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IN THE HIGH COURT OF KERALA AT ERNAKULAM

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

CRL.REV.PET NO. 732, 733 & 734 OF 2019; 17th March, 2022

ROOPESH *v.* **STATE OF KERALA AND OTHERS**

Against the Order in CMP No. 2063/2018, 2064/2018 & 2065/2018 in SC 817/2019, 818/2018 & 819/2018 of District Court & Sessions Court, Kozhikode

Revision Petitioner by Advs. K.S. Mizver, K.S. Madhusoodanan, Thushar Nirmal Sarathy, M.M.Vinod Kumar, P.K.Rakesh Kumar

Respondents K.A. Anas, Government Pleader

O R D E R

K.Vinod Chandran, J.

Amidst the raging controversy as to the retention of offence of sedition in the IPC; which the naysayers categorise as a relic of the colonial past; a symbol of British hegemony and the votaries support in the wake of rising anti-national feelings under the cloak of liberal thought, the Government sat over a sanction for six months, violating the time frame prescribed in the rules.

2. Shorn of the myriad facts regarding the ingredients of the offences alleged, the revision petitioner was charged under Ss. 143, 147, 148, 124A read with 149 IPC and Ss. 20 & 38 of the Unlawful Activities (Prevention) Act, 1967 [for short 'UA(P)A']. The revision petitioner is alleged to be a member of the Communist Party of India [Maoist] a proscribed organisation under the UA(P)A. The three crimes registered are Crime No.861 of 2013 of the Kuttiadi Police Station and Crime Nos.11 & 15 of 2014 of the Valayam Police Station. The State Police Chief wrote to the State Home Department, who took it up with the Authority constituted under S.45 of the UA(P)A. The statement dated 19.07.2018 filed by the 3rd respondent, Addl. Chief Secretary, Home & Vigilance, indicates the same having been taken up with the Law Secretary, who was the Chairperson of the Authority and the latter having agreed to convene a meeting of the Authority on 11.01.2018. This establishes the evidence gathered in the investigation having been placed before the Authority before 11.01.2018. Then it is stated that there was a change in the constitution of the Authority and a retired High Court Judge was appointed. The Chairman newly appointed was engaged with the Puttingal Enquiry Commission and related cases and hence could not consider the proposal immediately. Eventually the Authority took up the matter on 07.02.2018 and recommended it on the same day. The sanction of the State Government in the first two crimes were on 11.06.2018 and in the other crime on 07.04.2018; both delayed.

3. The allegation now raised is of delay in recommendation and sanction, thus violating the time stipulated under the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (Rules of 2008); prescribed as empowered under the UA(P)A. The sanctions, not being within time, are not valid and vitiates the cognizance taken by the Special Court. The Special Court, before which an application was moved under S.227 of the Criminal Procedure Code, for discharge, rejected the applications, wrongly assuming that the time stipulated under the Rules commence from the letter of the Director General of Police dated 03.06.2018. The Government does not press that contention before us.

4. Sri.K.S.Madhusoodanan, appeared for the revision petitioner, who is in judicial custody in another case. Sri.K.A.Anas, learned Government Pleader appeared for the State.

5. Sri.K.S.Madhusoodanan read the provisions under the UA(P)A in juxtaposition with the provisions under the Terrorist and Disruptive Activities [Prevention] Act, 1987 [for brevity, 'TADA'] and the Prevention of Terrorism Act, 2002 [for brevity, 'POTA']. It was pointed out that the provision for sanction, as a condition for taking cognizance, in all these enactments were an important safeguard to the fundamental rights of the citizen guaranteed under the Constitution; which otherwise would be used to stifle every voice of dissent. While the TADA & POTA, did not stipulate the specific time within which the sanction has to be granted; in the UA(P)A, in the Rules framed thereunder, a specific time of seven days is provided, within which the Authority constituted under S.45(2) has to make a recommendation, after which the appropriate Government also has to issue a sanction within another seven days from the receipt of the recommendation. When the said stipulation is not followed to the letter, it goes against the spirit of the safeguard provided and the cognizance taken by the Special Court is vitiated.

6. As far as the offence under S.124A IPC is concerned, a similar provision without stipulation of time is available under S.196 IPC. The sanctions granted, as available in all the three crimes, speak of the specific provisions charged under the UA(P)A and in a cryptic manner speaks also of *'any provisions under the IPC'*. The invocation of power to grant sanction is under the UA(P)A and hence the sanction accorded to the offences charged under the IPC cannot be considered to be a proper sanction. S.124A is not the only provision for which sanction is required under S.196 and hence the ingredients of the offence, as discernible from the materials available and the documents produced before the Authority, to arrive at a satisfaction have to be discussed to show a proper application of mind. While pointing out the mandatory requirement for a sanction under S.45(1) UA(P)A and the requirement to scrupulously follow the time limit under the Rules of 2008, specific reference is made to the word 'shall' in Rules 3 & 4. *Owners and Parties Interested in* ***M.V. "Vali Pero" v. Fernadeo Lopez [(1989) 4 SCC 671], Rambhai Nathabhai Gadhvi and Others v. State of Gujarat [(1997) 7 SCC 744], Ashrafkhan @ Babu Munnekhan Pathan v. State of Gujarat and Others [(2012) 11 SCC 606], CBI v. Ashok Kumar Agarwal [(2014) 14 SCC 295], Seeni Nainar Mohammed v. State rep. by Deputy Superintendent of Police [(2017) 13 SCC 685]*** and ***Shalibhadra Shah v. Swami Krishna Bharati [1981 Crl.LJ 113]****,* are relied on by the revision petitioner.

7. Sri.Anas at the outset submits that the time stipulated is directory and not mandatory. Even if the time is considered to be mandatory, that does not save the petitioner from being prosecuted under S.124A read with S.149 IPC. It is argued that the invocation of the power to grant sanction under S.45 of the UA(P)A would not invalidate the further sanction under S.196, in the same order, since the authority empowered to grant sanction under the UA(P)A and Cr.P.C. are the same. Even if there is an error caused in the issuance of the sanction it does not vitiate the cognizance taken, by virtue of S.460(e) of Cr.P.C. When even a finding or sentence is reversible on grounds of error, omission or irregularity; only when a failure of justice is occasioned, as provided in S.465, there is no warrant to find the cognizance taken to be vitiated for reason only of the delay in issuance of a sanction.

8. The safeguard provided by the insistence of a sanction, is to ensure that a citizen is not unnecessarily proceeded against on a frivolous charge by the investigating agency. The requirement of a sanction by the Government based on a recommendation of the Authority

constituted is incorporated in the Statute and the same is done. Time is of no essence and the delay causes no prejudice to the accused, as long as the sanction is obtained prior to the cognizance taken. In any event, it is contended, cognizance taken is of the offence and not of the offender and if at all, this Court finds the time stipulated to be mandatory under the UA(P)A; still the offence under S.124A read with S.145 IPC would survive and the petitioner has to be prosecuted thereunder. ***Haradhan Shah v. State of W.B 1975 (3) SCC 198, Union Of India v. Saleena 2016 (3) SCC 437, State of Karnataka v. Pastor P. Raju 2006 (6) SCC 728 Deepak Khinchi v. State of Rajasthan [(2012) 5 SCC 284] Union of India & Others v. Saleena [(2016) 3 SCC 437] State of Mizoram v. Dr. C. Sangnghina 2019(13) SCC 335 Pradeep S. Wodeyar v. State of Karnataka 2021(14) SCALE 203*** and ***Shantaben Bhurabhai Bhriya v. Anand Athabhai Chaudhari*** *[Crl.Appeal No.967 of 2021]* are relied on.

9. S.45(1)(ii) of the UA(P)A prohibits, unequivocally, any Court from taking cognizance of offences under Chapters IV & VI without previous sanction of the appropriate Government. Ss. 20 & 38 of the UA(P)A charged against the petitioner herein, fall under Chapter IV & Chapter VI respectively. Sub-section (2) of S.45 requires the sanction for prosecution, from the appropriate Government, under sub-section (1), within such time as prescribed, after considering the report of such Authority appointed by the appropriate Government. The Authority so appointed is also required to make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed by the Central Government. The Rules of 2008 is brought out specifically to prescribe the time as mandated under sub-section (2) of S.45. The Rules of 2008, but for the short title and definition clauses have only two Rules; Rule 3 & 4. Rule 3 prescribes the time for making the report containing the recommendations, by the Authority to the appropriate Government. Rule 4 prescribes the time limit for issuance of sanction of prosecution, by the appropriate Government. Both these rules prescribe seven working days as the time within which the recommendation is to be made and the sanction has to be issued; commencing respectively from the receipt of evidence gathered by the investigating officer and the receipt of recommendation of the Authority. Admittedly, in the present case, both the recommendation of the Authority and the sanction of the State Government were after the prescribed seven days.

10. M.V. "Vali Pero" [supra] considered Rule 4 of the Calcutta High Court Rules applicable to depositions taken on Commission. It *inter alia* provided the depositions to be signed by the deponent; the consequence of failure of which was not provided by the rule. It was held that if the word 'shall', in the specific rule, is construed as mandatory, then the noncompliance would lead to a drastic consequence of nullifying the deposition itself, which would result in miscarriage of justice, even when the omission is by inadvertence. The Court leaned in favour of treating the expression as directory so as to avoid miscarriage of justice, by permitting the Court to reject the deposition without a signature, only if, on the available material the correctness and authenticity is doubtful. In the cited case, the evidence available by way of deposition of defendant's witnesses were totally eschewed by the High Court; accepting the objection raised by the plaintiffs that the witness' signature were not available on the deposition. The suit was also decreed, based on the un-rebutted evidence of the plaintiffs. Pertinently, it was not the defendants who objected to their deposition, but the plaintiffs; who raised no objection with regard to the genuineness or authenticity of the deposition, but merely pointed out the technical defect of absence of signature, occasioned only by inadvertence. It was in the context of the

ensuing miscarriage of justice occasioned; if the requirement of affixing of signature is construed as mandatory, that the more liberal interpretation was given to the word 'shall'.

11. The word 'shall' in the context of the UA(P)A & the Rules of 2008, cannot be said to be merely directory. Sub-Section (2) of S.45 specifically speaks of the recommendation of the authority and the sanction by the appropriate Government 'shall' (sic) be within such time as prescribed. The prescription made by the Government is available in the Rules of 2008, which subordinate legislation was brought out only to prescribe the time limit, for both the Authority and the appropriate Government, respectively to make the recommendation and issue the sanction as provided under S.45. It has been held by the Honourable Supreme Court in ***RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424*** :

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ...

12. The word 'shall' used in the Rules of 2008 has a well defined texture as available from the identical 'shall' employed in the text of sub-section (1) & (2) of S.45 of the UA(P)A; and the power conferred on the Central Government by S.52 to make rules for carrying out the provisions of the Act. The Rules of 2008 prescribed the time of seven days; as spoken of in the enactment. The Act itself is enacted, to prevent unlawful activities of individuals and associations as also dealing with terrorist activities, which terms are specifically defined under the enactment itself. The colour is perceivable from the context in which the enactment is saved from the challenge of having infringed the fundamental rights guaranteed under the Constitution, only on the ground of a reasonable restriction; which has to be construed very strictly. The Parliament, in bringing out the enactment and the Government, in promulgating the Rules had the prior experience of the TADA and POTA as also S.196 Cr.P.C; none of which had a time frame for issuance of sanction. UA(P)A as it was originally enacted, in its Statements of Objects and Reasons, declared it to be in the interest of the sovereignty and integrity of India, intended to bring in reasonable restrictions to (i) freedom of speech and expression, (ii) right to assemble peaceably and without arms; and (iii) right to form associations or unions. The original enactment by S.17 required a sanction from the Central Government or the authorised officer to initiate prosecution.

13. UA(P)A, 1967, as it was originally enacted did not concern itself with terrorist activities. In the wake of the rise in terrorist and disruptive activities, TADA of 1985 was promulgated and then the TADA of 1987, to deal with matters connected therewith or incidental thereto. The TADA of 1987 was repealed by Act 30 of 2001, after which POTA, 2002 was brought into force. POTA stood repealed in the year 2004. Amendments were brought in the UA(P)A by Act 29 of

2004, including in the Preamble the words 'and for dealing in terrorist activities' and resultant amendments to the text too. By Act 35 of 2008, amendments were again brought in the UA(P)A; when subsection (2) of S.45 was incorporated. The TADA by S.20A(1) required any information about the commission of an offence under that Act to be recorded by the Police only with prior approval of the District Superintendent of Police. By sub-section (2), cognizance could be taken by a Court only after previous sanction of the I.G. of Police or the Commissioner of Police. POTA by S.50 prohibited any Court from taking cognizance of an offence under that Act without the previous sanction of the Central Government or the State Government. It is very clear that the legislators learned from the experience and worked on the information, about the actual working of the enactments, which brought drastic consequences to those accused of the offence of a terrorist or disruptive act. The sanction required by the TADA from the higher echelons of Police was found to be insufficient to curb the evil of misuse and hence, by POTA the requirement was upgraded to one from the Government itself. After repeal of the POTA, the UA(P)A, strengthened with the amendments in 2004, continued with S.45, which prohibited cognizance by any Court; of offences under Chapter III, without a sanction from the Central Government or the authorised officer and under Chapters IV & VI without the sanction of either the State Government or the Central Government, as appropriately required. It was by Act 35 of 2008 that sub-section (2) was incorporated in the UA(P)A.

14. The Parliament, in 2008, while enacting Amending Act 35 of 2008 had consciously incorporated the provision requiring a recommendation from an Authority and retained the requirement of sanction from the appropriate Government, as provided in sub-section (1). It was by sub-section (2) that an Authority was contemplated, to make recommendations after reviewing the evidence gathered and a specific time was permitted to be prescribed by rules. The Central Government having brought out the Rules of 2008 specifying the time, within which the recommendation and sanction has to be made, the time is sacrosanct and according to us, mandatory. It cannot at all be held that the stipulation of time is directory, nor can it be waived as a mere irregularity under S.460 (e) or under S.465 Cr.P.C. S.460 saves any erroneous proceeding, *inter-alia* of taking cognizance; if done in good faith. When sanction is statutorily mandated for taking cognizance and if cognizance is taken without a sanction or on the strength of an invalid one, it cannot be said to be an erroneous proceeding taken in good faith and the act of taking cognizance itself would stand vitiated. The defect is in the sanction issued, which cannot be saved under S.460(e). As for S.465, we shall deal with it, a little later.

15. ***Shailabhadra Shah*** [supra] was a case in which proceedings were taken under S.295-A IPC, based on an article against a religious leader, which was alleged to be scurrilous and defamatory. There was no prior sanction obtained under S.196(1) Cr.P.C, which was held to be *sine qua non,* without which a Magistrate cannot take cognizance of the offence. The Division Bench of the High Court of Gujarat explained the policy underlying the requirement of a sanction under S.196(1) Cr.P.C., which offences were held to be of a serious and exceptional nature. The offences enumerated under Sec.196 Cr.P.C are those punishable under Chapter 6 or under S.153-A, S.295- A or S.505, as it was then. Looking at the offences enumerated under S.196 it was held that the requirement for a consent for the purpose of initiating a prosecution had to be considered on the balancing considerations of whether such a prosecution would augur well for public peace or would on the contrary result in its deterioration. It also had to be looked at, in the context of whether actions complained of were in essence reformative; intended to attack religious or social dogmas and whether a prosecution would result in throttling free discussion

on a subject. The underlying policy was held to be that, prior sanction is a must before cognizance of the offence is taken.

16. ***Rambhai Nathabhai Gadhvi*** (supra) arose under the TADA of 1985. The accused were alleged to be actively engaged in smuggling of arms and ammunitions. One of the two arguments addressed, was regarding the validity of a sanction under S.20A. The sanction required thereunder was for the prosecuting agency to approach the jurisdictional Court to enable it to take cognizance of the offence, which sanction was held to be a *sine qua non,* without which the Court is forbidden from taking cognizance. The sanction granted therein, by the DGP, permitted addition of S.3,4 and 5 of TADA. The documents made available to the DGP were the FIR and a letter sent by the Superintendent with a narration of facts. It was held that there is nothing to show that the sanctioning authority applied its mind effectively and arrived at a satisfaction that, it is necessary in public interest to launch prosecution under the TADA. The provisions of the TADA being more rigorous with stringent penalty and the trial prescribed being compendious, the sanctioning process had to be more serious and exhaustive than those contemplated in other penal statutes was the finding. Their Lordships also held that the mere permission granted to add certain sections of TADA is not a sanction to prosecute the appellant. ***Anirudh Singhji Karan Singhji Jadeja v. State of Gujarat [1995(5) SCC 302]*** a three Judge Bench was referred to. Therein, despite the DSP's letter being exhaustive, it was held that the Government, the sanctioning authority, ought to have verified, that the facts stated are borne out from the records.

17. Ashok Kumar Agarwal [supra] arose under the Prevention of Corruption Act, 1988 which held that grant of sanction is not a mere formality. There is an obligation cast on the sanctioning authority to discharge its duty and grant or withhold sanction, only after having full knowledge of the material facts of the case. Sanction, it was declared is not an acrimonious exercise, but a solemn and sacrosanct act, affording protection to the government servant (in the context of that enactment) against frivolous prosecution. This is equally applicable in the case of prosecution launched either under the UA(P)A or for offences as enumerated under S.196 Cr.PC. ***Seeni Nainar Mohammed*** [supra] was yet another case under the TADA of 1985 wherein, again the Hon'ble Supreme Court reiterated that prior approval as contemplated under S.20A to be mandatory.

18. ***Pastor P. Raju*** [supra] was a case in which an FIR was registered under S.153-B IPC and the respondent on production after arrest, was remanded by the Magistrate. While holding that cognizance takes place at the point when a Magistrate first takes judicial notice of an offence, it was held that an order remanding an accused to judicial custody does not amount to taking cognizance of an offence. The order of the High Court quashing the proceedings for absence of a sanction under S.196(1) was reversed, finding that, for registration of a crime or conducting investigation, a sanction is not required. In the present case we are not at that stage and the Special Court had already taken cognizance and the challenge is against the cognizance taken, without a valid sanction.

19. ***Deepak Khinchi*** [supra] was a case in which there was a delay of 3 years in initiating prosecution under the IPC and the Explosive Substances Act; the latter enactment requiring a sanction. The delay was occasioned due to the Sessions Court refusing to take cognizance twice. On the first instance there was no sanction but on the next instance despite a sanction having been obtained, cognizance was refused on a frivolous ground. In the third round

cognizance was taken, which was approved by the High Court against which the accused approached the Hon'ble Supreme Court. It was considering the gravity of the offences, the Hon'ble Supreme Court refused to find any prejudice caused to the accused. Therein the learned Judges referred to ***State Of Goa v. Babu Thomas 2005 (8) SCC 130***, a case in which the Hon'ble Supreme Court allowed the competent authority to issue a fresh sanction order despite finding the prosecution already launched to be without a valid consent. We are afraid, that stage has not yet reached in the present case and it would be premature for us to speak on a sanction, in future; which if we do could be termed an *obiter dicta*.

20. ***Dr.C. Sangnghina*** [supra] permitted the trial to be proceeded with on the second charge sheet; which the Special Court refused to take cognizance of on the ground of double jeopardy. The Hon'ble Supreme Court held that there can be urged no ground of double jeopardy since at the first instance cognizance was refused due to absence of sanction; which in any event was produced along with the second charge sheet. Reliance was placed on ***Babu Thomas*** [supra] and ***Nanjappa v. State of Karnataka 2015 (14) SCC 186***. It has to be noticed that the three decisions, cited here, were under the Prevention of Corruption Act, which required sanction under S.19 of that Act. S.19 (3) of the Prevention of Corruption Act, is the very same saving provision under S.465 Cr.P.C. It interdicted reversals of judgments, on the only ground of sanction orders suffering from an error, omission or irregularity; unless the Court opines that it has resulted in a failure of justice.

21. UA(P)A, does not contain a provision similar to S.19(3) but definitely S.465 has application since S.43-D deems every offence under UA(P)A to be a cognizable offence under S.2(c) of the Code. As to the application of S.465, to validate defective sanctions, the Hon'ble Supreme Court held so, in ***Ashraf Khan @ Babu Munne Khan Pathan*** (supra) which arose under the TADA 1985:

33. Now we proceed to consider the submission advanced by the State that non-compliance with Section 20-A(1) i.e. absence of approval of the District Superintendent of Police, is a curable defect under Section 465 of the Code. We do not have the slightest hesitation in holding that Section 465 of the Code shall be attracted in the trial of an offence by the Designated Court under TADA. This would be evident from Section 14(3) of TADA which reads as follows:

*"14. Procedure and powers of Designated Courts.— (1)-(2) * * **

(3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session."

34. From a plain reading of the aforesaid provision it is evident that for the purpose of trial Designated Court is a Court of Session. It has all the powers of a Court of Session and while trying the case under TADA, the Designated Court has to follow the procedure prescribed in the Code for the trial before a Court of Session. Section 465 of the Code, which falls in Chapter 35, covers cases triable by a Court of Session also. Hence, the prosecution can take shelter behind Section 465 of the Code. But Section 465 of the Code shall not be a panacea for all error, omission or irregularity. Omission to grant prior approval for registration of the case under TADA by the Superintendent of Police is not the kind of omission which is covered under Section 465

of the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects.

[underlining by us for emphasis]

22. As we already noticed, UA(P)A was in force from the year 1967 with the requirement of a sanction by the appropriate Government without any stipulation of time. The enactments which sought to prevent terrorist activities brought out subsequently also had the very same requirement of a consent without any stipulation of time. From the wealth of experience gleaned over more than half a century, when such enactments were in force; the Parliament consciously in the year 2008 brought in a provision where the requirement was not only a sanction form the appropriate Government but a prior recommendation from an Authority constituted under the Act, which had to be perused by the appropriate Government before sanctioning a prosecution. As has been noticed in the various precedents the provisions under the UA(P)A have an added rigour. The investigating agency is given a wider latitude in so far as the time frame for completing the investigation which in turn makes it more rigorous for the accused, which is made further harsh by the restrictions in granting bail as found in subsections (5) & (6) of S.43-D, the presumption under S.43- E and the overriding effect to the enactment as conferred under S.48. This is the context in which S.45 (2) has been incorporated, with provision, for an Authority to be constituted for an independent review of the evidence gathered, whose recommendation also has to be considered before the sanction is granted. There is also provided a time frame for the recommendation of the Authority to be made and the sanction of the Government issued; hitherto not included in identical penal statutes. The time frame, as we noticed is unique and it brings in consequences hitherto unavailable and the viability of a second proceedings would be on a very sticky wicket; especially when it could enable the investigating agency to move the Authority and the Government repeatedly if an earlier attempt is unsuccessful. We hasten to add that we are only thinking aloud and that contention would have to be left for another day, another proceeding, to be answered; as we are not now on that aspect and we would resist the temptation to make an *obiter*.

23. We are of the opinion that the provision for sanction is mandatory and the stipulation of time also is mandatory and sacrosanct. We have noticed the legislative history of the enactments and the provision for sanction incorporated thereunder, to take cognizance of charges based on activities labelled and defined as unlawful, terrorist and disruptive. It has to be found that the sanction under the UA(P)A granted after six months from the date of receipt of recommendation of the authority is not a valid sanction. It also has to be stated that the sanction orders merely speak of the Government, after careful examination of the records of investigation in detail, being fully satisfied of the accused having committed an offence punishable under Ss.20 and 38 of the UA(P)A. The sanction order merely referred to the records of investigation in the respective crimes, the letter of the State Police Chief and the recommendation of the authority constituted under S.45 of the UA(P)A.

24. It is to be emphasized that S.45(2) of the UA(P)A makes it mandatory for the Authority to make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed, to the appropriate Government. This does not absolve the appropriate Government from applying its mind since otherwise there was no requirement for a further sanction from the appropriate Government. We have seen from the precedents that sanction for prosecution is a solemn and sacrosanct act which requires the

sanctioning authority to look at the facts and arrive at the satisfaction, of requirement of a prosecution. It was held in ***Anirudh Singhji Karan Singhji Jadeja*** *[*supra] that despite the letter of the DSP being exhaustive, the Government ought to have verified that the allegations as stated by the DSP were borne out from the records. In the case of UA(P)A despite the independent review made by the Authority constituted under S.45, the Government has to arrive at a satisfaction without merely adopting the recommendation of the Authority. The Government, it is to be emphasized, has no obligation to act in accordance with the recommendation of the Authority. The sanction is of the Government and not the Authority and the recommendation of the Authority only aids or assists the Government in arriving at the satisfaction. In the present case there is no such application of mind discernible, but for the reference to the recommendation of the Authority and the laconic statement of the Government, that details have been verified, on which satisfaction is recorded as to the offence having been committed by the accused, for which prosecution has to be initiated. We find the sanction order of the UA(P)A to be not brought out in time, as statutorily mandated and bereft of any application of mind; both vitiating the cognizance taken by the Special Court.

25. The next contention raised by the State is with respect to the prosecution for offences under S.124A r/w S.149 IPC. At the outset we notice the finding in ***Rambhai Nathabhai Gadhvi*** [supra] that the power of the designated court to try the accused for any offence other than the offences under the special statute can be exercised only in a trial conducted for any offence under the special statute. When the cognizance taken, of the offences under the UA(P)A, is held to be without jurisdiction, for want of valid sanction, then there is no question of a valid trial being held by the Special Court into any offence under the IPC. Further it has to be noticed that there can be no sanction even under S.196 found, from the orders of sanction produced in the above revision petitions. In that context we need not dwell upon whether the Sessions Court competent to try the offence under S.124A should be directed to take cognizance and proceed with the trial of the offences under IPC.

26. Haradhan Shah [supra] held that rejection of representation by the Government and the Advisory Board in Preventive Detention matters should be after real and proper consideration; but it is not required that the reasons be communicated to the detenu, by a speaking order. It was held that :*Elaborate rules of natural justice are excluded either expressly or by necessary implication where procedural provisions are made in the statute or where disclosure of relevant information to an interested party would be contrary to the public interest (sic).* ***Saleena*** [supra] relied on the above cited decision and reiterated, in the context of the subjective satisfaction that regulates the orders of preventive detention, that there is no requirement that the order rejecting representation by the detenu should be a speaking one. It was also clarified that the Constitutional Courts could at any time call for the records and ensure that there was a proper consideration of the representation. The dictum is applicable only in preventive detention matters or where such requirement is given a complete go by in the statute. The sanction as mandated in the UA(P)A and the Cr.P.C has been held to be not directory and the purpose itself would be defeated if the above dictum of preventive detention, is imported in the matter of sanctions for taking cognizance by Criminal Courts, wherein the application of mind should be demonstrated from the order itself.

27. All the sanction orders invoke the powers under the UA(P)A. As rightly pointed out by the learned Government Pleader, merely because the powers under the UA(P)A alone was invoked;

if the order discloses consideration of the materials for the purpose of granting sanction under S.196, definitely the sanction orders can be upheld and the cognizance taken held to be valid, especially when the authority to grant such sanction under the UA(P)A and S.196 is the same authority; here, the Government. In all the revision petitions the sanction order after recording satisfaction of the accused having committed offences under the UA(P)A reads: *'besides offences punishable under relevant sections of the IPC for which they should be prosecuted' (sic).* The satisfaction, as revealed form the orders, does not refer to the precise provision under the IPC and it is more laconic than the satisfaction under the UA(P)A. S.196 refers to Chapter VI, Ss.153-A, 153-B, 295- A and sub-sections (1) to (3) of S.505.S.124-A, which is alleged in the present case, falls under Chapter V1. The offences falling under Chapter VI are offences against the State and the others are respectively (i) promoting enmity between different groups on grounds enumerated thereunder and doing acts prejudicial to maintenance of harmony, (ii) imputations and assertions against national integration, (iii) deliberate malicious acts intended to outrage religious feelings or insulting religious beliefs and (iv) those relating to public mischief as enumerated under sub-sections (1) to (3) of S.505. The offences so culled out for the purpose of mandating a requirement of sanction from the appropriate Government are those which could, by its very initiation result in allegations of violation of fundamental rights. The varied offences though engrafted in the IPC, whether the act complained of falls under the provision is a matter of perception regulated by individual experiences. It could also result in drastic action and punitive measures being taken against the alleged perpetrators which could later be classified as malicious and ill-motivated. It is to avoid such consequences on a well-meaning citizen or even an unsuspecting one, that the Parliament very consciously brought in the requirement of a sanction. The procedure for a recommendation from an Authority constituted and a further sanction from the appropriate Government ensures and warrants an objective consideration of the requirement to prosecute. The various offences vary in content and essence and without even a mention of the act complained of, the offence alleged or even the precise provision, the Government has made a cryptic statement which falls short of a satisfaction entered, with due application of mind. The sanction orders under both the UA(P)A and IPC have to be found invalid, not enabling the Special Court to take cognizance.

28. The sanction accorded to prosecute the petitioner for reason of the same having not been issued within the time stipulated in the UA(P)A and the Rules of 2008 is vitiated. The statutory mandate of time having not been complied with, the Special Court cannot take cognizance of the offences under Ss.20 and 38 of the UA(P)A Act. There is also a complete absence of application of mind. Under S.196(1) of the Cr.P.C, again there is no application of mind in the sanction as evidenced from the orders impugned and hence the cognizance taken of the offence under S.124-A of the IPC also has to fail. The cognizance taken by the Sessions Court under the IPC and UA(P)A are set aside and the orders passed, impugned in the Criminal Revision Petitions are set aside.

The Criminal Revision Petitions stand allowed.