

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-VII,
ERNAKULAM**

Present :-

Sri. V P M Suresh Babu, Additional District & Sessions Judge VII.

Friday, the 4th day of October, 2024/12th Aswina, 1946.

SESSIONS CASE No.1090/2022

(Crime. No.29/2020 of Thalappuzha Police Station)

Complainant :

State of Kerala,
rep. by the Investigating Officer Anti- Terrorist Squad

By Adv. T P Ramesh, Special Public Prosecutor

Accused:

A2- Chaithanya @ Surya(custody)
S/o Ramaiah, Kondamodu post, Veeramma Colony,
Rajapalayam Mandal, Gundur(Dist), Andra Pradesh

A3- Savithry @ Rajitha (custody)
D/o. Loke Gowda, JariMane Halluvalli(Post),
Kalasa, Mudigere, Chikkamangaluru, Karnataka

This Sessions Case coming on for hearing on 04.10.2024 in the presence of the Addl. Public Prosecutor and counsel for the accused and after having stood over for consideration till this day, and the Court on the same day delivered the following:

O R D E R

on framing of New Charge

The accused No. 2 and 3 stand charged for the offences punishable under section 143, 147, 148, 121, 121A, 122 read

with 149 IPC and Section 7 read with Section 25(IA) of the Arms Act and Section 20, 38 and 39 of the Unlawful Activities (Prevention) Act.

2. The prosecution case is that on 08.02.2020 at about 12.50 pm. the accused No. 1 to 7, who belongs to the banned CPI (Maoist) terrorist organisation, came behind the Estate Paddy Building At Thavinjal Panchayat in Wayanad. They came in uniform of People's Liberation Guerrilla Army and possessed machine guns and the persons present there to wage war armed rebellion against the Government and affixed and supplied notice inciting the people to join armed rebellion against the Government. They thereby committed the offence under Section 143, 147, 148, 121, 121A, 122 read with 149 IPC and Section 7 read with Section 25(IA) of the Arms Act and Section 20, 38 and 39 of the Unlawful Activities (Prevention) Act. After perusing the police report and statement of the witness and other materials, my learned predecessor took cognizance of an offence under Section 143, 147, 148, 121, 121A, 122 read with 149 IPC and Section 7 read with Section 25(IA) of the Arms Act and Section 20, 38 and 39 of the Unlawful Activities (Prevention) Act on 31.10.2022.

3. Heard both sides.

4. Copy of relevant prosecution records were furnished to both accused. Heard both sides under Section 227 of the Cr.P.C.

5. The only point for consideration is :-

Whether there is any sufficient material to frame charges against the accused for all the offences alleged against them ?

6. **The point** :- Though there are seven accused shown in the police report, police report is submitted only against three accused. It is stated that further investigation is pending against other accused. But so far, no police report is filed against them. The prosecution against the first accused is subsequently withdrawn. As such, the police report is now against only Chaitanya @ Surya and Savithry @ Rajitha @ Usha, who are shown as accused No. 3 and 4 in the police report.

7. The learned Special Public Prosecutor submit that the prosecution has collected sufficient material to prove the offence under Section 143, 147, 148, 121, 121A, 122 read with 149 IPC and Section 7 read with Section 25(IA) of the Arms Act and Section 20, 38 and 39 of the Unlawful Activities (Prevention) Act. The learned Advocate for the accused argued that in order to attract the offence under Section 25(IA) of the Arms Act, there must be evidence to prove that the accused possessed the weapons. Except the oral statement of witnesses, there is no recovery of arms and no evidence that the accused carried arms which are usable. Therefore the offence under Section 25(IA) will not lie. Likewise, it is alleged that the accused has collected arms for waging war against the Government. It was also based on

oral evidence which is not sustainable. According to the learned counsel, there is no sufficient material to frame charges under Section 25(IA) of the Arms Act. According to the learned counsel, there is no sufficient material to frame charges against the accused under Section 121 and 121A of the IPC also.

8. The learned counsel relies on the decision of the Hon'ble Supreme Court in ***State of Punjab v. Jagha Singh (AIR 1998 Supreme Court 3113)***. In the decision referred to by the learned Advocate, the Hon'ble Supreme Court held that in the absence of any evidence to show that the accused was found in possession of a particular weapon in working condition and in possession of one 12 Bore DBBL gun in a working condition, he cannot be convicted. In the present case also, no evidence regarding the weapon except some photographs. The learned counsel also referred to the decision of the Hon'ble Supreme Court in ***Jaspal Singh v. State of Punjab (AIR 1999, Supreme Court 1548)*** which provides that in the absence of evidence to prove that the accused possessed the gun which was in working condition, conviction under Arms Act Section 25, is not proper.

9. It is by keeping in view the submission of both sides, I proceed to consider whether there is sufficient material to frame charges against the accused for the offences alleged in the Police Report referred to above. Though my learned predecessor took cognizance of the offence punishable under Section 20, 38 and 39 of Unlawful Activities (Prevention) Act,

admittedly no sanction is produced along with the Police Report or subsequently. Section 45 contains a bar against taking cognizance. Section 25 of unlawful Activities (Prevention) Act, which deals with cognizance of offence provided that, *“no court shall take cognizance of any offence under Chapter 3 without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf”* (Section 45(1)(i)). Section 45(1)(ii) Under Chapter 4 and 6 without 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. Therefore, the very cognizance of offence under Section 20, 38 and 39 is not sustainable and no charges are liable to be framed against the accused under Section 20, 38 and 39 of the unlawful Activities (Prevention) Act.

10. So far as the offence under Section 25(IA) is concerned, no arm was recovered. It is only based on the alleged photographs in which the arms were found and the oral testimony of witnesses, the offence under Section 25(IA) was incorporated. Section 25(IA) provides that *“whoever acquires or has in his possession or carries any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than 7 years but which may extend to 14 years and shall also be liable to fine”*.

11. Section 7 provides that *“no person shall acquire or have in his possession or carry or use, manufacture, sell, transfer, convert to repair test or proof or expose or offer for sale or transfer or have in his possession for sale or transfer or conversion or repair, test or proof any prohibited arms or prohibited ammunition unless he has been specifically authorised in this behalf”*.

12. Firearm is defined in Section 2(e) of Arms Act.

“firearms” means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes—

(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such thing,

(ii) accessories for any such firearm designed or adapted to diminish the noise or flash caused by the firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery.

13. In ***Jaspal Singh*** referred to by the learned Supreme Court held that without proving that the arms was in working condition, no conviction can be entered into against the accused. In the instant case, there is no arms seized. Based on photographs of the arms and the oral evidence, the offence under Section 25(IA) was incorporated. There is no material to frame charges against accused for

offence under Section 25(IA) of the Arms Act also.

14. Remaining offence alleged against the accused are under Section 121, 121A and 122 read with Section 149 of the IPC. Section 143 deals with unlawful assembly and Section 147 deals with rioting and 148 deals with rioting with weapons. Of course, as stated earlier, except the oral evidence, there is nothing to show that the accused was carrying the arms. Therefore there is also no material to frame charges under Section 148 of the IPC against the accused.

15. However, the prosecution produced material to show that there was an assembly consisting of five or more persons, though all of them are not identified and there was a waging of war against the Government of India as provided, as defined under Section 121 of the IPC. So far as conspiracy to commit the offence also, there is no evidence. Though the learned Advocate argued that for framing charge under section 122 of the IPC, arms is necessary. On going through the ingredients of the offence, it is seen that whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India is liable for the offence under Section 122 of the IPC. Therefore, I am of the view that there is sufficient evidence to presume that the accused has committed an offence punishable under Section 143, 147, 128 read with Section 149 of the IPC. There is no material to frame charges for the offence under Section 148, 121A of the

IPC and Section 7 read with Section 25(IA) of the Arms Act and Section 20, 38 and 39 of Unlawful Activities (Prevention) Act.

In the result, charges are liable to be framed against the accused for offence punishable under Section 143, 147, 121 and 122 read with the 149 IPC. The accused are discharged for the offence is punishable under Section 148, 121A of the IPC, 25(IA) of the Arms Act and Section 20, 38 and 39 of the Unlawful Activities (Prevention) Act.

Dictated to the Confdl. Asst., transcribed and typed by her corrected by me and pronounced in open court on this the 04th day of October, 2024.

Sd/-
V P M Suresh Babu
Addl. Sessions Judge -VII
(By Order)

///True copy///

Sheristadar

Order in
SC No.1090/2022
(Crime. No.29/2020 of
Thalappuzha Police Station)
dtd 04.10.2024