"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY
&
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 08TH DAY OF JULY 2019/17TH ASHADHA, 1941

W.A.No.1330 OF 2015

AGAINST THE JUDGMENT DATED 22.5.2015 IN WP(C).NO.24902/2014 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 5 IN W.P.(C):

1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF HOME, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

3 THE DISTRICT COLLECTOR
COLLECTORATE, KALPETTA, WAYANAD-673 121.

4 THE STATE POLICE CHIEF
POLICE HEAD QUARTERS, VAZHUTHAKKAD P.O., THIRUVANANTHAPURAM-695 014.

5 THE SUPERINTENDENT OF POLICE
KALPETTA, WAYANAD-673 121.

BY SRI.K.V.SOHAN, STATE ATTORNEY

RESPONDENTS/PETITIONER & RESPONDENTS 6 TO 8 IN W.P.(C):

1 SHYAM BALAKRISHNAN
GIMLA, NILAVILPUZHA, MATTILIYAM P.O.,
WAYANAD-670 731.

2 PREM KUMAR
THE DEPUTY SUPERINTENDENT OF POLICE, MANANTHAVADY,
WAYANAD-670 645.

3 JOSE
THE SUB INSPECTOR OF POLICE, VELLAMUNDA POLICE STATION, WAYANAD-670 731.

4 UNION OF INDIA
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF HOME AFFAIRS, NORTH BLOCK,
CENTRAL SECRETARIAT, NEW DELHI-110 001.

R1 BY ADVS.SRI.P.CHANDRASEKHAR
R4 BY SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R1 BY ADVS.SMT.P.M.MAZNA MANSOOR
SMT.V.A.HARITHA
SRI.C.R.SYAMKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27.06.2019, THE COURT ON 08.07.2019 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

Liberty is often defined as the state of being free within Society from oppressive restrictions imposed by authority on one's way of life, behaviour or political views. The framers of our Constitution believed that certain freedoms are essential to enjoy the fruits of liberty and that the State shall not be permitted to trample upon these freedoms save for the pursuit of objectives that are in the larger interest of Society. As a matter of fact, the worth of a State lies in the worth of the individuals composing it and a truly free State is one where the collective liberties of its citizens are duly recognised and respected.

2. The appellant herein is the State of Kerala, aggrieved by the judgment dated 22.5.2015 of the learned Single Judge in W.P.(C).No.24902/2014. The learned Single Judge, through a passionate defence of the principle of personal liberty, held that the State had, by detaining the writ petitioner in police custody on a suspicion of his being a Maoist - a suspicion that was not based on any valid material, violated his fundamental right under *Article 21* of the Constitution of India. Consequently, the learned Judge directed the State Government to compensate the writ petitioner in an amount of Rs.1 lakh, over and in addition to paying him costs of the litigation quantified @ Rs.10,000/-.

3. In his writ petition, it was the case of the petitioner that he was residing along with his life partner in Wayanad District where they were engaged in organic farming. He was also a researcher of 'Yoga Sastra' (Science of Yoga) and conducted camps and classes occasionally for teaching Yoga. On 20.5.2014, the petitioner's friend Sachu, who was a former Human Resource Executive with India Vision news channel, and was currently working in a reputed company in a Gulf country, along with his wife Smt.Razia, who was working as a Yoga Teacher in an International School at Kakkanad, came to the petitioner's house on a motorcycle bearing Registration No.KL-8-V 4755. At about 4.30 p.m. on the same day, when the petitioner was travelling on the said motor cycle to Korom Junction to meet another of his friends, two police constables, dressed in plain clothes, blocked his way and took the key of his bike without any explanation and arrested him. When he asked for the reasons for his arrest, the police officials told him that a very large group of police men were looking for the motorcycle, and the two persons who were travelling thereon in the morning. Though the petitioner informed the Police that those travelers were at his home and that they were free to meet them, the Police constables ignored his offer and took him to Korom town. From there he was forcefully taken into the police jeep by the 8th respondent and six members from the thunderbolt force who were armed with advanced automatic rifles. The event was witnessed by hundreds of local people and had severely tarnished his reputation. The 8th respondent also prevented him from making a phone call to inform his family about his arrest, and prevented him from seeking any legal assistance. In the police jeep the Sub Inspector apparently told the petitioner that they were looking for the

riders of the motorcycle since they were suspected to be Maoists. Again the petitioner informed the 8th respondent that the said two persons were at his home and requested the said respondent to take him there so as to check the veracity of his statement, but the said plea was also ignored. The motor cycle was also seized. Later, at the Police station, the petitioner states that he was strip-searched in front of other persons and then subjected to an interrogation. He was then taken to his house, accompanied by Commandos belonging to the Thunderbolt force, and a search was conducted at the house when some articles such as laptops and mobile phones were seized. The police personnel reportedly left his house only by about 00.30 hours the next morning.

4. Impugning the judgment of the learned single judge that found in favour of the petitioner on the issue of unlawful detention, Sri.K.V.Sohan, the learned State Attorney would rely on the averments in the counter affidavit filed in the writ petition, as also the decision of the Supreme Court of United Kingdom in *Regina (Hicks and others) v. Commissioner of Police of the Metropolis (Secretary of State for the Home Department intervening) - (2017) 2 WLR 824* to contend that the police authorities apprehended the petitioner when he was detained by a section of the public who were in an agitated state. The petitioner was apparently taken to the police station for his own safety. Thereafter, to rule out the possibility of the petitioner having any connection with Maoists who had committed acts of illegality in the area, they had questioned the petitioner at the police station and also searched his residential premises. It is the contention of Sri. Sohan that the constitutional provisions that protect an individual from arbitrary arrest/detention have to be

balanced with the necessity to not make it impracticable for police authorities to perform their duty to maintain public order and protect the lives and properties of others. When viewed thus, it is contended, there was no prolonged or unjustified detention of the petitioner especially when there were many instances of disturbance to public tranquility encountered in the area at the hands of Maoist rebels that could have led the Police authorities to suspect the involvement of the petitioner in such acts.

5. Per contra, the learned counsel Sri.P.Chandrasekhar would contend that the version of the police authorities as regards the need for detention and the manner of detention are factually incorrect. He would maintain that the detention was under the circumstances narrated in the writ petition and there was absolutely no material whatsoever, on the basis of which the police authorities could have harboured a suspicion against the petitioner that he was closely associated with a militant Maoist organisation that was banned under the *Unlawful Activities Prevention Act*. He points out that the procedural lapses on the part of the police authorities, in not summoning him to the Police Station in terms of *Section 160* of the *Code of Criminal Procedure* or formally arresting him, and thereafter searching his residence without a search warrant, all pointed to an infringement of his fundamental right to privacy and personal liberty, under *Article 21* of the Constitution of India. The version of the police authorities that his house was in the midst of a thick forest, where there was a possibility of ambush by Maoist rebels, is sought to be discredited through reference to the title deed of his property which shows the property as being bounded by private holdings on three sides and a River on the

Southern side. Reference is then made to the judgments in *Gobind v. State of M.P. and Another - AIR 1975 SC 1378* and *K.S. Puttaswamy and Another v. Union of India and Others - (2017) 10 SCC 1* to contend that the action of the police authorities resulted in a serious violation of the petitioners fundamental right under *Article 21* of the Constitution. Reference is also made to the judgments in *Om Kumar and Others v. Union of India* - (*2001) 2 SCC 386, A (FC) and Others (FC) v. Secretary of State for the Human Department - (2004) UKHL 56* and *Huang v. Secretary of State for the Human Department - (2007) UKHL 11* to contend that even on the settled principles of administrative law, the State action in the instant case had to be reviewed by applying the principles of primary review mandated in cases involving violation of human rights. It is also emphasised, by placing reliance on the decision in *Arup Bhuyan v. State of Assam - AIR 2011 SC 957,* that the concept of a crime through association, has never been recognised under Indian Law. Sri. Chandrasekhar concludes by stating that the principles governing the grant of compensation while exercising the writ jurisdiction under *Article 226* of the Constitution are well settled and the instant is a case where the compensation awarded by the learned single judge calls for no interference. Reliance is placed on the decision of this Court in *Vibin P.V. v. State of Kerala - 2013 (1) KLT 102* for the said contention.

6. We have carefully considered the rival contentions as also the materials available on record. We might at the outset record our appreciation for the meticulous efforts put in by counsel on either side Viz. State Attorney Sri.K.V. Sohan and Sri.P.Chandrasekhar, who relied on a plethora of judgments - both Indian and

Foreign - to buttress their contentions as regards the balance to be struck between *bona fide* State action and the protection of fundamental rights of its citizens.

7. The Preamble to our Constitution declares that we the people of India are guaranteed the liberty of thought, expression, belief, faith and worship. The freedom of an individual to hold a particular political ideology is an aspect of his fundamental right to personal liberty under *Article 21* of our Constitution in that he has the unfettered freedom to choose an ideology of his liking (See: *K.S. Puttaswamy's* case (supra)). Accordingly, merely on a suspicion that the petitioner has embraced the Maoist ideology, he cannot be persecuted by the State authorities. *Article 21* of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Closely allied to the said right is the fundamental right to move freely throughout the territory of India and to reside and settle in any part of the territory of India, guaranteed through *Article 19(1)(d)* and *(e)* of our Constitution. The rights under *Articles 19* and *21* are not to be treated as mutually exclusive but rather as parts of an integral scheme that is designed to protect a citizen against arbitrary State action. As observed by *V.R. Krishna Iyer, J.* in *Mrs.Maneka Gandhi v. Union of India and Others - (1978) 1 SCC 248*, "No Article in Part III is an island but part of a continent, and the conspectus of the whole part gives the directions and the correction needed for interpretation of these provisions". Thus, one has to look at the effect of the breach of a right on the individual, who is the focus of the guarantee of fundamental rights under our Constitution, to determine whether any of his fundamental rights has been violated. If State action occasions a simultaneous breach of more than one fundamental right, then the

action has to be tested against the mandate of each of the provisions. One freedom shades into and merges with the other. Accordingly, an action that deprives a citizen of his right to move freely simultaneous breaches both the fundamental rights under *Articles 19 and 21*, unless the restrictive action satisfies the requirement of being a procedure authorised by the law [*Article 21*], which law is a reasonable one [*Article 19*] that is not arbitrary [*Article 14*].

8. The action taken by Police authorities in terms of the provisions of the Criminal Procedure Code, especially *Section 149* on which reliance is placed, has to satisfy the requirements of the safeguards envisaged under our Constitution. When thus viewed, we find that no material is produced by the State to show what the basis for harbouring a suspicion against the petitioner was when it is stated that the police authorities had reason to believe that the petitioner would commit an offence. In our view, any action taken by the police authorities, that had the effect of restraining the petitioner from acting according to his own free will, had to be based on a reasonable belief that they had as regards the likelihood of him committing an offence. They had to have material that justified the entertainment of such belief. The position was eloquently explained by *Lord Atkin* albeit in his dissenting judgment in *Liversidge v. Sir John Anderson and another* as follows:

> "It is surely incapable of dispute that the words "if A has X" constitute a condition the essence of which is the existence of X and the having of it by A. If it is a condition to a right (including a power) granted to A, whenever the right comes into dispute the tribunal whatever it may be that is charged with determining the dispute must ascertain whether the condition is fulfilled. In some cases the issue is one of fact, in others of both fact and law, but in all cases the words indicate an existing something the having of which can be

> ascertained. And the words do not mean and cannot mean "if A thinks that he has." "If A has a broken ankle" does not mean and cannot mean "if A thinks that he has a broken ankle." "If A has a right of way" does not mean and cannot mean "if A thinks that he has a right of way." "Reasonable cause" for an action or a belief is just as much a positive fact capable of determination by a third party as is a broken ankle or a legal right. If its meaning is the subject of dispute as to legal rights, then ordinarily the reasonableness of the cause, and even the existence of any cause is in our law to be determined by the judge and not by the tribunal of fact if the functions deciding law and fact are divided. Thus having established, as I hope, that the plain and natural meaning of the words "has reasonable cause" imports the existence of a fact or state of facts and not the mere belief by the person challenged that the fact or state of facts existed, I proceed to show that this meaning of the words has been accepted in innumerable legal decisions for many generations, that "reasonable cause" for a belief when the subject of legal dispute has been always treated as an objective fact to be proved by one or other party and to be determined by the appropriate tribunal."

9. Sri. Sohan, the learned State Attorney, has raised a contention as regards the propriety of this Court interfering with legitimate action taken by the police authorities with a view to maintain law and order in an area that has seen a proliferation of unlawful activities at the instance of militant Maoist groups. We would respond to the said contention in the following manner. In the exercise of its powers of judicial review under *Article 226* of our Constitution, while acting as a sentinel on the *qui vive* to protect the fundamental rights of our citizens, this Court exercises a primary review over State action with an emphasis on the doctrine of proportionality. A charge that State action has violated the fundamental right of a citizen calls for a heightened scrutiny of the said action by the Constitutional Courts to determine whether the action of the State in restricting the liberty of the citizen was strictly required by the exigencies of the situation. This principle was adopted by the Privy Council in *de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries,*

Lands and Housing - 1999 (1) AC 69 where, drawing on South African, Canadian and Zimbabwean authority, the Court observed that:

> "..... in determining whether a limitation is arbitrary or excessive, the Court must ask itself whether: (i) the legislative object is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

10. This statement of the law was later adopted by the House of Lords in *A (FC) and Others (FC) v. Secretary of State for the Home Department - (2004) UKHL 56*. Thereafter, to the three requirements enumerated above, a fourth was added and recognised in the *19th report of the Appellate Committee of the House of Lords – (2007) UKHL 11*, which observed that:

> "..... the judgment on proportionality must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the convention. The severity and consequences of the interference will call for careful assessment at this stage."

11. When we apply the said tests to the case at hand, we have no hesitation in holding that, in view of the primacy that is accorded under our Constitution to a person's fundamental right to privacy and personal liberty, the action of the police authorities in detaining and interrogating the petitioner and thereafter searching his residence, without following the procedure mandated under the *Code of Criminal Procedure*, was wholly unjustified. It may be that the police entertained a suspicion and the action taken was to a good end, but it is fundamental in our law that the

means which are adopted to this end are lawful means. A good end does not justify a bad means more so when the means adopted are such that violate the personal freedom and privacy of individuals.

12. Coming next to the issue of compensation, we may take note of the judgment of a Division Bench of this Court in *Vibin P.V v. State of Kerala - 2013 (1) KLT 103* where the court, after a survey of all the precedents on the subject, observed as follows at paragraph 36 of the judgment:

> "The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the Law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds. This is the upshot, which the Supreme Court reminds us through case law."

13. Taking cue from the said judgment, and finding that despite there being no express provision in our Constitution for payment of compensation by the State for the infringement of the right to life and personal liberty guaranteed under *Article 21* thereof, there is nevertheless established precedent to support such a direction for payment of compensation, we see no reason to interfere with the direction of the learned single judge to the State Government, to pay a compensation of Rs.1 Lakh to the petitioner, over and above the costs of the litigation quantified at Rs.10,000/-. The compensation amount awarded whilst not exorbitant, is also, in our view, adequate to inform the State authorities of the importance that is attached in our

Country and Constitution to the personal liberty of our citizens. It also serves to emphasize upon the caution that they must exercise in situations where, in the discharge of their lawful duties, they are confronted with issues relating to the personal liberty of citizens.

The Writ Appeal fails, and is accordingly dismissed.

Sd/-
HRISHIKESH ROY
CHIEF JUSTICE

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

prp

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE I: TRUE COPY OF THE GENERAL PROGRAM OF THE PARTY MANIFESTO.

ANNEXURE II: TRUE COPY OF THE PHOTOGRAPHS IN WHICH THE PETITIONER ATTENDED CLASSES.

ANNEXURE III: TRUE COPY OF THE DETAILS OF THE CASES REGISTERED IN WAYANAD DISTRICT AGAINST THE MAOISTS.

RESPONDENTS EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE