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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 1.8.2024

Delivered on : 2.8.2024

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HON'BLE MR.JUSTICE K.RAJASEKAR

Crl.O.P.(MD) No.9337 of 2024
and
Crl.M.P.(MD) No.6396 of 2024

1. Adhil Iman
2. A.Muhammed Nafeel @
Mohammed Nabil

Petitioners

vs.

1. The State rep. by
The Deputy Superintendent of Police,
CBCID-SOUTH,
Kanyakumari District.
(Crime No.05 of 2022)

2. Kalyana Sundaram

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the FIR in Crime No.5 of 2022 dated 28.11.2022 on the file of the first respondent and quash the same in so far as the petitioners are concerned in respect of offences under Sections 15(1)(a)(i)(c), 16(1)(b) and 20 of Unlawful Activities (Prevention) Act.



For Appellants : Mr.R.Sankarasubbu for
Mr.M.Seenisulthan

For respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

A.D.JAGADISH CHANDIRA, J.

The present Criminal Original Petition has been filed by A2 and to call for the records pertaining to the FIR in Crime No.5 of 2022 dated 28.11.2022 on the file of the first respondent and quash the same in so far as the petitioners are concerned in respect of offences under Sections 15(1)(a)(i)(c), 16(1)(b) and 20 of Unlawful Activities (Prevention) Act.

2. Factual background of the case is as under:-

i) Originally, a complaint dated 25.9.2022 came to be filed by the second respondent herein before the Inspector of Police one B.T.Senthilkumar of Manavalakurichi Police Station, while he was in charge of Mandaikadu Police Station alleging that on the previous night, when all his family members were sleeping, at about 10.50 pm, two unknown persons came by two wheeler motor bike and stood in front of his house and hurled two bottles of petrol bomb on the



Fortuner car parked inside the compound, due to which, the window glass of the car was damaged and bicycle parked near the car was set ablaze and in the morning at about 7.00 am, the de facto complainant had seen the incident through CCTV footage and lodged the complaint.

ii) Based on the above complaint, an FIR was registered in Crime No.52 of 2022 for offences punishable under Sections 120B, 147, 148, 153A, 307, 436 IPC and section 4 of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. Subsequently, it was reregistered and renumbered as Crime No.5 of 2022 on the file of CBCID-South, Kanyakumari for the same offences, implicating 9 accused.

iii) During the course of investigation the first respondent came to know that the persons behind the alleged occurrence were from Muslim community and the de facto complainant belonged to BJP party and that the petitioners and other accused persons were the participants of the activities of Campus Front of India, Social Democratic Party of India and Popular Front of India.

iv) The investigation having revealed that the petitioners have involved in the commission of offence as a protest for the arrest of one Sheik Mujubar Rahman and Abdul Kadar by the National Investigation



Agency on 24.09.2022, the respondent had filed an FIR alteration Report on 24.01.2023 before the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District by adding sections 15(1)(a)(i),(c), 16(1)(b) and 20 of the Unlawful Activities (Prevention) Act and thereby altered the FIR into one for offences punishable under Sections 120(b), 153(A), 307, 436 IPC and 4 of TNPPDL Act and 15(1)(a)(i)(c), 16(1)(b) and 20 of Unlawful Activity Prevention Act.

v) Claiming that the alteration of FIR for adding Sections 15(1)(a)(i),(c), 16(1)(b) and 20 of the Unlawful Activities (Prevention) Act is illegal and unjust and abuse of process of law and thereby the FIR in Crime No.5 of 2022 in respect of such offences is liable to be quashed.

3. The crux of the submissions made by the learned counsel for the petitioners is as under:-

i) The impugned alteration of FIR adding the provisions of Unlawful Activities (Prevention), Act without any material or evidence and as such the impugned FIR is liable to be quashed in respect of offences i.e., Sections 15(1)(a)(i),(c), 16(1)(b) and 20 of the Unlawful Activities (Prevention) Act.

ii) The learned Judicial Magistrate No.I, Nagercoil ought not to



have accepted the alteration of FIR report filed by the 1st respondent and ought to have rejected the same as the petitioner was not a member of any terrorist organization or association found in the first schedule of Unlawful Activities (Prevention) Act, 1967.

iii) While Section 15 of the Unlawful Activities (Prevention) Act describes the Terrorist activities, Section 16 speaks about the punishment for Terrorist Activities and Section 20 deals with punishment for being a member of any Terrorist Gang or Organization. On the date of occurrence on 24.09.2022 the petitioner was not a member of any Terrorist Gang or Organization. In such circumstances, invoking the provisions of section 15, 16 and 20 of the UAPA is clear case of abuse of powers and abuse the process of law.

iv) The alteration report filed by the 1st respondent has not made any specific allegation that the petitioner and his co-accused persons belonged to any banned or terror organization. In such circumstances the alteration of offences under Sections 15(1)(a)(i),(c), 16(1)(b) and 20 of the Unlawful Activities (Prevention) Act is illegal and liable to be quashed.

v) The criminal penal laws in India are having only prospective effect. That is the fundamental right guaranteed under Article 20(1) of



the Constitution of India. Thus, the penal laws in India are having only prospective effect unless retrospective effect is given by the competent legislature. Even if it is alleged that the Popular Front of India was banned subsequent to the alleged occurrence, the penal provisions of Unlawful Activities (Prevention) do not give any retrospective effect for the offences committed before the said organization was banned by the the Government of India under the provisions of UAPA. Thus, the alteration of FIR under provisions of UAPA is illegal and violative of Article 20(1) of the Constitution of India and is liable to be set aside.

4. Per contra, the submissions made by Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State are as under:-

i) The present petition, having challenged the alteration of offences, is a premature one deserving no consideration at this stage, especially, when the Petitioners herein had not even responded to the summons/notice under section 41 (A) Cr.P.C. which had been issued to them on 06.02.2023 and 09.02.2023 after the alternation of the offences under UAPA Act and as such the present quash petition is liable to be dismissed considering that the petitioners are absconding



accused and they had not co-operated with the investigation.

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ii) The National Investigation Agency officials had conducted raids on PFI functionaries' offices all over India and across Tamil Nadu on 22.09.2022 and arrested them. To show protest for the same, the members of PFI and SDPI organizations had conducted demonstrations across Tamil Nadu on 23.09.2022. Apprehending that the ruling party at the centre is behind those NIA's raids and arrests, they conspired together, planned and hurled two Molotov Cocktail on the Fortuner car of the complainant, who is a member of BJP party and damaged his property.

iii) The Investigation conducted so far discloses the active involvement of all the 9 named accused in the Crime. The Case Diary has the relevant statements and materials which implicate the role of each of the accused in the crime. The electronic evidence collected during the course of investigations also concurs with the involvement of the accused. As of now, the investigation is only at a natal stage and custodial interrogation of the petitioners herein is very much necessary for the further course of investigation.

iv) During the course of investigation, accused A1 Musamil, A5 Rishvan and A9 Majid Alrasheen were arrested and enlarged on bail



and other accused A6 - Ansad, A7 Azeem and A8 - Asiq @ Asiq Mohammed Siraj were enlarged on Anticipatory Bail by the Principal Judge Nagercoil. The other accused A4 - Mohd. Abdul Khader and the petitioners A2 - Adhil Iman and A3 - Mohd. Nabil are still absconding and yet to be arrested. Further, a search was conducted at the house of petitioners/accused A2 Adhil Iman and A3 Mohd. Nabil on 09.10.2022, which resulted in seizure of incriminatory documents and the same had been produced before Judicial Magistrate No.1, Eraniel. The case diary contains the copy of the incriminating material which attracts the provision of UAPA Act.

v) There is no personal motive between the accused persons and the complainant. To show their protest and retaliation against the BJP and Hindu organizations, the accused persons chose the complainant, since he was a member of BJP party, which made him vulnerable and their main motive is to execute a terrorist act on the persons belonging to Hindu and BJP organizations thereby creating fear and panic among the section of Hindu people primarily BJP and Hindu organization members. They committed this act with intent to strike terror among the Hindu section of the people thereby doing a terrorist act which is a punishable offence u/s 15, 16 & 20 of the UAPA Act, 1967.



vi) The Alteration report for invoking UAPA Act was filed before Judicial Magistrate I, Nagercoil on 24.01.2023 based on the facts, incriminating materials recovered and statements of witnesses whereby it is evident that the accused persons who were members and followers of PFI organization hatched conspiracy, planned and executed the terrorist act by hurling Molotov Cocktail on BJP member's car and damaging the property with intent to threaten the unity, integrity, security, sovereignty of India by striking terror among Hindus by using explosive / inflammable substances and compelling Indian Government to abstain from such act which is a terrorist act as contemplated u/s 15 (1) (a) (ii), (c) Of UAPA and punishable u/s 16 (1) (b) of UAPA Act.

vii) The said alteration report has been accepted by the Judicial Magistrate on the same day. Further, since the UAPA Act was invoked, Judicial Magistrate I had submitted the FIR, case records and other documents to the Sessions Court at Nagercoil, which is the competent court to take cognizance of such UAPA Act cases.

viii) As regards the main ground viz., the applicability of UAPA in the present case is violative of Article 20 (1) of Constitution of India is concerned, it is submitted that the provisions had come into the



statutory book as early as on 2008 and the present occurrence took place in the year 2022. The ban on PFI is on 28.09.2022 and that does not have any basis regarding the present occurrence and the special Act is not added on this said allegation rather the ingredients of Section 15 (1) (a) (li) which forms part of the definition for "Terrorist Act" is attracted.

ix) As regards the applicability of Section 20 of UAPA concerned, it is submitted that any person, who is the member of terrorist gang or terrorist organisation involved in terrorist act is liable to be charged. The petitioner is a member of the terrorist gang as defined under section 2(1) of the UAPA Act, 1967, defines "terrorist gang" as any association, other than terrorist organization, whether systematic or otherwise, which is concerned with or involved in, terrorist act. In the present case, as on date, the investigation discloses the involvement of 9 persons. The accused persons in this case had committed a terrorist act by using explosive/inflammable substances with intent to strike terror in Hindu section of the people in India thereby justifying the fact that they belonged to a Terrorist gang and everyone is a member of such gang and so cognizable u/s 15, 16 & 20 of the UAPA Act, 1967.



x) The petitioners, who are the perpetrators of the entire occurrence, are still absconding and yet to be arrested. The scope of the petition to quash in FIR is very much limited when a roving enquiry is warranted in the case. The materials collected by the prosecution justifies the initiation of UAPA Act. Further, it is pertinent to note that the alteration report filed by the prosecution adding the offences under the UAPA Act had been accepted by the Learned Sessions Judge. There are sufficient materials to prove the involvement of the petitioner /A2 & A3 pertaining the offences and so the petition to quash the UAPA Act cannot be entertained and it is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. The main ground taken by the petitioners for seeking quashment of the FIR in respect of alteration/addition of penal provision viz., Sections 15(1)(a)(i)(c), 16(1)(b) and 20 of Unlawful Activities (Prevention) Act is that the occurrence, in respect of the petitioners, alongwith other accused had been implicated in the case, is said to have taken place only on 24.9.2022 while the organisation



called PFI, in which the petitioners are claimed to have been associated themselves, was banned only on 28.9.2022 and thereby, the penal provisions in respect of being in association with any Terrorist Gang or Organization, which do not have retrospective effect, cannot be attributed to the petitioners.

7. In this regard, from the submissions of the learned Additional Public Prosecutor, it is seen that the National Investigation Agency officials had conducted raids on PFI functionaries' offices all over India and across Tamil Nadu on 22.09.2022 and arrested them and to show protest for the same, the members of PFI and SDPI organizations had conducted demonstrations across Tamil Nadu on 23.09.2022. Whiles, the occurrence is said to have taken place on 24.9.2022 creating panic among the public. The alteration and addition of penal provision is not only for being in association with any Terrorist Gang or Organisation, but for having committed terrorist activities also. The activities committed by the petitioners are whether terrorist activities committed individually or by associating themselves with a Terrorist Gang/Organisation and the cognizance taken by the State to ban the said Organisation has any nexus with the offence committed by the



petitioners are the matters for investigation and as rightly pointed out by the learned Additional Public Prosecutor, it is highly premature to decide them at this stage, without a investigation having been conducted.

8. In view of the above, the Criminal Original Petition is liable to be dismissed and accordingly, it is dismissed. The connected Miscellaneous Petition is closed.

(A.D.J.C.,J.) (K.R.S.,J.)
2.8.2024

Index: Yes/No.
Internet: Yes/No.
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To

1. The Deputy Superintendent of Police,
CBCID-SOUTH,
Kanyakumari District.
2. Public Prosecutor,
High Court, Madurai.



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A.D.JAGADISH CHANDIRA, J.
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K.RAJASEKAR, J.

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P.D. ORDER IN
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