IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 05TH DAY OF JANUARY 2021 / 15TH POUSHA, 1942

WA.No.765 OF 2018

[AGAINST THE JUDGMENT DATE 15.03.2018 IN WP(C) NO. 31229/2017 OF THIS COURT]

APPELLANTS/PETITIONERS:

1 T.I. MADHUSOODANAN, S/O. KUNHIRAMAN, AGED 56 YEARS,
RESIDING AT NIRANJANA HOUSE, MAVICHERI P.O, PAYYANNUR, KANNUR.

2 RIJESH @ RIJU, S/O. BALAN, AGED 39 YEARS,
RESIDING AT KUNNUMMAL HOUSE, EAST KADIRUR, THALASSERY, KANNUR.

3 MAHESH, S/O. NANU, AGED 39 YEARS,
RESIDING AT KATTIALMEETHAL HOUSE, EAST KADIRUR, THALASSERY, KANNUR.

4 SUNILKUMAR @ SUNOOTY, S/O. KORAN, AGED 46 YEARS,
RESIDING AT KULAPPURATHUKANDI HOUSE, EAST KADIRUR, THALASSERY, KANNUR.

5 SAJILESH V.P., S/O. RAMAKRISHNAN, AGED 31 YEARS,
RESIDING AT MANGALASSERRY HOUSE, CHUNDANGAPOYIL, KADIRUR, THALASSERY, KANNUR.

6 P. JAYARAJAN, S/O. KUNHIRAMAN, AGED 65 YEARS, KAIRALI, POOKKODE, KOOTHUPARAMBA, KANNUR.

BY ADVS. SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.P.N.SUKUMARAN
SRI.K.SURESH
SRI.K.VISWAN

RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVT OF INDIA,
MINISTRY TO HOME AFFAIRS(INTERNAL SECURITY DIVISION),
NORTH BLOCK, NEW DELHI - 110 001.

2 CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY SUPERINTENDENT OF POLICE, C.B.I, SCB,
THIRUVANANTHAPURAM.

3 STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY (HOME & VIGILANCE),
GOVT. SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1 BY ADVS. SRI. P. VIJAYAKUMAR, ASG OF INDIA
SRI. SUVIN R. MENON, CGC
R2 BY ADV. SRI. SASTHAMANGALAM S. AJITHKUMAR
R3 BY SRI. SUMAN CHAKRAVARTHY, SR. GOVT.PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.01.2021, ALONG WITH W.A. NO.766/2018, THE COURT ON 05-01-2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 05TH DAY OF JANUARY 2021 / 15TH POUSHA, 1942

WA.No.766 OF 2018

[AGAINST THE JUDGMENT DATED 15.03.2018 IN WP(C) NO. 25403/2017 OF THIS COURT]

APPELLANTS/PETITIONERS:

1 VIKRAMAN, S/O. BALAN, AGED 46 YEARS, KATTIL MEETHAL HOUSE, KIZHAKKE KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

2 JIJESH C.P., S/O. DAMU NAMBIDI, AGE 36 YEARS, KUNIYIL HOUSE, KIZHAKKE KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

3 PRAKASHAN C., S/O. KUNHIKANNAN, AGED 54 YEARS, KEERTHANAM, EAST KADIRUR P.O., THALASSERY TALUK, KANNUR DISTRICT.

4 PRABHAKARAN T., S/O. ACHU, AGED 42 YEARS, LUDHIYA NIVAS, KUNNUMMAL HOUSE, MALOOR P.O., KANNUR DISTRICT.

5 SHIBIN, S/O.GANGADHARAN, AGED 30 YEARS, OTHYOTH HOUSE, VETTUMMAL, KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

6 SUJITH P., S/O.SURENDRAN, 32 YEARS, OTHYOTH HOUSE, VETTUMMAL, KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

7 VINOD VINU, S/O.BALAKRISHNAN, AGED 35 YEARS, NANDIATH HOUSE, KADIRUR P.O., THALASSERY TALUK, KANNUR DISTRICT.

8 RIJU, S/O. AANDI, AGED 30 YEARS, MEETHALA THACHARATH HOUSE, KAVILMOOLA P.O., MALOOR, KANNUR DISTRICT.

9 SUNIL, S/O.LATE NARAYANAN, AGED 37 YEARS, SINIL NIVAS, KUNNUMMAL, THOLAMBRA P.O., KANNUR DISTRICT.

10 BIJESH POOVADAN @ BIJU, S/O. BALAKRISHNAN, AGED 34 YEARS, MEETHALA THACHARATH, KAVILMOOLA P.O., MALOOR, KANNUR DISTRICT.

11 KRISHNAN ARAPPAYIL, S/O. POKKAN, AGED 47 YEARS, MANIKKAL, THADIKADAVU P.O., CHAPPRAPADAVU, TALIPARAMBA, KANNUR DISTRICT.

12 A. RAMACHANDRAN @ RAMAN, AGED 55 YEARS, S/O. GOVINDAN, PUTHALATH POYIL, KIZHAKKE KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

13 VIJESH @ MUTHU, S/O. BHASKARAN, AGED 30 YEARS, KANATHIL HOUSE, UKKAS MOTTA, KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

14 VIJESH @ GEORGEKUTTI, S/O. VALSAN, AGED 36 YEARS, VALIYAPARAMBATH, UKKAS MOTTA, KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

15 MANOJ, S/O. RAGHAVAN, AGED 43 YEARS, KANNOTH HOUSE, BRAHMAVU MUKKU, KIZHAKKE KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

16 SHABITH, S/O. GOVINDRAN, AGED 33 YEARS, MEETHALE VALIYOTH, BRAHAMAVU MUKKU, EAST KADIRUR, THALASSERY TALUK, KANNUR DISTRICT.

17 NITH @ NIJITH, S/O. RAJAN, AGED 30 YEARS, VAKKUMMAL, AMBILAD P.O., NIRMALAGIRI, KOOTHUPARAMBA, THALASSERY TALUK, KANNUR DISTRICT.

18 SIRAJ, S/O. KHADAR, AGED 35 YEARS, VAZHAYIL HOUSE, NARAVOOR P.O., KUTHUPARAMBA, THALASSERY TALUK, KANNUR DISTRICT.

19 P. P. RAHIM @ JAGA RAHIM, S/O. MUHAMMED, AGED 39 YEARS, POOLAKKANDI PARAMBA, AMBILAD P.O., NOW RESIDING AT C.K.QUARTERS, 24/393, KUTHUPARAMBA MUNICIPALITY, PAZHAYANIRATH, THALASSERY TALUK, KANNUR DISTRICT.

BY ADVS. SRI.B. RAMAN PILLAI (SR.)
SMT.DEEPTHI S.MENON
SRI.P.N.SUKUMARAN
SRI.K.VISWAN

RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS (INTERNAL SECURITY DIVISION), NORTH BLOCK, NEW DELHI-110001.

2 CENTRAL BUREAU OF INVESTIGATION, REPRESENTED BY SUPERINTENDENT OF POLICE, C.B.I., SCB, THIRUVANANTHAPURAM.

3 STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY (HOME & VIGILANCE), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1 BY ADV. SHRI P. VIJAYAKUMAR, ASG OF INDIA
R2 BY ADV. SRI. SASTHAMANGALAM S. AJITHKUMAR
R3 BY ADV. SRI. SUMAN CHAKRAVARTHY, SENIOR GOVT. PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05-01-2021, ALONG WITH W.A. NO.765/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 5th day of January, 2021

Shaji P. Chaly, J

The captioned appeals are filed by writ petitioners against the common judgment in W.P.(C) Nos.25403 & 31229 of 2017 dated 15.03.2018, by which, the learned single Judge has declined the reliefs sought for by them in the writ petitions.

2. W.P.(C) No.25403 of 2017 has been filed seeking the following reliefs:-

> (i) To call for the records leading to Exhibit-P2 order dated 7.4.2015 issued by the Under Secretary to the Government of India, Ministry of Home Affairs (Internal Security Division), New Delhi and to quash the same by the issue a writ of certiorari or any other appropriate writ, direction or order;
>
> (ii) To set aside the order dated 11.03.2015 passed by the Sessions Court, Thalassery taking cognizance of the offence under Section 16-A read with Section 15(1)(a)(i) and Section 19 of the Unlawful Activities (Prevention) Act, 1967 on the basis of Exhibit-P1 final report in S.C. No.200/2015 (now re-numbered as S.C. No.343/2017 and pending trial on the file of the Special Judge;s Court (SPE/CBI)-III, Ernakulam;
>
> (iii) To declare that the authority competent to grant sanction for prosecution of the petitioners in the case arising out of Crime No.780/2014 of Kadirur Police Station (R.C. No.10(S)/2014-CBI/SCB/Tvpm) is the Government of Kerala."

3. W.P.(C) No.31229 of 2017 has been filed seeking the following reliefs:

> (i) To call for the records leading to Exhibit-P3 order dated 9.5.2017 issued by the Under Secretary to the Government of India, Ministry of Home Affairs (Internal Security Division), New Delhi, and to quash the same by the issue a writ of certiorari or any other appropriate writ, direction or order;
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> (ii) To declare that the authority competent to grant sanction for prosecution of the petitioners in the case arising out of Crime No.780/2014 of Kadirur Police Station (R.C. No.10(S)/2014-CBI/SCB/Tvpm) is the Government of Kerala under Section 45(1)(ii) of the UAPA."

4. Since the subject issues raised are similar in nature, we have heard the appeals together on agreement.

5. The basic facts for disposal of the writ appeals are that; appellants herein are the accused Nos.1 to 25 in Sessions Case No.343/2017 on the file of the Special Judge, CBI-III, Ernakulam. The said case arises out of Crime No.780 of 2014 of the Kadirur Police Station registered on 01.09.2014 alleging offences punishable under Sections 143, 147, 148, 324, 302, 307 r/w 149 of the IPC, Sections 3 and 4 of the Explosive Substances Act, 1908 and Section 13(a) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as, 'UAPA' for short), against one Vikraman and a person shown as the photographer and a group of Communist Party of India (Marxist) workers. Subsequently, a report was filed deleting Section 13(a) of the UAPA and adding Section 15(1) r/w 16 of the UAPA. Initially, investigation was conducted by the State Police.

6. Since the case involved offence under the provisions of the UAPA, in terms of Section 6 of the National Investigation Agency Act, 2008, the matter was reported to the Central Government. However, the Central Government informed the State Government to continue with the investigation. Thereafter, a notification was issued by the Government of Kerala, giving consent to the Central Bureau of Investigation (CBI), to take up the investigation in November, 2014. Accordingly, the CBI took over the investigation of the case and re-registered the crime as RC 10(S)/2014/CBI/SCB/TVPM.

7. After completion of the investigation, a final report was submitted by the CBI on 6.3.2015 against nineteen persons who are the appellants in W.A. No.766 of 2018 alleging offences punishable under Section 120B, 143, 147, 148, 201, 202, 212, 324, 307, 302 r/w. 149 of the IPC, Sections 3 and 5 of the Explosives Substances Act, 1908, Section 27 of the Arms Act, 1959, and Section 16(a) r/w. 15(1)(a)(i) and Section 19 of the UAPA, 1967.

8. In the final report altogether 13 charges are imposed against accused Nos.1 to 19.

9. In order to understand the case, Charge No.1 of the final report would be relevant, which states that due to political enmity, sometime after June, 2014 one Vikraman, 1st accused, along with other unknown persons entered into a criminal conspiracy at Kathirur, Thalassery, to

murder Elamthottathil Manoj, an office bearer of RSS and an accused involved in the attempt to murder Sri. P. Jayarajan, an office bearer and State Level leader of CPI(M), so as to prevent flow of CPI(M) party workers of Kannur district to BJP or RSS, and also to take political revenge on the attack on Sri.P. Jayarajan, the then District Secretary of CPI(M), Kannur. In pursuance of the said conspiracy, 1st accused Vikraman, a resident of Kizhakke Kathirur and an accused in many politically motivated criminal case, conspired with CPI(M) sympathizers and workers/office bearers with criminal background from Kathirur, Maloor, Koothuparambu, for committing murder of Manoj in a ghastly manner by inflicting bodily injuries with deadly weapons, so as to cause his death and kill him and also to explode one or more bombs with the intention to strike terror in the minds of the people of the locality and also in the rank and file of RSS cadre to which deceased Manoj belonged to. In furtherance of the said criminal conspiracy, on 1.9.2014 around 9.30 am, under the leadership of the 1st accused Vikraman, 16 accused persons i.e., A1, A2, A4 to A10 and A13 to A19 formed themselves into an unlawful assembly, armed with deadly weapons like country bombs, Koduval, dagger etc., waited in a house under construction belonging to one Rijesh @ Riju, a contractor and CPI(M) worker, near Pattuvathu valavu, the scene of crime for the arrival of Manoj, the victim, likely to travel on the road from his residence at Kizhakke Kadirur towards

Ukkasmootta, with the intention to attack and kill him by inflicting injuries with deadly weapons and also to explode one or more bombs, in order to strike terror in the minds of the people of the locality and also in the rank and file of the RSS cadre to which deceased Manoj belonged to. The 1st accused also arranged an unknown accused person to give information regarding the departure of Manoj from his residence at Kizhakke Kadirur over phone. The 16 accused persons assembled at the unoccupied house under construction of Rijesh @ Riju, as specified above, and on getting information over phone from an unknown accused regarding departure of Manoj from his residence, the 16 persons armed with deadly weapons and country bombs waiting at the house under construction, rushed towards the road, barely 100 metres away and took positions on its sides with intent to kill Manoj and to strike terror in the minds of the people of the locality and also in the rank and file of the RSS cadre to which deceased Manoj belonged to. The accused have waited on the two cut roads leading towards the road, armed with deadly weapons, and crude bombs.

10. Within two minutes, the deceased Manoj accompanied by one Pramod, said to be an innocent co-passenger, reached the scene of crime in a blue Maruthi Van driven by the victim. When the vehicle reached the scene of occurrence, 1st accused Vikraman hurled a country bomb in his possession on the public road aiming at the vehicle. The

bomb hit on the vehicle and exploded, as a result of which, the vehicle got damaged and Manoj lost control of the vehicle. Both the passengers in the vehicle were injured from the blast and the vehicle hit on an electric post on the left side of the road and stopped. Hearing the sound of explosion, the locals living in the area got frightened, closed doors and windows, and hid themselves inside their houses. People working in the nearby areas in the open fields, ran away for safety. Meanwhile, some of the accused rushed towards the vehicle and covered it from the front and rear. Deceased Manoj, even though was injured by the blast, tried to hold the door of the vehicle, preventing the accused persons from opening the door. At that point of time, Prabhakaran, accused No.4, holding a long sword like weapon, approached from the front of the vehicle, cleared the broken windshield of the vehicle with the long blade of the weapon and inflicted a stab injury on the chest of Manoj. Thereafter, on seeing Manoj holding the door of the vehicle, he inflicted a cut injury on the right wrist of Manoj. Manoj left the hold on the door and other accused persons opened the right door of the vehicle and dragged Manoj, who was already seriously injured with the impact of the blast, out of the damaged vehicle. Then accused Nos.4, 13, 17, 18 and 19 hacked him indiscriminately with deadly weapons, in their possession, with the intention to kill him. The maximum number of injuries were inflicted on the vital parts of the body like chest and head. Pramod, who

was the co-passenger along with the deceased Manoj, injured with splinters of the bomb explosion, was trapped inside the vehicle, and was a mute witness to the attack.

11. After hurling the bomb, Vikraman, the 1st accused, who also got injuries from the blast, along with accused Nos.2 and 6, joined the attackers and accused Nos.1 and 2 hacked the victim, taking deadly weapons from others. It is further alleged that other accused persons guarded both the entries of the road to prevent any passersby reaching the scene of occurrence. When the victim was almost dead, the 17th accused one Nijith, with a steel dagger in his possession, slit the throat of Manoj, to ensure that no trace of life is left in his body. After the attack, the assailants waited for a while to ensure that the work was fairly done. While the attackers started receding, Pramod gathered courage and stepped out of the vehicle through the driver seat, since the door on his side was jammed. While said Pramod was coming out of the vehicle, A1 Vikraman noticed and attacked him with a Koduval, a deadly weapon in his possession, as a result of which, he sustained an injury on his right shoulder. However, he managed to run away from the scene saving his life. Meanwhile some public in the area started coming towards the scene of crime and after observing the situation, 16th accused – Shabith, on the directions of Vikraman, 1st accused, exploded one more bomb in his possession on the public road to scare away or kill

the innocent public approaching the scene of crime and further explosion created more panic in the area.

12. It is also stated that some ladies fainted; women and children started crying loudly, and some people took shelter inside the bathroom of their own house. Some of them contacted their near and dear ones away from home, over phone and the area was filled with smoke and the smell of gunpowder. Anticipating more explosions, the normal public kept away from the place. After the attack, the assailants left the place leaving the weapons with Vijesh @ George, 14th accused, and he took custody of the weapons, which included five long knives and a steel dagger, put them in a gunny bag in which it was brought and hid them in a place close to the scene of crime. Thereafter, during night, he shifted the weapons to a marshy land, by the side of a canal along the side of a public road. Other allegations are made against the accused in the matter of conspiracy treatment of the injured accused persons, etc. It is also alleged that all had the knowledge with respect to the crime to commit the murder of deceased Manoj.

13. The role played by each and every accused is also explained in Charge No.1 and finally it is stated that the 19 accused persons have committed the crime as alleged above. That apart, independent charges are made against some of the accused, who are personally involved in the crime. Ultimately, it is alleged that all the offences mentioned above

have been committed within the jurisdiction of Principal Sessions Court, Thalassery and sought to take cognizance of in the matter. It was further stated in the final report that investigation revealed that there were more accused persons in the criminal conspiracy to execute the crime and to harbour the accused persons after the crime and they are yet to be identified and their relationship with the executors of the crime are to be established. Hence, they stated that investigation would be continued to identify and apprehend the remaining accused and also submitted that a supplementary charge sheet could be filed after identifying the remaining accused persons and their connection with the offences committed in the case.

14. After making all the charges, it is stated in the report that sanction under Section 45(ii) of the UAPA and consent for trial under Section 7 of the Explosive Substances Act will be produced at the earliest from the competent authorities and accordingly, prayed that the Sessions Court may be pleased to take the charge sheet on file and take cognizance of the charges in accordance with law. Apparently, a supplementary charge sheet was filed on 29.08.2017 and after detailing the similar charge against the additional accused Nos 20 to 25, it is stated therein that sanction under Section 45 (1)(ii) of the UAPA obtained from the competent authority is enclosed with the charge.

15. The issue raised by the appellants with respect to the

cognizance taken by the Sessions Court, Thalassery is that in the absence of sanction under Section 45 (1)(ii) of the UAPA, insofar as it concerns accused Nos.1 to 19, and the invalidity of the sanction order, insofar as it concerns the accused Nos.20 to 25, is bad, and it will have to be considered in the back drop of the above facts taking into account the provisions of UAPA and National Investigation Agency Act, 2008, and other relevant statutory provisions of the Indian Penal Code, 1860.

16. We have heard Mr. B. Raman Pillai and Mr. K. Gopalakrishna Kurup, learned Senior Counsel appearing for the appellants, assisted by Advocates Mr. K. Viswan and Mr. K. Suresh, Mr. P. Vijayakumar, learned Assistant Solicitor General of India for the Central Government, Mr. Sasthamangalam S. Ajithkumar, learned counsel for the Central Bureau of Investigation, and Mr. Suman Chakravarthy, learned Senior Government Pleader for the State, and perused the pleadings and materials on record.

17. The paramount contention advanced by Mr. K. Gopalakrishna Kurup is that the Sessions Court, Thalassery, to which the case was committed, took cognizance of the offences as alleged on 11.03.2015 and took the case on file as S.C. No. 200 of 2015, which is bad, since admittedly on that date, no sanction was secured, which is clear from the final report. It is also pointed out that a sanction order dated 7.4.2015 was admittedly produced by the CBI, issued by the Central

Government and placed on record before the Sessions Court, Thalassery. Apparently, there was some confusion with respect to the Court, which can try the offence, since the allegations contained offences charged under the provisions of UAPA, 1967. Anyhow, ultimately by order dated 7.3.2017 in Crl.A. No.519 of 2017, the Hon'ble Apex Court had directed the proceedings be transferred to the Special Court at Ernakulam and the parties were directed to appear before the said Court on 10.04.2017.

18. It is further submitted that along with the supplementary charge sheet, an order dated 9.5.2016 granting sanction for prosecution of the said five persons was also produced and it was accordingly, the Special Judge took cognizance of the offences as against the six persons included therein. Now, the trial is pending before the Special Court.

19. Mr. B. Raman Pillai, learned Senior Counsel for the appellants in W.A. No.766 of 2018, apart from supporting the contentions advanced by Mr. K. Gopalakrishna Kurup, submitted that the sanction order is not in compliance with Rules 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (hereinafter called 'Rules, 2008'). It was also contended that the authority and the Government, who granted sanction, is not competent to recommend and grant sanction. That apart, learned Senior Counsel Mr. Raman Pillai contended that as per Section 15 of the UAPA, 1967, the culpability can be attributed against the accused, who does any terrorist act and the

accused persons who had not done any terrorist act, cannot be roped in under Section 16 r/w. 15 of the UAPA. In spite of the fact that accused Nos.5 to 10 and 13 to 15 have not committed any offences under the provisions of UAPA, the Central Government have granted sanction to all the accused, who even according to the prosecution, have not allegedly committed any terrorist acts, as enumerated under Section 15 of the UAPA. Therefore, the prime contention advanced was that it is evident that there was no application of mind, as mandated in law.

20. That apart, predominantly it was contended that the roping in of accused Nos. 5 to 10 and 13 to 15 under Section 15 of the UAPA with the aid of Section 149 of the IPC is impermissible under law. Both the learned Senior Counsel appearing for the appellants further contended that the appellants are continuing in judicial custody, for the past more than five years, due to the illegality committed by the learned Sessions Judge, Thalassery and further submitted that the accused could have applied for bail if the learned Sessions Judge was inclined to return the final report in the absence of a sanction order.

21. Above all, it was further contended that even going by the allegations, the attempt was to murder only one person and the bomb hurled was only intended to get the vehicle stopped. It is further submitted that there is no allegation of a second bomb explosion in the first information statement and there is no sign of a second explosion in

the scene of occurrence as per scene mahazar and expert report. Therefore, it is contended that the allegation of second bomb explosion was made only to attract Section 15 of the UAPA and there is no witness cited by the CBI to show that accused No.16 hurled the bomb while people of the area were advancing towards the scene of occurrence.

22. Referring to Section 45 of the UAPA, 1967, the learned Senior Counsel appearing for the appellants submitted that it is mandatory that the jurisdictional Court is entitled to take cognizance of the offences under the relevant provisions of UAPA only on getting sanction under Section 45 (1)(ii), failing which it is illegal. To substantiate the said contention, learned Senior Counsel submitted that the intention of incorporating Section 45 in the UAPA is to put a buffer in taking cognizance, without sufficient materials, and therefore, the conduct of the Sessions Court, Thalassery, taking cognizance of the offences under UAPA, without sanction under Section 45 (1)(ii) of the UAPA can never be sustained in any manner.

23. Yet another significant contention advanced by the learned Senior Counsel Mr. K. Gopalakrishna Kurup is that since the offence took place within the State, sanction ought to have been secured under the UAPA from the State Government, which is the competent authority constituted as per Section 45 of the Act to grant sanction.

24. So also, relying upon the various provisions of the UAPA,

1967, Code of Criminal Procedure, 1973, and Section 5 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as, the 'DSPE Act, 1946), learned Senior Counsel for the appellants submitted that the charge alleged against the accused persons under the UAPA cannot be sustained primarily for the reason that there was no sanction to prosecute accused Nos.1 to 19 and the sanction granted against all the accused is without verifying the entire documents and, therefore, invalid. However, the learned single Judge, taking into account the attendant facts and circumstances, partly allowed the writ petition leading to W.A. 766 of 2018 concluding that the cognizance taken by the Sessions Court, Thalassery, for offences punishable under the provisions of UAPA, as against accused Nos.1 to 19, even prior to the sanction order, is bad in law and declared so. Therefore, it was held that it has to be treated that no cognizance as such has been taken. It was accordingly, the learned single Judge directed the Special Court where the final report is presently submitted that it shall apply its mind as against accused Nos.1 to 19 afresh, in the light of the final report and the sanction, and decide whether cognizance can be taken or not. It was further held that if the Special Court decides to take cognizance, there is no need for allotting a separate number to the case, since the cognizance taken for other offences is unaffected and remains to be valid. Insofar as the allegation of invalidity of the sanction order was

concerned, against accused Nos.20 to 25 and other accused, the writ petitions were dismissed holding that validity of a sanction has to be looked into by the trial court during trial. Anyhow, the reliefs sought for, for a declaration that the State Government is the authority competent to grant sanction was completely declined. It is thus challenging the legality and correctness of the common judgment of the learned single Judge dated 15.03.2018 passed in the writ petitions, stated supra, these appeals are filed.

25. We have evaluated the rival submissions made across the bar.

26. The question primarily revolves around Section 45 of the UAPA, 1967, dealing with cognizance of the offences, which reads thus:

> "**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 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."

27. It is an admitted fact that so far as accused Nos.1 to 19 are concerned, no sanction order for prosecution was produced when the final report was submitted and the Sessions Court took cognizance of the offences under the provisions of UAPA.

28. Section 45(1)(ii) of the UAPA, 1967 makes it clear that no court shall take cognizance of any offence under Chapters IV and 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.

29. Learned Senior Counsel appearing for the appellants placed heavy reliance upon the connotation 'as the case may be', to contend that since the alleged incident took place within the limits of the State Government, sanction has to be secured from the State Government and not from the Central Government. According to the learned Senior Counsel, it is not the offence under UAPA that matters for granting sanction, but the place of the crime constituting offence under UAPA which matters for the purpose of granting sanction. In fact, the learned single Judge has considered the said contention advanced by the learned Senior Counsel and has arrived at the conclusion that when the investigation is conducted by the CBI, by virtue of the provisions of the DSPE Act, 1946, and since it is conducted by a Central agency, it is for

the Central Government to grant sanction.

30. In order to arrive at the said conclusion, the learned Single Judge relied upon Section 43 of the UAPA, dealing with officers competent to investigate offences under Chapters IV and VI. It is clearly specified therein that notwithstanding anything contained in the Code, no police officer shall in the case of Delhi Special Police Establishment, constituted under sub-section (1) of Section 2 of the DSPE Act, 1946 (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank shall investigate any crime. Taking into account the said provision, it was found by the learned single Judge that if an interpretation is given to the term "as the case may be" in Section 45(1)(ii) of the UAPA, 1967 that sanction for cognizance has to be obtained from the State Government concerned, in all the incidents occur within the territory of a State Government, it would lead to an absurdity. It was further held that the court cannot read anything into the statutory provision, which is plain and unambiguous, and further that when Section 43 deals with three situations relating to investigation of offences under Chapters IV and VI, the term "as the case may be" employed in Section 45(1)(ii) necessarily contemplates those situations and that is why the term "as the case may be" thus employed. Section 43 of the UAPA reads thus:-

> "**43. Officers competent to investigate offences under Chapter IV and VI**

> Notwithstanding anything contained in the Code, no police officer,-
>
> (a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;
>
> (b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;
>
> (ba) in the case of National Investigation Agency, below the rank of Inspector;
>
> (c) in any case not relatable to clause (a) or clause (ba), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank;
>
> Shall investigate any offence punishable under Chapter IV or VI."

31. According to us, a reading of Section 45 itself makes it clear that it is not the area in question that is to be taken into account, in the matter of granting sanction. Because, under sub-section (i) of Section 45(1) though not applicable in the appeals at hand, it is specified that no court shall take cognizance of an offence under Chapter III, without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf. Chapter III deals with offences and penalties for being a member of an unlawful association and wherever it takes place within the territory of India, a sanction from the Central Government or any officer appointed in that behalf is to be secured irrespective of the investigating agency.

Therefore, according to us, the provisions of Section 45 makes it clear that it is not the place of occurrence that matters, but the investigating agency is what matters. That means, as per Section 45(1)(ii) a clear segregation is made by which both, the State and the Central Government agencies are vested with the powers to conduct investigation and submit a final report before the competent court and if an investigation was conducted by a State agency in the instant case the State Government had the power to grant sanction.

32. Here, in the case on hand, the crime was originally registered by the Kadirur police station. However, later, the State Government granted consent to the Central Government to conduct the investigation and a notification was issued accordingly and that is how the CBI became vested with the powers to investigate the crime in question.

33. It is an admitted fact that under the provisions of DSPE Act, 1946, the Central Bureau of Investigation is under the control of the Central Government. True, the Delhi Special Police Establishment Act is an Act to make provisions for the constitution of a special police force in Delhi, for the investigation of certain offences in the Union Territories and for the superintendents and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 2 of the DSPE Act makes it clear that the Central Government

may constitute a special force to be called as Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under Section 3. However, fact remains that as per Section 5 of the DSPE Act, 1946, the Central Government is vested with powers by order extend to any area, including railway areas, in a State, not being a Union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3. Section 5 of the Act reads thus:

> "**5. Extension of powers and jurisdiction of special police establishment to other areas**.- (1) The Central Government may by order extend to any area (including Railways areas), in a State, not being a Union territory]] the powers and jurisdiction of member of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in notification under section 3.
>
> (2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the function of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

> (3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

34. But fact remains, as per the provisions of the amendment Act 26 of 1952, Section 6 was brought into force by which it was clarified that nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.

35. In our considered view, a reading of the above provisions together would make it clear that it is not the place of occurrence of the crime that matters, but what matters is the agency conducting the investigation under the control of the Central Government and admittedly, in the instant case the investigation is conducted by an agency under the control of the Central Government and the offences under Sections 15 and 16 of the UAPA is incorporated in the final report, and therefore, the sanction issued by the Central Government is a validly constituted one. It is also clear that merely because the central agency

conducts an investigation into any offence within the State, it is never under the control of the state government especially due to the fact there is no enabling provision under any one the acts discussed above to do so. Which thus means the central agency conducting the investigation is always under the control of the Central Government and that power under any circumstances is not conferred on the State Government even while conducting an investigation within a state . Moreover, the UAPA, 1967 is an Act also to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith. The statement of objects and reasons shows that it was pursuant to the acceptance by Government of a unanimous recommendation for the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixteenth Amendment) Act, 1963 was enacted empowering the Parliament to impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India, on (i) Freedom of speech and expression; (ii) Right to assemble peaceably and without arms; and (iii) Right to form associations or unions.

36. The Act was amended in 2004 and the objects and reasons thereto shows that the Central Government have been concerned with the manner in which the provisions of the Prevention of Terrorism Act,

2002 were being grossly misused in the past two years and it was felt necessary to repeal the Act. It was with the objective, the amendment Ordinance was promulgated on 21.09.2004 and the Unlawful Activities (Prevention) Amendment Bill, 2004 replaced the Ordinance, also with the objective to make further provisions with the aim of strengthening the arrangements for speedy investigation, prosecution, and trial of cases related to terrorism related offences, while, at the same time, ensuring against any possible misuse of such provisions. That apart, in our view, Section 45 makes it clear that sanction for prosecution under sub-section (1) of Section 45 would be given after considering the report of such authority appointed by the Central Government, or as the case may be, the State Government, and it 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. Therefore, it is taking note of the objects and reasons of the provisions of UAPA, such a safety measure is incorporated under Section 45, which thus means, an independent authority appointed by the Central Government, makes an independent review of the evidence gathered in the course of investigation and make a recommendation to the Central Government or the State Government as to whether a sanction is to be granted or not. Therefore, sufficient safety vault is provided to ensure that unnecessarily

the provisions of Act, 1967 is not incorporated in any final report submitted by an investigating agency and therefore prima facie we will have to presume that the actions were done by the respective authorities in accordance with law until otherwise proved by the appellants.

37. Learned Assistant Solicitor General of India, has taken us through the sanction order to contend and canvas that an independent authority has gone through the materials of the investigation conducted and submitted a report to the Central Government and it was accordingly, sanction was issued.

38. We have gone through the sanction orders issued by the Government of India, Ministry of Home Affairs against the accused persons. On a perusal of the sanction order, it is evident and clear that the authority had occasion to go through the investigation conducted by the CBI and then granted sanction. The validity of the sanction order has to be looked into by the Special Court trying the case in question and definitely, the appellants are vested with sufficient liberty to question the veracity and legality of the sanction order issued by the Government of India.

39. Another contention advanced by the learned Senior Counsel for the appellants is relying upon the Rules 3 and 4 of Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008, which read thus:

> "**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."

40. Relying upon the above said rules, the specific contention advanced was that from the order of sanction, it is not clear that the time period prescribed therein was followed by the authorities concerned, as well as the Central Government. It is also pointed out that the provisions of the UAPA are affecting the rights and liberty of the individuals and due to its imperative nature, it is a mandatory requirement. Therefore, when the time period stipulated under Rules 3 and 4 of the Rules, 2008 is not reflected in the sanction order and that is a reason to think that there is no proper sanction and to hold that the sanction is bad, enabling the appellants to secure bail against the other offences alleged against them. In our view, even going by the contentions advanced by the appellants, it is clear that the issue with respect to the time period prescribed even if a mandatory requirement,

is shrouded in facts, which could only be deciphered by a fact finding authority and in this case, the Special Court, wherein the final report is submitted against the appellants. Therefore, we are unable to consider the contentions advanced by the learned Senior Counsel appearing for the appellants in that regard also.

41. Moreover, we have gone through the final report submitted by the CBI, wherein allegations are made against the accused persons, attributing various offences. It was also contended that there are no allegations made against accused Nos.5 to 10, 14 and 15, to make them liable for the offences under UAPA, that only with the aid of Section 149 of the IPC they are roped in, and a reference to Section 40 of the IPC makes it abundantly clear that since an offence under Section 149 of the IPC is not incorporated therein it cannot be invoked and there is no enabling provision under the UAPA to do so also unlike in other special enactments . Therefore, according to the learned Senior Counsel, the said appellants are not liable to be proceeded under the provisions of UAPA, since no allegations are forthcoming from the final report so as to rope in such persons under the provisions of UAPA.

42. On the other hand, learned counsel for the CBI submitted that Section 40 of the IPC takes care of Section 141 and without Section 141, Section 149 of the IPC has no role to play. Section 141 of the IPC deals with unlawful assembly. It specifies that an assembly of five or more

persons is designated as "unlawful assembly", if the common object of the persons composing that assembly is,-

> *First*.- xx xxxx xxxxx
> *Second*.- To resist the execution of any law, or of any legal process; or
> *Third*.- To commit any mischief or criminal trespass, or other offence; or
> *Fourth*.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
> *Fifth*.- xx xxx xxxx.

43. Section 149 of the IPC dealing with unlawful assembly and guilty of offence committed in prosecution of common object, stipulates that if an offence is committed by any member of an unlawful assembly, in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

44. We find force in the above said contention advanced by the learned counsel for the CBI and are of the opinion that since Section 141 of the IPC is incorporated in Section 40 of IPC, without Section 141 of

the IPC, there can be no unlawful assembly and the guilt of the offence under Section 149. Moreover, Section 15 of the UAPA under Chapter IV dealing with punishment for terrorist activities comprehends various manifestations in the Terrorist act, which reads thus:

> "**15. Terrorist Act**.--
>
> (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--
>
> (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--
>
> (i) death of, or injuries to, any person or persons; or
>
> (ii) loss of, or damage to, or destruction of, property; or
>
> (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
>
> xx xx xxx xxxx"

45. Therefore, on a reading of the said provision also, it is clear that it is not only that act contemplated under Section 15(1) alone, which enables an investigating agency to attribute the offences under the UAPA against the persons who are in the assembly. Anyhow, we are

not finally concluding anything on those aspects, since if we traverse too much through the same, it is likely to affect the defense of the appellants at the trial stage in that regard. But we only intended to say that merely because Section 149 of the IPC is not incorporated under Section 40 of the IPC, that will not disable the investigating agency to rope in other persons who were in the assembly under the UAPA, and we are constrained to say so, so as to arrive at conclusions to meet up with the points raised in the appeals and canvassed at the time of hearing.

46. Yet another contention raised by the learned Senior Counsel appearing for the appellants is that going by the charge read along with the sanction order, it could be deduced that the sanction order is not a valid one. However, as we have already pointed out, it is a matter for evidence, since those aspects are shrouded in facts and the writ court was not expected to interfere with such matters, while the trial is pending. Learned Senior Counsel appearing for the appellants have further contended that going by Section 5(3) of the DSPE Act, 1946, the officer who conducted the investigation exercised the powers of the officer in charge of police station in that area and while discharging the powers so, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of the station and therefore, the CBI is liable to act as State Police and was expected to approach the State Government for sanction. We do not

find much force in the said contention, since such a provision is incorporated under Section 5 of the DSPE Act, 1946 for ensuring that the investigating officer appointed under the said Act is enabled with sufficient powers so as to act as a police officer and that does not mean, that police officer is liable to report to the State Government for securing sanction, which thus means, Section 5(3) is intended to clothe the CBI with sufficient powers so as to carry on with the investigation and that does not mean that the CBI has to report to the State Government for securing sanction.

47. Though Mr. K. Gopalakrishna Kurup, learned Senior Counsel appearing for the appellants in W.A. No.765 of 2018, relied on the decision in **Hitendra Vishnu Thakuar and Ors. v. State of Maharashtra and Ors.** reported in AIR 1994 SC 2623, to substantiate his contentions, we do not find force in the contentions because, that was a case considered by the Hon'ble Apex Court after a full fledged trial vis-a-vis Sections 3 and 20 of Terrorist And Disruptive Activities Act, 1987 and the applicability of the provisions thereto. Learned Senior Counsel has also relied upon the decision in **Ashrafkhan and Ors v. State of Gujarat** reported in (2012) 11 SCC 606, which was also a case considered in appeal against conviction and sentence under TADA and may not have any bearing, at the threshold stage of trial proceedings.

48. Mr. K. Gopalakrishna Kurup, has further relied upon a decision of the Bombay High Court in **The State of Maharashtra v. Harshed K. Shah and Ors.** reported in (1981) CriLJ 1096, which was in regard to non production of a sanction for prosecution under the provisions of Bombay Money-lenders Act, 1946, wherein it was held that belated production of sanction cannot confer jurisdiction upon the Magistrate to take cognizance of the offence alleged. In our considered opinion, the decision in **Harshed K. Shah** (cited supra) was rendered by the Bombay High Court in a revision petition from an order of the Magistrate after assimilating the factual circumstances and it cannot have any application to the facts and circumstances involved in these appeals.

49. Much reliance was placed in a decision of the Madras High Court in **Vaiko v. The State of Tamilnadu** reported in 2018 (2) LW (Crl) 846, wherein the issue considered was with respect to the grant of sanction for prosecution under Section 45(2) of the UAPA. In the said decision, the Court found that since there was no independent authority constituted to assess the records of the investigation, the sanction given by the Government cannot be taken into account for prosecution. After considering various decisions, at paragraphs 12 to 14, the Hon'ble Madras High Court held thus:

> "12. In this case, admittedly the committee itself has been constituted by the State Government under Section 45 (2) of the Act, only in the year 2011 by virtue of G.O. Ms. No. 208 dated 25.03.2011. In this

> case, the final report has been filed in the year 2009 and admittedly there was no independent authority that was in existence on the day the sanction was granted by the State Government by letter dated 31.08.2009 and therefore, the very sanction that was granted becomes vitiated. Even though it is true that the Central Government has given permission for the State Government to exercise the power to grant sanction for prosecution, the State Government can proceed to grant sanction only after getting the report of the independent committee which was constituted under Section 45 (2) of the Act. This mandatory requirement has not been fulfilled in this case. Therefore, the very sanction is non est in the eye of law.
>
> 13. In view of the above, the final report filed by the respondent police for an offence under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 and the cognizance taken by the Court below is illegal and this Court has to necessarily interfere with the same in exercise of its jurisdiction under Section 482 of Cr.P.C. The petitioner need not be put into the ordeal of facing the trial in this case, in view of the non fulfilment of the mandatory requirement that has been discussed herein above.
>
> 14. In the result, proceedings of the court below in CC. No. 5516 of 2009 is hereby quashed and accordingly, Criminal Original Petition is allowed."

50. In our view, the decision in **Vaiko** (cited supra) has no application to the case on hand, since the said situation does not arise.

51. That apart, Mr. K. Gopalakrishna Kurup has relied on the decision in **Subhashree Das and Ors. v. State of Orissa** [2011 (11) OLR 1000], wherein the High Court of Orissa at Cuttack held thus:

> "10. In view of the conclusions/finding reached hereinabove, this Court is of the considered view that, no cognizance could have been taken against the Petitioners in the absence of any valid sanction of the prosecution and in this regard, although sanction

> for prosecution had been obtained, yet the same was not based upon a review by a validly appointed authority to carry out "independent review of evidence" obtained in course of investigation. Therefore, the very foundation for obtaining such sanction being not in consonance with law, the order of cognizance dated 16.7.2010 passed by the learned J.M.F.C, Banpur in G.R. Case No. 16 of 2010 ought to be quashed and this Court directs accordingly."

52. In our view, facts and circumstances being distinguishable no reliance can be placed on the decisions relied on by the learned Senior Counsel appearing for the appellants in W.A. No.765 of 2018.

53. Mr. K. Gopalakrishna Kurup, learned Senior Counsel appearing for the appellants, has also invited our attention to the decision in **Roopesh v. State of Kerala and Ors.**, reported in 2019 (4) KLT 219, to buttress his submission that a valid sanction is a sine qua non for enabling the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence under the Unlawful Activities (Prevention) Act, 1967. However it is brought to our notice by the learned counsel for the CBI that the decision rendered by a learned single Judge of this Court in **Roopesh** (cited supra) was stayed by the Hon'ble Apex Court vide order in Special Leave to Appeal (Crl.) No.1813-1815/2020 dated 16.10.2020.

54. Mr. B. Raman Pillai, learned Senior Counsel appearing for the appellants in W.A. No.766 of 2018 has invited our attention to the decision of the Hon'ble Apex Court in **Mohd. Iqbal Ahmed v. State of**

Andhra Pradesh reported in (1979) 4 SCC 172, in regard to sanction under Sections 5 and 6 of the Prevention of Corruption Act, 1947. It was also a case considered in appeal and ultimately the conclusions arrived at were on the basis of evidence let in by the parties and the findings in respect of the sanction given by the appropriate statutory authority.

55. Apart from the above, other decisions relied on by the learned Senior Counsel for the appellants with respect to incorporation of Section 149 of the IPC are not fruitful to decide the issue raised in these appeals, in view of the observations made by us earlier.

56. On the other hand, learned ASG has relied upon various decisions, including the decision of the Hon'ble Apex Court in **Subramanian Swamy v. Manmohan Singh and Another** reported in (2012) 3 SCC 64, to contend that merely because the sanction order was not produced, cognizance taken cannot be said to be bad in law, and the requirement of validity of sanction, we do not propose to go into the same in view of the findings rendered by us as above.

57. So also, we do not find much force in the contention raised by the learned counsel for the CBI that the Sessions Court, Thalassery, where the final report was laid, was an incompetent court, since there was a Special Court constituted for the trial of offences under the UAPA and when cognizance was taken by the Special Court, the sanction order was available, in view of the fact that cognizance was taken by the

Sessions Court, Thalassery, by virtue of the provisions of the UAPA, 1967, and the case was later transferred to the Special Court on account of the directions issued by the Hon'ble Apex Court, as discussed above.

In the light of the discussion made above, we do not find any jurisdictional error or legal infirmity on the part of the learned single Judge, in exercising the powers conferred under Article 226 of the Constitution of India. Therefore, upshot of the above discussion is that the appeals are liable to be dismissed and accordingly, we do so. However, we make it clear that the trial court shall not be influenced by the findings and observations made in the judgments rendered by the learned single Judge, and us, as above, in considering any issues at any stage of the proceedings, in accordance with law.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Krj

//TRUE COPY//

P.A. TO C.J.