violation of any of the provisions of the UAPA Act. The citations referred to by the learned counsel for the petitioner is not applicable to the facts of the present case. The trial Judge, after careful perusal of the entire materials, dismissed the petition and relied on the judgment of the Honourable Supreme Court in the case of Central Bureau of Investigation Vs. Ashok Kumar Aggarwal reported in (2014) 14 SCC 295 and therefore, there is no merit in the revision and the Revision is liable to be dismissed.

6. Heard and perused the records.

7. Admittedly, the case in Crime No.363 of 2015 was registered against the petitioner for the offence u/s.419, 447, 468, 471 and 420 IPC and Sections 18, 18A, 18B, 20, 38 (1), 39(1)(a)(i) and 40(1)(c) of the UAPA Act, 1967. The respondent police, after investigation, laid charge sheet before the Principal Sessions Judge, Erode. The Principal Sessions Judge, taken the charge sheet on file in C.C.No.2 of 2016. During the pendency of the case, the petitioner approached the Principal Sessions Judge, Erode, under Section 227 of Cr.P.C., to discharge the petitioner from the said case.

8. The learned Principal Sessions Judge, Erode, after hearing the case, dismissed the same. Challenging the same, the petitioner is before this court.

9. The learned counsel for the petitioner would put forth his arguments on two folds. One is sanction of prosecution is not in accordance with law and as per Section 45(2) of UAPA Act, within 7 days, it ought to have been filed, whereas, in this case, they have not complied with the said mandatory provisions. Therefore, the Principal Sessions Judge ought not to have taken the charge sheet on file, even otherwise ought to have discharged the petitioner by allowing the CrI.M.P. No.196 of 2017 filed by the petitioner to discharge him from the case.

10. Further he would submit that the SIM card and ration cards have nothing to do with the day to day activities of the petitioner and the person who identified the petitioner is not in person but only identified the photo, which is not admissible in evidence and therefore, in support of his contention, he relied on the judgment of the State of Gujarat Vs. Anwar Osman Sumbhaniya and others (2020) 3 SCC (CrI) 618.

11. As far as the validity of sanction of prosecution is concerned, as pointed out by the learned Sessions Judge and the decisions referred in the impugned order viz., in the case of CBI Vs. Ashok Kumar Aggarwal reported in (2014) 14 SCC 295, it can only be decided after the trial. In this case, admittedly, the prosecution obtained the sanction and the learned Government Advocate (Criminal Side) would submit that the sanction has been obtained within 7 working days and therefore, the question as to whether it is obtained within 7 working days is valid or not or any inordinate delay has been occurred can be decided only at the time of trial. Now, at this time, the prosecution has obtained the sanction for prosecution against the petitioner and since the obtaining of sanction is mandatory and once prosecution has also obtained it, the validity of the sanction of prosecution has to be decided only after trial. Therefore, the citation referred in the case of Roopesh Vs. State of Kerala, rep. by Public Prosecutor, High Court of Kerala, Ernakulam and others (CrI Rev Pet No.732/2019) is not applicable to the present

facts of the case. As rightly pointed out by the learned Principal Sessions Judge, in that case, for the offence under Section 124A of IPC, no sanction order was obtained and therefore, the petitioner/accused therein filed discharge application. Though the Sessions Judge dismissed the same the High Court of Kerala, allowed the Criminal Revision Petition and set aside the order against them. The State has preferred appeal before the Honourable Supreme Court and the Supreme Court admitted the SLP and passed the direction that all other cases regarding the matter has to be kept in abeyance till the disposal of the case. Whereas, in this case, a reading of the Sanction Order, would go to show that the Principal Secretary to Government, Home Department accorded sanction to the prosecution of the petitioner/accused for all the offences, therefore, the contention of the learned counsel for the petitioner is not legally sustainable. Even according to the learned counsel for the petitioner, mandatory provisions of Section 45(2) of UAPA Act has not been duly complied with and sanction has not been accorded within 7 days. But according to the prosecution, within 7 working days, sanction of the prosecution was obtained. A reading of the sanction order would go to show that the sanction authority after applying its mind to the matter, accorded sanction for all the offences. Therefore the issue regarding the validity of the sanction obtained by the sanction authority can be decided only at the time of trial after recording the evidence and not at the time of framing of the charge.

12. The contention raised by the learned counsel that the petitioner was identified only through photograph, therefore, it is not admissible in evidence, is concerned, the citation referred to by the learned counsel for the petitioner in the case of *State of Gujarat Vs. Anwar Osman Submbhaniya and others* (2020) 3 SCC (Cr1) 618, is not applicable to the present case on hand. In that case, it was decided only after trial. During the trial, the accused was not identified by the witnesses and they identified only through photograph and the Honourable Supreme Court held that the evidence is inadmissible. Whereas in this case, during the investigation, one of the witnesses have spoken that one person came and collected xerox copy of the Adhaar Card and the ration card and the prosecution has stated that the petitioner misused that document and impersonated and obtained the SIM card and during the investigation, while finding out the original person, to whom the ration card belongs to, at that time, the prosecution shown the photo of the petitioner, the witnesses identified the person who has appeared in the photo and that he has collected the copy of the ration card and a sum of Rs.150/- and subsequently, the accused was arrested and he gave a confession statement before the prosecution agency and recovered the SIM card. Under these circumstances, the scope of section 227 Cr.P.C., is very limited. Therefore, the contentions raised by the learned counsel for the petitioner can be decided only after trial and not at this stage.

13. At the time of argument, this court called for the CD file from the prosecution and this court after carefully going through the entire materials and also the charge sheet filed by the prosecution and the documents annexed therein, finds that prima facie materials are available to proceed further by framing charge against the petitioner and all the points raised by the learned counsel for the petitioner can be decided after the trial and not at this stage.

14. It is well settled proposition of law that at the stage of deciding petition u/s.227 Cr.P.C., and 228 Cr.P.C., the court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even it is opposed to common sense or the broad probabilities of the case.

15. At the time of framing of charge, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

16. If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for a conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

17. Therefore, in this case, a careful perusal of the records show that the petitioner is the member of the banned organization and already several cases are pending in the States of Kerala, Karnataka and Tamil Nadu. Admittedly, the CPI(Maoist) Party is a banned organization and the materials reveal that the petitioner is a member of the said organization.

18. Though the learned counsel for the petitioner would submit that the materials collected from the petitioner are not weapons and it does not fall under the TADA Act and so the materials are not sufficient to fix the accused under UAPA Act, the question as to whether the materials are admissible in evidence or not will be decided only at the time of trial. At the time of framing of charge, this court need not conduct roving enquiry upon the documents.

19. On careful reading of the complaint and the charge sheet filed by the prosecuting agency and the documents annexed therein, it is seen that the petitioner has given the confession statement more than once and therefore, the admissibility and validity of the confession statement can be decided only at the time of trial and not at the time of framing charge.

20. Therefore, this court feels that there is enough materials available to frame the charge against the petitioner and all the grounds raised by the learned counsel for the petitioner would be decided after trial and not at this stage. Therefore, this court is of the view that the learned Principal Sessions Judge also discussed all the grounds raised by the petitioner and dismissed the petition filed u/s.227 of Cr.P.C., and this court does not find any perversity or infirmity in the order passed by the trial Judge. Therefore, there is no merit in the Revision and the Criminal Revision is dismissed accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Principal Sessions Judge, Erode.
- 2.The Deputy Superintendent of Police
Gobichettipalayam Rural Sub-Division
Gobichettipalayam Police Station.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.1163 of 2020

RGN(CO)
GN(22/02/2021)

सत्यमेव जयते

WEB COPY