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Crl.O.P.(MD)No.9125 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.9125 of 2019

and

Crl.MP(MD)No.5800 of 2019

Shyna @ Shyni @ Shoba @ Raji : Petitioner/Sole Accused

Vs.

1.The Assistant Commissioner of Police,
Avaniyapuram Police Station,
Madurai.

(Crime No.1516 of 2015) : R1/Complainant

2.Muthukrishnan : R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in SC No.276 of 2017 on the file of the Additional District and Sessions Judge No.IV, Madurai and quash the same.

For Petitioner	: Mr.A.Jayaramachandran
For 1 st Respondent	: Mr.R.Meenakshi Sundaram Additional Public Prosecutor
For 2 nd Respondent	: No appearance

O R D E R

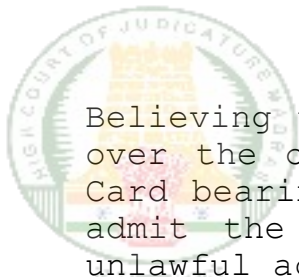
This criminal original petition is filed seeking quashment of the case in SC No.276 of 2017 on the file of the Additional District and Sessions Judge No.IV, Madurai.

2.The case of the prosecution in brief:-

The accused belongs to Valappad Village, Thrissur District, Kerala State. He is involved in the offence of Unlawful Activities (Prevention) Act, 1967 in Coimbatore and Tiruppur area. He was working as office-bearer of CPI (Maoist), which is a banned Organisation. By joining in the above said outfit, he is involved in unlawful activities, which are prejudiced to the law and order and also instigated the public.

3.The de-facto complainant was approached by the accused persons and advised him to join in the above said banned organisation. He also promised to secure a job in other State.

<https://hcservices.ecourts.gov.in/hcservices/>



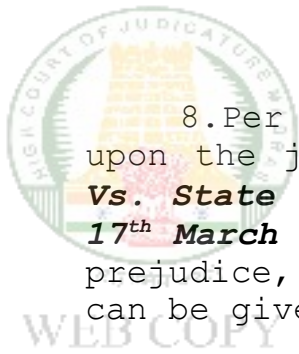
Believing the words of the accused, the de-facto complainant handed over the old ration card and utilising the same, he purchased SIM Card bearing No.8122082687 and he also made propaganda and tried to admit the public in the organisation for the purpose of making unlawful activities and protest against the lawful Government. So on the basis of the above allegations, the case was registered in Crime No.1516 of 2015 on the basis of the complaint given by the de-facto complainant for the offences under sections 419, 420, 468, 471 IPC r/w sections 13, 18(b), 20 of Unlawful Activities (Prevention) Act, 1967. After completing the formalities of investigation, final report was filed before the Principal District Judge, Madurai, which was taken cognizance in SC No.276 of 2017.

4. Seeking quashment of the same, this petition is filed.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would straightway rely upon the judgment of this court in the case of ***Vaiko Vs. The State of Tamil Nadu represented by Inspector of Police, D1, Triplicane Police Station, Chennai [2018-2-L.W (Crl.) 846]*** for the purpose of argument that the delay on the part of the authorities in giving sanction is illegal and that cannot be condoned, in view of the above said proposition of law that was laid down by this court by following the judgment of Gujarat High Court in the case of ***Rambhai Nathabhai Gadhvi Vs. State of Gujarat (AIR 1997 Supreme Court 3475)*** contended that the delay of one day in giving sanction order, after scrutiny is not legal and in respect of the fact that prejudice has been caused to the petitioner and that illegality cannot be cured. Regarding the factual issue, an argument was advanced by the learned counsel appearing for the petitioner, this court did not permit the petitioner to argue the matter on merits, on factual issues.

7. Per contra, the learned Additional Public Prosecutor would rely upon the judgment of this court in the case of ***Veeramani @ Eswar @ Sara @ Sunilkumar Vs. State represented by the Deputy Superintendent of Police, Gobichettipalayam Rural Sub-Division, Gobichettipalayam Police Station, (Crl.RC No.1163 of 2020, dated 27/01/2021)*** and the judgment of the Punjab and Haryana High court in the case of ***Harpreet Singh @ Happy @ Heera Vs. State of Punjab (CRA.S-4214-SB of 2013 (O & M), dated 12/05/2016)***. The Additional Public Prosecutor would submit that these two judgments are on the direct point. So according to the learned Additional Public Prosecutor, unless prejudice has been projected or caused, because of the one day delay and view of the judgment of this court in the above said case Crl.RC No.1163 of 2020, dated 27/01/2021, it is only a directory and not mandatory.



8.Per contra, the learned counsel appearing for the would rely upon the judgment of the Kerala High Court in the case of **Roopesh Vs. State of Kerala and others (Crl.Rev. Pet. No.732 of 2019, dated 17th March 2022** for the purpose of argument that even if there is no prejudice, the law must be interpreted strictly and no concession can be given.

9.In the light of the above said rival submission, let us go to the Rules, that has been canvassed in this petition.

10.Section 45(2) of the Unlawful Activities (Prevention) Act, 1967 reads as follows:-

"(2)Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

11.Rules 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution)Rules 2008 reads as follows:-

"3.Time limit for making a recommendation by the Authority. ?The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government [or, as the case may be, the State Government] within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.

4.Time limit for sanction of prosecution. ?The Central Government or, as the case may be, the State Government] shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority."

12.As per the above said Section and Rules, within seven days, the sanction might have been obtained by the prosecuting agency from the competent authority.



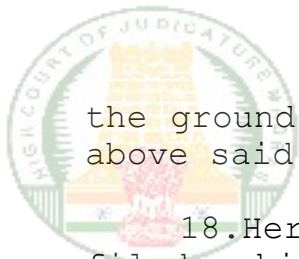
13.The learned counsel appearing for the petitioner would submit that the Committee, which was constituted under the provisions of the Act is not legal, which was also pointed out by this court in the judgment cited above.

14.But the learned Additional Public Prosecutor would submit that the Committee was constituted under sub-section (2) of section 45 of the Act, 1967 by G.O.(Ms).No.208, dated 25/03/2011, whereby the Secretary to Government (Law Department), the Secretary to Government (Public Department), Additional Director General of Police, (Law and Order), and the Inspector of Police, Intelligence, (Internal Security), Chennai, were constituted to form the competent authority. According to the learned Additional Public Prosecutor, the matter has been placed before the Committee and after going through the records only the Committee made a recommendation, on 06/04/2017. But however, sanction was accorded only on 19/04/2017. So according to him, within seven working days, sanction was accorded. But the date of recommendation has not been properly mentioned by the authority.

15.But on perusal of the recommendation, it is seen that it was signed on 06/04/2017. So we can take this as the correct date of recommendation. The Government Order has been passed in granting sanction for prosecuting the petitioner on 19/04/2017 in G.O.(4D) No.49. So if we calculate seven working days, it is seen that with a short of one day, which means there is one day delay in passing the sanction order. The question which arises for consideration is whether this one day delay has caused any prejudice to the petitioner.

16.As mentioned above, it is contended on the part of the petitioner that it is totally illegal, which cannot be cured. According to him, it may go to the root of the prosecution. So, it is liable to be quashed.

17.The contention on the part of the petitioner is that no proper materials have been placed before the competent authority and subjective satisfaction was not arrived at. But the sanction order clearly deals about the facts and circumstances and necessitate for initiating proceedings against the petitioner. Even though, contrary view has been expressed by other courts with regard to the non-compliance of section 45(2) of the Act, in the facts and circumstances of the case, the judgment of Kerala High Court in the case of **Roopesh vs. State of Kerala, rep. By Public Prosecutor, High Court of Kerala, Ernakulam and others)** was also considered by this court in the case of **Veeramani @ Eswar @ Sara @ Sunilkumar Vs. State rep. By Deputy Superintendent of Police, Gobichettipalayam Police Station (Crl.RC No.1163 of 2020 dated 27/01/2021)**, the subsequent development has also taken care and noted in the above said order. In that case also, a discharge application was filed on



the ground that it was dismissed by the trial court, upon which the above said revision was preferred.

18. Here also, we find that similar discharge application was filed, which came to be dismissed by the trial court, wherein also the very same plea has been raised. I find no ground to differ from the view that has been expressed by the Coordinate Bench of this court.

19. In view of the above facts, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The IV Additional District & Sessions Judge,
Madurai.
2. The Assistant Commissioner of Police,
Avaniyapuram Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.9125 of 2019
31/03/2022

tp (CO)

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