

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM

Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Monday the 9th day of January, 2023/ 19th Pousha, 1944

Crl. M.P. No. 39 of 2022

in

SC.01/2020/NIA

(RC 4/2019/NIA/KOC)

Petitioner:

Union of India represented by National Investigation Agency, Kochi.

**By Adv. Sri. Arjun Ambalappatta
Public Prosecutor, NIA**

Accused :

1. Allan Shuaib (A1), age 20 years,
S/o. Mohammed Shuaib, Manipoori House,
Palattu Nagar, Thiruvannur, Kozhikode
2. Thwaha Fasal (A2), age 24 years,
S/o. Abubacker, Kottummal House, Moorkanad,
Pantheerankavu, Kozhikode.
3. M. Usman (A3), aged 42 years, S/o.
Aboobacker, Melethil House, Odampatta,
Chembrassery, pandikkad, Malappuram, Now
remanded at High Security Prison, Viyyur.
4. Vijith Vijayan @ Pachha @ Balu @ Musafir @
Ajay (A4), aged 29 years, S/o. Vijayan V.K.,
Chaithram House, Puzhamudi Post, Kalpetta,
Wayanad District, Kerala.

A1 to A4 by Adv. Sri. Thushar Nirmal Sarathy

This Criminal M.P coming on for hearing before me on 09.01.2023 and the Court on the same day passed the following:-

ORDER

Prosecution filed this application to club the charge sheets in SC.01/2020/NIA and SC.01/2021/NIA, both generated out of the common crime

RC.4/2019/NIA/KOC.

2. Notice served to the accused in both the cases.

3. Heard both sides. The accused have no objection in clubbing SC.01/2021 with SC.01/2020.

4. Relevant facts as born out from the prosecution records, briefly stated are as follows:- On 01.11.2019 Police Patrolling Party spotted three persons under suspicious circumstance, two among them caught red handed, the remaining one ran away. The persons apprehended from the spot are A1 Allan Shuaib and A2 Thwaha Fasal and the person run away from the place is A3 Usman. A1 and A2 were arrested at once and their houses were searched and many number of incriminating materials were seized from the possession of A1 as well as from the houses of A1 and A2, which includes materials linking them with the proscribed terrorist organisation CPI(Maoist). Later NIA took over the investigation. Investigation revealed out that A1 and A2 are semi Under Ground Cadres whereas A3 is a professional revolutionary an area committee member of the proscribed terrorist organisation. During the course of investigation A3 was absconding. After investigation, NIA filed its first final report on 27.04.2020 against A1 to A3 after obtaining required sanction from the competent authority to prosecute the accused for the offences punishable under 120B IPC besides sec.38 and 39 of UA(P) Act. In addition to that A2 was charged for the offence under section 13 of UA(P) Act. On the basis of this final report, this court took cognizance of the offences and the case taken on file as SC.01/2020. A3 continues to be absconding.

5. Even after the filing of the final report, NIA continued the investigation. Further investigation revealed the involvement of Shri.Vijith Vijayan. He is said to be associated with the banned terrorist organisation at its publication wing under the area committee. He is said to be a semi UG Cadre of the proscribed terrorist organisation. After investigation NIA filed its supplement charge sheet against accused Vijith Vijayan on 19.07.2021 after obtaining required sanction from the competent authority to prosecute him for the offences punishable under 120B IPC besides sec.13, 38 and 39 of UA(P) Act. On the basis of this final report, the court took cognizance of the offences and the case against accused Vijith Vijayan was taken on file as SC.01/2021.

6. Absconding accused A3 Usman was arrested on 29.09.2021. NIA obtained permission to continue further investigation. Further investigation revealed that all the four accused are members of the proscribed terrorist organisation CPI(Maoist) and they have involved in terrorist acts and all the accused have attended conspiracy meetings as sub groups and all their terrorist related activities were carried out in furtherance of these conspiracy meetings. After completing the investigation, NIA filed its second supplementary charge sheet against all the four accused persons on 25.03.2022 after obtaining fresh sanction from the competent authority to prosecute all the four accused persons u/s.20 of UA(P) Act in addition to the offences already charged against them.

7. It is in this factual circumstance, prosecution moved the above application to club the cases and to try all the accused together in one case.

8. Prosecution allegation is to the effect that all the individual acts of the

accused were carried out in furtherance of the criminal conspiracy entered into, wherein all these accused are involved. The material evidence to be adduced in both cases are common to each other, hence it is convenient to have clubbing of these cases. As recorded earlier, both the prosecution and accused favour the clubbing of cases, so that all the accused persons can be charged and tried together.

9. Sec.223 of Cr.P.C. permits clubbing. Admittedly, all the persons committed the alleged offences in the course of the same transaction. The material evidence to be adduced on the side of the prosecution are common in both the cases. Section 223(a) says that the persons accused of the same offence committed in the course of the same transaction can be charged and tried together. Clause (b) says that the persons accused of an offence and the persons accused of abatement or attempt to commit such offence can also be charged and tried together. Clause (d) says that even if such persons are accused of different offences, still they can be charged and tried together if the offences were committed in the course of the same transaction. For all these reasons, both the cases can be clubbed together and all the accused persons can be charged and tried together in a single case.

In the result, petition allowed as follows:-

- a) It is ordered to club SC No.01/2021(NIA) with SC No.01/2020(NIA) both pending before this court.
- b) The sole accused in SC No.01/2021(NIA) is added as additional accused no.4 in SC No.01/2020(NIA).

- c) The records in SC No.01/2021(NIA) are to be attached and kept along with the records in SC No.01/2020(NIA).
- d) The proceedings in SC No.01/2021(NIA) stands closed.

Dictated to the Confidential Asst., typewritten by her directly to computer system, corrected and pronounced by me in open court on this the 9th day of January, 2023.

Sd/-
Anil. K. Bhaskar
Judge, Special Court for NIA Cases

Appendix: - Nil

Id/-
Judge, Special Court for NIA Cases
(By Order)

//True Copy//

Sd/-
Sheristadar.