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"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019 / 29TH BHADRA, 1941

Crl.Rev.Pet.No.732 OF 2019

AGAINST ANNEXURE III ORDER IN CMP. NO.2064/2018 DATED 6-4-19 IN S.C.818/2018 OF COURT OF SESSIONS, KOZHIKODE

CRIME NO.11/2014 OF VALAYAM POLICE STATION, KOZHIKODE

REVISION PETITIONER/PETITIONER/ACCUSED (IN JUDICIAL CUSTODY):

ROOPESH, AGED 50,
S/O.RAMACHANDRAN, XVII/183, 'AMI' UNIVERSITY COLONY, COCHIN UNIVERSITY P.O., KOCHI022 (R.P.NO.873, CENTRAL PRISON, VIYYUR, THRISSUR).

BY ADVS.
SRI.K.S.MIZVER
SRI.K.S.MADHUSOODANAN
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR

RESPONDENTS/COMPLAINANT & FORMAL PARTY:

1 STATE OF KERALA,
TO BE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2 DEPUTY SUPERINTENDENT OF POLICE, NADAPURAM-673 504.

ADDL.R3 THE ADDITIONAL CHIEF SECRETARY,
HOME AND VIGILANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM

ADDL.R4 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM

ARE SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENTS 3 AND 4 AS PER ORDER DATED 15/7/19 IN CRL.RP 732/19.

R1-R4 BY SRI. SURESH BABU THOMAS
ADDL.DIRECTOR GENERAL OF PROSECUTION

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20.09.2019, ALONG WITH Crl.Rev.Pet.733/2019, Crl.Rev.Pet.734/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019 / 29TH BHADRA, 1941

Crl.Rev.Pet.No.733 OF 2019

AGAINST ANNEXURE III ORDER IN CMP. NO.2063/2018 IN S.C.817/2018 DATED 6-4-19 OF COURT OF SESSIONS, KOZHIKODE

CRIME NO.861/2013 OF KUTTIYADI POLICE STATION, KOZHIKODE

REVISION PETITIONER/PETITIONER/ACCUSED(IN JUDICIAL CUSTODY):

ROOPESH, AGED 50,
S/O. RAMACHANDRAN, XVII/183,
'AMI' UNIVERSITY COLONY, COCHIN UNIVERSITY P.O.,
KOCHI-22 (R.P.NO.873, CENTRAL PRISON,
VIYYUR, THRISSUR).

BY ADVS.
SRI.K.S.MADHUSOODANAN
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER

RESPONDENTS/COMPLAINAN & FORMAL PARTY:

1 STATE OF KERALA,
TO BE REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682031.

2 DEPUTY SUPERINTENDENT OF POLICE, NADAPURAM-673504.

ADDL. R3 THE ADDITIONAL CHIEF SECRETARY,
HOME AND VIGILANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

ADDL. R4 THE STATE POLICE CHIEF,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

ARE SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENTS 3 AND 4 AS PER ORDER DATED 15/7/19 IN CRL.RP 733/19.

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R1 TO R4 BY BY SRI. SURESH BABU THOMAS
ADDL.DIRECTOR GENERAL OF PROSECUTION

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20.09.2019, ALONG WITH Crl.Rev.Pet.732/2019, Crl.Rev.Pet.734/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019 / 29TH BHADRA, 1941

Crl.Rev.Pet.No.734 OF 2019

AGAINST ANNEXURE III ORDER IN CMP. NO.2065/2018 IN S.C.819/2018 DATED 6-4-19 OF COURT OF SESSIONS, KOZHIKODE

CRIME NO.15/2014 OF VALAYAM POLICE STATION, KOZHIKODE

REVISION PETITIONER/PETITIONER/ACCUSED(IN JUDICIAL CUSTODY):

ROOPESH, AGED 50,
S/O.RAMACHANDRAN, XVII/183, 'AMI' UNIVERSITY COLONY,
COCHIN UNIVERSITY P.O., KOCHI-22 (R.P.NO.873, CENTRAL PRISON, VIYYUR, THRISSUR).

BY ADVS.
SRI.K.S.MIZVER
SRI.K.S.MADHUSOODANAN
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR

RESPONDENT/COMPLAINANT & FORMAL PARTY:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2 DEPUTY SUPERINTENDENT OF POLICE, NADAPURAM-673504.

ADDL. R3 THE ADDITIONAL CHIEF SECRETARY,
HOME AND VIGILANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

ADDL. R4 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM

ARE SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENTS 3 AND 4 AS PER ORDER DATED 15/7/19 IN CRL.RP 734/19.

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R1 TO R4 BY BY SRI. SURESH BABU THOMAS
ADDL.DIRECTOR GENERAL OF PROSECUTION

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20.09.2019, ALONG WITH Crl.Rev.Pet.732/2019, Crl.Rev.Pet.733/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER

Under Challenge in these petitions is the common order passed by the Court of Session, Kozhikkode, as per which, the petitions filed by the revision petitioner under Section 227 of the Code of Criminal Procedure, 1973 (for short "the Code") were dismissed.

2. In his petition seeking discharge, the petitioner had raised manifold contentions before the learned Sessions Judge. He contended that the cognizance taken by the Court of Session for the offence under Section 124A of the IPC was unsustainable as his prosecution sans the requisite sanction under Section 196 of the Cr.P.C was bad in law. He also raised a contention that the sanction obtained by the prosecution for prosecuting him under the Unlawful Activities (Prevention) Act, 1967 ('UAP Act' for the sake of brevity) could not be regarded as valid in view of the blatant violation of the provisions of the Unlawful Activities (Prevention) (Recommendation And Sanction of Prosecution) Rules, 2008 ("Recommendation Rules, 2008" for the sake of brevity). Both these contentions did not find favour with the learned Sessions Judge. Hence, these revision petitions.

3. To appreciate the contentions raised by the petitioner, it is necessary to have a brief understanding of the facts involved.

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4. The petitioner is involved in three crimes, viz., Crime No.861 of 2013 registered at the Kuttiyadi Police Station, Crime No. 11 of 2014 and Crime No.15 of 2014 registered at the Valayam Police Station.

(a) The allegation in Crime No.861 of 2013 is that on 01.11.2013 at about 6 p.m., the petitioner along with five others, armed with guns and ammunition and being members of a banned Maoist organisation, visited the residential homes of certain persons at Viyyad Tribal Colony, and distributed pamphlets containing seditious writings. The Detecting Officer proceeded to the spot and the pamphlets were seized on receipt of information. He then went on to register a Crime alleging offences punishable under Sections 143, 147, 148, 506(ii) of the IPC, Section 25(IA) of the Arms Act, 1959 and Sections 10(1), 13(1) and 16(1)(b) of the UAP Act.

(b) The allegation in Crime No.11 of 2014 is that on 1.1.2014, the petitioner, along with four others, armed with guns, went to the residence of certain persons at Valiya Panom, Vilangad and demanded food. After having food, which was obtained after threatening the residents, they are alleged to have distributed pamphlets containing seditious writings. They are also alleged to have exhorted people to take up armed struggle against the State. On receipt of information, the concerned officer proceeded to the spot and seized

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the pamphlets, which contained seditious writings. He then registered a Crime under Sections 143, 147, 148, 506(ii) r/w. Section 149 of the IPC, Section 25(IA) of the Arms Act, 1959 and Sections 10(1), 13(1)(a) and 16(1)(b) of the UAP Act.

(c) In Crime No.15 of 2014, the allegation is that on 4.1.2014, at about 8.00 p.m., five armed vigilantes, being members of a proscribed terrorist organisation CPI (Maoist), visited the Panniyeri Tribal Colony and entered the houses of some of the residents and demanded food. While leaving, they are alleged to have distributed pamphlets containing seditious writings. A Crime was registered under Sections 143, 147, 148, 506(ii) r/w. Section 149 of the IPC, Section 25(IA) of the Arms Act, 1959 and Sections 10(1), 13(1)(a) and 16(1)(b) of the UAP Act.

5. Investigation in the aforesaid crimes was completed and final reports were laid. Certain offences were deleted and certain others were added. The records reveal that in all the three cases, the petitioner finds himself charge sheeted for having committed offences punishable under Sections 143, 147, 148, 124A r/w Section 149 of the IPC and Sections 20 and 38 of the UAP Act.

6. Separate sanction orders were obtained under the

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Recommendation Rules, 2008 for prosecuting the petitioner. The investigation against the rest of the accused is pending.

7. The cases were taken cognizance of by the Court of Session, Kozhikode and they were numbered as S.C.Nos.817 of 2018, 818 of 2018 and 819 of 2018.

8. Sri.K.S.Madhusoodhanan, the learned counsel appearing for the petitioner, contended that to prosecute the petitioner under Section 124A of the IPC, it is imperative that sanction under Section 196 of the Cr.P.C has to be obtained. In the cases on hand, the sanction orders produced are one obtained under Section 45(1)(ii) of the UAP Act, which miserably falls short of the requirement under the Act.

9. The learned counsel would then refer to the Recommendation Rules, 2008 and it is urged that Rules (3) and (4) clearly mandate that the Authority constituted under Section 45(2) of the UAP Act shall, within seven working days of the receipt of evidence gathered by the Investigating Officer under the Code submit its report of recommendation to the State Government and that the State Government shall, under sub-section (2) of Section 45 of the Act, take a decision regarding sanction for prosecution within seven

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working days after receipt of recommendations of the Authority. In the instant petitions, the time limit prescribed under the Act has not been followed and in that view of the matter, the sanction orders have to be held as vitiated, submits the learned counsel. Elaborating further and referring to the sanction orders produced along with the petitions, the learned counsel points out that in Crime No. 861 of 2013, the letter of the State Police Chief to the Sanctioning Authority was on 28.09.2017 and in terms of the Rules, the decision regarding sanction should have been taken within a period of 14 days from the said date. In the said case, the sanction order was issued only on 11.06.2018, much after the expiry of the period stipulated in the Rules. In Crime No.11 of 2014, the letter of the State Police Chief to the Sanctioning Authority was on 04.10.2017 and the sanction order was issued only on 11.06.2018. So is the case with Crime No. 15 of 2014, in which crime, the proposal was sent by the State Police Chief on 21.10.2017 and the sanction order was issued on 7.4.2018. According to the learned counsel, when the Statute prescribes a time limit for recommendation, the same has to be complied with in its letter and spirit and its non-compliance would be fatal. The learned counsel would also refer to the judgment of a Division Bench of this Court in **P.A.Shaduly @ Haris and Another v. Superintendent of Police, NIA** (Crl.A. No.148 of 2016 dated 12.4.2019), wherein it was held in paragraph No.43 that when a statute

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prescribes a time limit for the recommendation, the same has to be complied with in letter and spirit. It is further submitted by the learned counsel that the petitioner herein was arrested on 15.12.2015 and he has been languishing in custody since then. The irregularity in issuing the sanction orders has occasioned in gross failure of justice, submits the learned counsel.

10. Sri. Suresh Babu Thomas, the learned Additional Director General of Prosecution, has opposed the prayer. According to the learned ADGP, the allegations are extremely grave and mere failure of the State to follow the stipulations in the Act and Rules will not have any effect in the prosecution of the petitioner.

11. In view of the nature of contentions raised and to get a clarity on the issues, the Additional Chief Secretary, Home and Vigilance, Government Secretariat and the State Police Chief were suo motu impleaded as additional respondents 3 and 4 and they were directed to file counter affidavit specifically adverting to the contentions advanced in these petitions.

12. In the counter affidavit filed by the additional 3rd respondent, it is stated that the proposal for sanction of the first accused in the three crimes were received by the 3rd respondent on 21.10.2017. At the time of receipt of

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the proposal, the Authority constituted for recommending prosecution sanction was under the Chairmanship of the Law Secretary. Later, based on request by the State Police Chief, the Government reconstituted the review authority of UAP Act cases under Section 45(2) of the UAP Act by appointing Justice P.S. Gopinathan, as its Chairman by order dated 5.1.2018. The Chairman of the Authority was preoccupied with Puttingal Temple Enquiry Commission and related cases. The Committee was able to take up the proposal only on 7.2.2018, on which day, sanction was accorded to prosecute the petitioner. The proposal was circulated for sanction on 16.03.2018 and the sanction order was issued on 7.4.2018. Insofar as Crime Nos. 11 of 2014 and 15 of 2014 are concerned, the approval was granted by the Authority on 7.2.2018, the proposal was circulated for sanction on 16.03.2018 and sanction was finally accorded on 11.06.2018. It is further stated that though the provisions of the Act and Rules mandate that the time limit should be strictly adhered to, there was some delay due to reconstitution of the Authority as stipulated under Section 45(1) of the Act and Rule 2(b) of the Recommendation Rules, 2008.

13. In the statement filed by the additional 4th respondent, it is stated that the proposals were sent in respect of Crime No.861 of 2013 on 28.09.2017, in respect of Crime No.11 of 2014 on 04.10.2017 and in respect of

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Crime No. 15 of 2014 on 21.10.2017 and the delay, which has occasioned in granting the order, is explained as due to administrative exigencies. It is also stated that though the delay in according sanction violating the Act and Rules is bad in law, but the process cannot be rendered illegal.

14. I have considered the submissions advanced.

15. Before adverting to the contentions advanced, it would be profitable to have a look at the sanction order issued in Crime No. 861 of 2013. The sanction orders in all the cases are identically worded.

"GOVERNMENT OF KERALA

Abstract

Criminal Justice-Investigation in Crime No.861/13 of Kuttiady Police Station-Prosecution of the accused for the offence punishable under sections 20 and 38 of the Unlawful Activities (Prevention) Act, 1967-sanction under section 45 (1) (i) of the Unlawful Activities (Prevention) Act, 1967-orders issued.

HOME (SECRET SECTION-A) DEPARTMENT

G.O (Rt) No.1642/2018/Home Dated, Thiruvananthapuram, 11.06.2018

Read:- 1. Records of investigation in Crime No.861/13 of Kuttiyadi Police Station.
2. Letter No.D4-151504/2017/PHQ dated 28.09.2017 from the State Police Chief, Kerala, Thiruvananthapuram.
3. Report of the Authority constituted under Section 45(2) of the Unlawful Activities (Prevention) Act, 1967.
4. Letter No.T3-197780/2017/PHQ dated 03.06.2018 from the State Police Chief, Kerala, Thiruvananthapuram.

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ORDER

WHEREAS, it has been disclosed from the records of investigation in Crime No.861/13 of Kuttiadi police Station that the following persons, namely;

1. T.R.Roopesh@Praveen @ Prashanth @ Prakash, S/o.Ramachandran, Thekkiniyedath (H), Peringottukara (P.O). Thrissur, now residing at Amy House. Edathanapally Road. Punnakkaltu Moola, University Colony. KUSAT, Cochin.

2. Suresh A.S. @Pradepa @Thungappa @ Ragu, Angadi Village, Mudigere Tq, Chikkamangalur Dt . Karnataka.

3. Mahesh @ Jayanna @ John @ Mahadeva, Madhu, Appannadoddi Village Manvi PS Limit, Rarichur, Karnataka.

4. Sundari @ Geetha, Bintru D/o Babu Melekudiya, Kotyanthadkamane, Kuthlur, Belthangady, Mangalure, Karnataka.

5. One Un-identifiable lady

being the members of the banned terrorist organisation named Maoist thereby actively participated in the terrorist activities within the State and outside, with the intention to threaten the Unity, Integrity and Sovereignty of the Nation;

AND WHEREAS, the case registered U/s 143, 147, 148, 506(ii), 124 (A) r/w 149 IPC and Sections 20 & 38 of UAPA 1967 at Kuttiyadi Police Station with appearance of 5 armed Maoists including 2 women cadres at Vayad colony with in Kuttiady Police Station limit on 1.1.2013. They had shouted slogans supporting the CPI(Maoist) party and distributed pamphlets urging anti national activities. The State Police Chief has requested the Government to accord sanction for the prosecution of accused for the offence under sections 20 and 38 of the 'Unlawful Activities Prevention) Act,1967;

AND WHEREAS, the Authority constituted under section 45 (2) of The Unlawful Activities (Prevention) Act, 1967 examined the matter in detail with reference to the evidence gathered during then course of the Investigation and recommends the government to accord sanction to prosecute the 1st accused. With respect to the other accused, the authority recommends the Government to direct the Investigating officer to split up the case and proceed with the investigation, with intimation to the Court concerned, and to submit the report again for sanction after completing the investigation;

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AND WHEREAS, Government, after careful examination of records of investigation in crime No 861 of 2013 of Kuttiyadi Police Station in detail are fully satisfied that the 1st accused had committed offence punishable under Unlawful Activities (Prevention) Act, 1967 besides relevant sections of Indian Penal Code for which he should be prosecuted.

NOW THEREFORE, in exercise of the powers conferred by section 45 (I) (Prevention) Act, 1967. Government of Kerala do to prosecute T.R.Roopesh@Praveen @ Prashanth @ Prakash, S/o. Ramachandran, Thekkiniyedath (H). Peringotlukara. P.O., Thrissur now residing at Amy House, Edathanapally Road, Punnakkattu Moola, University Colony, KUSAT, Kochi, for committing the offence punishable under Section 20 and 38 of the UnlawfuI Activities (Prevention)Act, 1967 and for any other offences punishable under other provision of law in respect of the acts aforesaid and for taking cognizance of the said offence by a Court of competent jurisdiction. The State Police Chief shall direct the investigating Officer to split up the case against the other accused and proceed with the investigation, with intimation to the Court concerned, and to submit the report again for sanction after completing the investigation.

By order of the Governor,

Sd/-

Subrata Biswas
Additional Chief Secretary to Government

To
The State Police Chief, Kerala, Thiruvananthapuram
Inspector General of Police, Kannur Range
District police Chief, Kozhikode Rural
Stock File/Office copy.”

16. A perusal of the sanction order would show that the same has been issued in exercise of the powers under Section 45(1)(ii) of the UAP Act. The order in unmistakable terms states that the authority has examined the matter in detail with reference to the evidence gathered during the course of investigation and it is thereafter that it was recommended to the Government to accord sanction to prosecute the first accused for the offence under Sections

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20 and 38 of the UAP Act, 1967. On the strength of the recommendation given by the authority, the Government have accorded sanction to prosecute the petitioner for the offences under the UAP Act and also for the relevant sections of the Indian Penal Code for which, he needs to be prosecuted. The casual expression, "and also for the relevant sections of the Indian Penal Code" assumes great significance in a case of this nature. From the sanction order, it appears that sanctioning authority has failed to advert to the time stipulations in the Recommendation Rules, 2008 and also the requirement for a previous sanction of the State Government under Section 196(1) of the Cr.P.C.

17. In this context, it would be apposite to refer to the precedents, wherein the Hon'ble Supreme Court had occasion to elucidate on the provisions with regard to sanction, keeping in mind the public interest and the protection available to the accused.

18. In **CBI v. Ashok Aggarwal**[1], the Apex Court had observed as under:

> "7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and

1 [(2014) 14 SCC 295]

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circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority

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and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind.

(Vide: Gokulchand Dwarkadas Morarka v. King AIR 1949 PC 82; Jaswant Singh v. State of Punjab AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P. AIR 1979 SC 677; State through Anti-Corruption Bureau, Govt of Maharashtra v. Krishanchand Khushalchand Jagtiani AIR 1996 SC 1910; State of Punjab v. Mohd. Iqbal Bhatti (2009) 17 SCC 92; Satyavir Singh Rathi, ACP v. State AIR 2011 SC 1748; and State of Maharashtra v. Mahesh G. Jain (2013) 8 SCC 119).

8. In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution

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independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

19. In **Rambhai Nathabhai Gadhvi and Ors. v. State of Gujarat**[2], wherein while considering a sanction order issued under Section 15 of TADA (since repealed), it was held by the Apex Court as under:

> "8. Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the Sub-section is the permission to prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take

2 [(1997) 7 SCC 744]

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> cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction."

20. The above precedents would make it clear that a valid sanction is *sine qua non* for enabling the prosecuting agency to approach the Court in order to enable the Court to take cognizance of the offence under the UAP Act. If there is no valid sanction, the Designated Court will get no jurisdiction to try a case against any person mentioned in the report as the Court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.

21. With the above principles in mind, we shall now have a glance at the relevant provisions. Section 45 of the UAP Act deals with Cognizance of

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Offences. It reads as under:

> "Section 45 - Cognizance of Offences.-
>
> (1) No court shall take cognizance of any offence-
>
> (i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;
>
> (ii) under Chapter IV and Chapter VI without the previous sanction of the Central Government or, as the case may be, the State Government, and [if] such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.
>
> [(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."

22. Section 45 of the Act leaves no manner of doubt that a Court is empowered to take cognizance of any offence under Chapter III only with the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf. In respect of offences under Chapters IV and VI, cognizance can be taken only after obtaining previous sanction of the

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Central Government or, as the case may be, the State Government. The provision also mandates that 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.

23. Section 48 of the UAP Act confers an overriding effect to the provisions of the Act over all other enactments. It states as under:

> "Section 48 - Effect of Act and Rules, etc., inconsistent with other Enactments.
> The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

24. Section 52 of the Act enables the Central Government to frame Rules. It reads as under:

> "Section 52 - Power to make Rules.—
>
> (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

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(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

[(ee) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of section 45, and]

(f) any other matter which is required to be, or may be, prescribed.

Section 2 (ee) was inserted by Act 35 of 2008 and came into effect with effect from 31.12.2008."

25. It is in exercise of the powers conferred by sub-section (2) of Section 45 read with clause (f) of sub-section (2) of Section 52 of the UAP Act, the Central Government framed the Unlawful Activities (Prevention)

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(Recommendation And Sanction of Prosecution) Rules, 2008. The Rules are extracted hereunder for easy reference.

"1. Short title and commencement.

(1) These rules may be called the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition.

(1) In these rules, unless the context otherwise requires,

(a) "Act" means the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

(b) "Authority" means the Authority to be appointed by the Central Government [or, as the case may be, the State Government] under sub-section (2) of section 45;

(c) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Words and expression used herein and not defined in these rules, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

(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."

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26. Section 45(2) the Act as well as Rules 3 and 4 of the Recommendation Rules, employ the word "shall" when it speaks about the time frame within which sanction should be granted. The provisions enumerated above leave no manner of doubt that within seven days of the receipt of evidence gathered by the Investigating Officer under the Code, the Authority appointed under Section 45 of the Act shall make its report to the State Government and the State Government, in turn, have to take a decision regarding sanction for prosecution within seven working days after receipt of recommendation of the Authority. The word 'shall' is ordinarily mandatory, but in the context or if the intention is otherwise, it may be construed to be merely directory. The construction ultimately depends on the provision itself keeping in view the intendment of the enactment and the context in which, the word 'shall' has been used. Where the consequence of failure to comply with any requirement of a provision is not provided by the statute itself, the consequence has to be determined with reference to the intention of the legislature, nature and purpose of the enactment and the effect of the non-compliance. (See **M.V. "Vali Pero" v. Fernandeo Lopez**[3]). It is trite that when the Act contains very harsh and stringent provisions and when it prescribes a procedure substantially departing from the prevalent ordinary

3 [(1989) 4 SCC 671]

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procedural law, the provisions cannot be considered in a liberal manner to the detriment of the accused. (See **Asharafkhan and Ors. v. State of Gujarat**[4]).The application of provisions, which form part of penal statues, requires strict interpretation and failure to comply with the mandatory requirement of sanction before cognizance is taken will vitiate the entire proceedings. (See **Seeni Nainar Mohammed and Others v. State Represented by the Deputy Superintendent of Police**[5]).

27. It is for obvious reasons that an independent authority was constituted to review the entire evidence gathered during the investigation and then make a recommendation, whether it is a fit case for prosecution. Insofar as the requirement of sanction and the procedure for the same are concerned, a procedure substantially departing from the prevalent ordinary procedure is laid down under the Act and Rules. The sanctioning authority as well as the State are expected to scrupulously stick to the time frame, particularly in view of the very stringent provisions of the Act. The legislature has thought it fit to incorporate a provision such as Section 43D in the Act, which provides that accused is not entitled to release on bail, if the court is of the opinion that there are reasonable grounds for believing that the accusations against such person is *prima facie* true. When the penalty provided is extremely stringent

4 [2012 (11) SCC 606])
5 (AIR 2017 SC 3035).

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and the procedure for trial prescribed is compendious, the sanctioning process mentioned under Section 45 of the Act and under the Recommendation Rules, 2008 must have to be adopted very seriously and exhaustively than the sanction contemplated in other penal statutes, as has been held by the Apex Court in **Rambhai Nathabhai Gadhvi and Ors. vs. State of Gujarat**[6]. The explanation offered for non compliance with the stringent statutory provisions is that the Chairman of the authority was pre-occupied with other matters. This is totally unacceptable, particularly in view of the fact that the petitioner has been undergoing incarceration in a very serious offence from December, 2015 onwards. I have no doubt in my mind that the failure of the respondents to scrupulously comply with the statutory stipulations has resulted in failure of justice.

28. Now the question is, whether there is a valid sanction to prosecute the petitioner under Section 124A of the IPC.

29. In the orders granting sanction, it has been stated that the Government, after careful examination of records of investigation in Crime No. 861 of 2013 of the Kuttiyadi Police Station in detail, are fully satisfied that the first accused had committed offence punishable under Unlawful Activities (Prevention) Act, 1967 besides relevant sections of the Indian Penal Code for

6 (1997 (7) SCC 744]

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which, he should be prosecuted. Thereafter, in exercise of powers conferred by Section 45(1) UAP Act, the Government of Kerala granted sanction for prosecuting the petitioner for the offence punishable under Sections 20 and 38 of the UAP Act and for any other offences punishable under other provision of law in respect of the acts aforesaid and for taking cognizance of the said offence by a Court of competent jurisdiction.

30. In the cases on hand, the petitioner is also being prosecuted for the offence under Section 124A of the IPC, which comes under Chapter VI of the IPC. Section 196 of the Code of Criminal Procedure reads as follows:

> "Section 196 - Prosecution for offences against the State and for criminal conspiracy to commit such offence.
> (1) No Court shall take cognizance of-
>
> (a) any offence punishable under Chapter VI or under section 153A,of the Indian Penal Code, or section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or
>
> (b) a criminal conspiracy to commit such offence, or
>
> (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.
>
> xxxxxxx xxxxxxxx xxxxxxxx"

31. Section 196(1) of the Code provides that "no Court shall take cognizance of any offence punishable under Chapter VI of the IPC, except with

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the previous sanction of the Central Government or of the State Government". The sanction of the Government is thus a pre-condition for taking of cognizance of the offences specified in various clauses of Section 196 of the Cr.P.C. The object of Section 196 of the Code is to ensure protection only after due consideration by the appropriate authority so that frivolous or needless prosecutions are avoided. The sanction of a prosecution must be expressed with sufficient particularity to indicate clearly the matter which is to be the subject of the proceeding and it should be apparent from the order of sanction that the authority had applied its mind to the facts constituting the offence. No materials have been placed before this Court to substantiate that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. The order itself states that it has been issued in exercise of the powers under Section 45(2) of the UAP Act and no reference is made to Section 124A of the IPC or of the requirement under Section 196(1) of the Cr.P.C. A casual mention that sanction is accorded for the relevant provisions of the IPC may not suffice, in view of the serious incidents of Section 124A of the IPC and the procedural requirement under section 196(1) of the Cr.P.C. Since grant of sanction is not a mere formality, the provisions must be observed with utmost strictness keeping in mind the public interest and the protection available to

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the accused against whom the sanction is sought. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other materials placed before it.

32. **In Shalibhadra Shah and Others v. Swami Krishna Bharati and Another**[7], A.M.Ahmadi, J, as he then was, speaking for a Division Bench, had occasion to consider Section 196(1) of the Cr.P.C. and in paragraph No.4 of the judgment, it was observed as under:

> "4. The offences enumerated in S.196(1) of the Code of Criminal Procedure are of a serious and exceptional nature. It is, therefore, provided that previous sanction of the Government shall be required so that prosecutions which may by themselves generate class feelings can be avoided. xxxxxxx xxxxxx
>
> It is, therefore, clear that there is an underlying policy which is clearly discernible on a reading of the offences enumerated in S.196(1) of the Code of Criminal Procedure in respect of which prior sanction is a must before cognizance of the offence under any of those provisions can be taken."

33. In the sanction orders issued in the instant petitions, there is no reference to the application of mind in relation to Section 124A of the IPC.

7 (1981 Cri.L.J.113)

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34. Sri. Suresh Babu Thomas, the learned Additional DGP, referred to the decision of the Apex Court in **State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru**[8] and it was argued that the general reference in the sanction orders that the accused can also be prosecuted for the relevant sections of the IPC would suffice. I am unable to agree. In the said case, there were separate sanction orders for prosecuting the accused for the offences under the Prevention of Terrorism Act, 2002 ('POTA' for brevity) and also for the offence under Chapter VI of the IPC. In the order granting sanction for the offence under the POTA, it was mentioned that the Lieutenant Governor was satisfied that the accused have *prima facie* committed offence punishable under Sections 121, 121A, 122, 124 and 120B of the IPC being involved in criminal conspiracy to commit the said offences with the intention of waging war against the Government of India along with other offences. The Hon'ble Supreme Court held, that may have no effect because, in the sanction order under Section 196 of the Code, the POTA offences did not find specific mention of. Thus, the mere mention of certain IPC offences in the order granting sanction for the offence under POTA was held not very significant. The same is not the case in the instant petitions. The prosecution ought to have obtained sanction under Section 196 of the Cr.P.C for prosecuting the petitioner for

8 2005 (11) SCC 600

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having committed offence under Section 124A of the IPC.

35. In view of the above, I hold that the sanction accorded to prosecute the petitioner herein is vitiated for non compliance with the mandatory provisions in the Act and Rules and, therefore, the taking of cognizance by the court below for the offences under Sections 20 and 38 of the UAP Act is vitiated. I also hold that the learned Sessions Judge had no jurisdiction to take cognizance of the offence under Section 124A of the IPC without a valid sanction order under Section 196(1) of the Cr.P.C. The petitioner is entitled to succeed in these revision petitions. I allow these revision petitions and set aside the orders passed by the learned Sessions Judge in:

a) C.M.P.No.2063 of 2018 in S.C.No.817 of 2018,
b) C.M.P.No.2064 of 2018 in S.C.No.818 of 2018 and
c) C.M.P.No.2065 of 2018 in S.C.No.819 of 2018.

The petitioner will stand discharged.

Sd/-

RAJA VIJAYARAGHAVAN V.,
JUDGE

ps/17/9/2019

///TRUE COPY// P.A. TO JUDGE

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APPENDIX OF Crl.Rev.Pet 733/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE I	**PHOTOCOPY OF THE ORDER IN C.M.P 558/2018 DATED 09.04.2018 OF COURT OF SESSIONS, KOZHIKODE.**
ANNEXURE II	**PHOTOCOPY OF THE SANTION ORDER OF THE STATE GOVERNMENT BEARING NO.G.O.(RT)NO.1641/2018/HOME DATED 11.06.2018.**
ANNEXURE III	**COPY OF THE ORDER IN CMP 2064/18 UNDER SEC.227 OF CR.P.C. OF COURT OF SESSIONS, KOZHIKODE DATED 06.04.2019.**

APPENDIX OF Crl.Rev.Pet 732/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE I	**PHOTOCOPY OF THE ORDER IN C.M.P.558/2018 DATED 09.04.2018 OF COURT OF SESSIONS, KOZHIKODE.**
ANNEXURE II	**PHOTOCOPY OF THE SANCTION ORDER OF THE STATE GOVERNMENT BEARING NO.G.O.(RT) NO.1641/2018 /HOME DATED 11.06.2018.**
ANNEXURE III	**COPY OF THE ORDER IN CMP 2064/2018 UNDER SECTION 227 OF CR.PC OF COURT OF SESSIONS, KOZHIKODE DATED 06.04.2019.**

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APPENDIX OF Crl.Rev.Pet 734/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE I	**PHOTOCOPY OF THE ORDER IN C.M.P.558/2018 DATED 9.4.18 OF COURT OF SESSIONS, KOZHIKODE.**
ANNEXURE II	**PHOTOCOPY OF THE SANCTION ORDER OF THE STATE GOVERNMENT BEARING NO.G.O.(RT)1001/2018/HOME DATED 7.4.2018.**
ANNEXURE III	**COPY OF THE ORDER IN C.M.P.2065/18 UNDER SEC.227 OF CR.P.C. IN S.C.819/18 DATED 6.4.19 OF COURT OF SESSIONS, KOZHIKODE.**