IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 136 OF 2017

1) Mahesh Kariman Tirki,
Age about 22 years,
Occupation – Agriculturist,
R/o Murewada, Taluqa-Etapalli,
District – Gadchiroli.

2) Pandu Pora Narote,
Age about 27 years,
Occupation – Agriculturist,
R/o Murewada, Taluqa-Etapalli,
District – Gadchiroli.

3) Hem Keshavdatta Mishra,
Age about 32 years,
Occupation – Education,
R/o Kunjbargal, Post – Nagarkhan,
District – Almoda (Uttarakhand).

4) Prashant Rahi Narayan Sanglikar,
Age about 54 years,
Occupation – Journalist,
R/o 87, Chandrashekhar Nagar,
Krushikesh, Deharadun, Uttarakhand.

5) Vijay Nan Tirki,
Age about 30 years,
Occupation – Labour,
R/o Beloda, Post – P.V. 92, Dharampur,
Taluqa – Pakhanjoor, District – Kanker
(C.G.). .... APPELLANTS

VERSUS

State of Maharashtra,
through PSO Aheri, Gadchiroli,
Maharashtra. .... RESPONDENT

WITH

CRIMINAL APPEAL NO. 137 OF 2017

G.N. Saibaba,
Aged about 47 years,
Occupation – Service (suspended),
R/o 100, B-Block, Hill View Apartments,
Vasant Vihar, Near PVR Cinema,
New Delhi. .... APPELLANT

VERSUS

State of Maharashtra,
through PSO Aheri, Gadchiroli,
Maharashtra. .... RESPONDENT

Mr. Pradeep Mandhyan with Mr. Barunkumar and Mr. H.P. Lingayat, Counsel for the appellants in Criminal Appeal 136/2017, Mr. Subodh Dharmadhikari, Senior Counsel assisted by Mr. N.B. Rathod, Counsel for appellant in Criminal Appeal 137/2017, Mr. Siddharth Dave, Special Public Prosecutor-Senior Counsel and Mr. H.S. Chitaley, Assistant Special Public Prosecutor for the respondent/State.

CORAM : ROHIT B. DEO & ANIL L. PANSARE, JJ.

DATE OF RESERVING THE JUDGMENT : 29th SEPTEMBER, 2022
DATE OF PRONOUNCEMENT OF THE JUDGMENT : 14th OCTOBER, 2022

JUDGMENT : (PER : ROHIT. B. DEO, J.)

Criminal Appeal 136/2017 and Criminal Appeal 137/2017 emanate from the common judgment dated 07-3-2017 rendered by the learned Sessions Judge, Gadchiroli, whereby the appellants are

convicted for offences punishable under Sections 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) read with Section 120-B of the Indian Penal Code (IPC) as set out infra.

S.No	Names	Conviction	Sentence
1.	Accused 1–Mahesh Kariman Tirki, Accused 2-Pandu Pora Narote, Accused 3-Hem Keshavdatta Mishra, Accused 4-Prashant Rahi Narayan Sanglikar, Accused 6-Gokalkonda Naga Saibaba	Section 13 of the UAPA read with Section 120-B of the IPC.	Rigorous imprisonment for seven years each and to pay fine of Rs.1000/- and in default Rigorous Imprisonment for six months each.
		Section 18 of the UAPA read with Section 120-B of the IPC.	Imprisonment for Life each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 20 of the UAPA read with Section 120-B of the IPC.	Imprisonment for Life each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each.
		Section 38 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for ten years each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each.
		Section 39 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for ten years each and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months each.

2.	Accused 5-Vijay Nan Tirki	Section 13 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for four years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 18 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for ten years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 20 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for ten years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 38 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for five years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.
		Section 39 of the UAPA read with Section 120-B of the IPC.	Rigorous Imprisonment for five years and to pay a fine of Rs.1000/- and in default to suffer Rigorous Imprisonment for Six Months.

Criminal Appeal 136/2017 is preferred by accused 1 to accused 5 and Criminal Appeal 137/2017 is preferred by accused 6.

2. CASE OF THE PROSECUTION :

(i) Assistant Police Inspector (API)-Atul Shantaram Awhad (PW 6), who was then attached to the Special Branch, Gadchiroli, received secret information that accused 1-Mahesh Tirki and accused 2-Pandu Narote were active members of the banned terrorist organisation CPI (Maoist) and its frontal organisation Revolutionary Democratic Front (RDF), and were abetting and assisting the hardcore underground cadre of the CPI (Maoist) by providing information and material and facilitating the travel and relocation of the members from one location to the other. API-Atul Awhad and his squad were keeping accused 1-Mahesh Tirki and accused 2-Pandu Narote under surveillance, in the naxal affected areas of Etapalli, Aheri and Murewada.

(ii) API-Atul Awhad and his squad were at the Aheri Bus Station at 6-00 p.m. on 22-8-2013. Accused 1-Mahesh Tirki and accused 2-Pandu Narote were found standing at a secluded place near the Bus Stand. At 6.15 p.m. one person wearing white cap approached accused 1-Mahesh Tirki and accused 2-Pandu Narote and the trio started conversing and interacting with each other in a manner which API-Atul Awhad and his squad found suspicious. API-Atul Awhad, therefore, approached the trio and questioned accused 1, accused 2 and accused 3 only to receive evasive answers. API-Atul Awhad summoned

two panchas and asked the names of the three persons who disclosed their names as Mahesh Kariman Tirki (accused 1), Pandu Pora Narote (accused 2) and Hem Keshavdatta Mishra (accused 3).

(iii) Accused 1-Mahesh Tirki, accused 2-Pandu Narote and accused 3-Hem Mishra were brought to the Aheri Police Station and their personal search was taken in presence of panch witnesses. Three pamphlets of the banned terrorist organisation CPI (Maoist) and its frontal organisation RDF, one purse containing Rs.60/-, platform ticket of Ballarshah Railway Station dated 28-5-2013, Identity Card and one Cell Phone of Micromax Company, was the material seized from accused 1-Mahesh Tirki. Pursuant to personal search of accused 2-Pandu Narote, one Cell Phone of Samsung Company, one purse containing Rs.1480/-, platform ticket of Delhi Railway Station dated 28-5-2013, Pan Card, Identity Card, was the material seized. The personal search of accused 3-Hem Mishra led to the seizure of one Memory Card of 16 GB of Sandisk Company wrapped in a paper, one purse containing cash of Rs.7,700/-, railway ticket of Delhi to Ballarshah dated 19-8-2013, Camera along with Charger, Pan Card, Identity Card and Cloth Bag.

(iv) API-Atul Awhad lodged report against accused 1-Mahesh Tirki, accused 2-Pandu Narote and accused 3-Hem Mishra (Exhibit

219), on the basis of which Crime 3017/2013 was registered for offences punishable under Sections 13, 18, 20, 38 and 39 of the UAPA read with Section 120-B of the IPC. In view of the provisions of the UAPA, further investigation was assigned to Sub-Divisional Police Officer-Suhas Bawche (PW 11).

(v) The interrogation of accused 1-Mahesh Tirki and accused 2-Pandu Narote revealed that naxalite Narmadakka of CPI (Maoist) had assigned accused 1-Mahesh Tirki and accused 2-Pandu Narote the task of escorting accused 3-Hem Mishra, who was arriving from Delhi with important informative material, to the Murewada forest, safely. The meeting with accused 3-Hem Mishra was scheduled at the Aheri Bus Stop. During interrogation of accused 3-Hem Mishra, it was revealed that accused 6-G.N. Saibaba, who was an active member of CPI (Maoist) and RDF, had handed over to accused 3-Hem Mishra one Memory Card wrapped in a paper with instructions to deliver the same to Narmadakka.

(vi) The interrogation of accused 3-Hem Mishra further revealed the involvement of accused 4-Prashant Rahi. The Investigating Officer-Suhas Bawche received information from his sources that accused 4-Prashant Rahi would visit Raipur or Deori. PW 11-Suhas Bawche conveyed the said information to Police Station Chichgarh. On

01-9-2013 Police Inspector Rajendrakumar Tiwari (PW 14) found accused 4-Prashant Rahi and accused 5-Vijay Tirki at the Chichgarh T Point, Deori in suspicious circumstances, and brought them to the Aheri Police Station at 5-00 a.m. on 02-9-2013. PW 11- Suhas Bawche arrested accused 4-Prashant Rahi and accused 5-Vijay Tirki vide arrest panchanamas Exhibit 239 and Exhibit 240 respectively. Pursuant to the personal search of accused 4-Prashant Rahi, the Investigating Officer seized one money purse, cash of Rs.8,800/-, one Visiting Card, one Driving Licence, one Yatri Card, one Newspaper "Dainik Bhaskar" and eight papers containing naxal literature along with typed written papers pertaining to the under-trial Maoist leader Narayan Sanyal. The personal search of accused 5-Vijay Tirki led to the seizure of one Cell Phone of silver colour, cash of Rs.5,000/-, four pieces of paper on which certain phone numbers were written and one newspaper "Dainik Bhaskar".

(vii) The investigation revealed that accused 5-Vijay Tirki was instructed by Ramdar, an active member of banned terrorist organisation CPI (Maoist) and its frontal organisation RDF, to receive accused 4-Prashant Rahi and escort him safely to the Abuzmad forest area to meet the senior maoist cadre. Investigation further revealed that accused 3-Hem Mishra, accused 4-Prashant Rahi and accused 6-

G.N. Saibaba entered into criminal conspiracy pursuant to which accused 6-G.N. Saibaba arranged the meeting of accused 3-Hem Mishra and accused 4-Prashant Rahi with the underground members of the banned terrorist organisation CPI (Maoist) and its frontal organisation RDF, and handed over the SD Memory Card of 16 GB of Sandisk Company containing important maoist communications and material to accused 3-Hem Mishra and accused 4-Prashant Rahi with instructions to deliver the same to the naxalites who were hiding in the Abuzmad forest area, and with the intention of furthering the activities of the said terrorist organisation and its frontal organisation.

(viii) Accused 3-Hem Mishra opened his Facebook account in presence of panch witness Shrikant Gaddewar (PW 4) at Police Station Aheri on 26-8-2013. The Facebook account was opened by accused 3-Hem Mishra by entering his user name and password on the Laptop of the Aheri Police Station and the screen shots and their printouts were taken by the Investigating Officer Suhas Bawche in presence of the panch witness and panchanama to that effect was recorded (Exhibit 200), proceedings were further videographed and panchanama to that effect was recorded (Exhibit 199). The Memory Card of Sandisk Company seized from accused 3-Hem Mishra was sent to the Central Forensic Science Laboratory, Mumbai (CFSL) and the forensic analysis

was done by Mr. Bhavesh Nikam (PW 21) who submitted the report (Exhibit 266). The certified hard copies of the mirror images of the data contained in the 16 GB Memory Card are annexed to the CFSL report.

(ix) Sanction under Section 45(1) of the UAPA was granted by the Sanctioning authority Mr. Amitabh Rajan (PW 19) vide order dated 15-2-2014, which is restricted to the arrested accused 1 to accused 5. The final report under Section 173(2) of the Code of Criminal Procedure, 1973 (Code of 1973) was submitted in the court of Judicial Magistrate First Class, Aheri on 16-2-2014. The learned Judicial Magistrate First Class, Aheri committed the case to the Sessions Court vide committal order dated 26-2-2014 and the proceedings were registered as Sessions Case 13/2014.

(x) In the interregnum, in view of the revelations during the course of investigation and interrogation of accused 3-Hem Mishra and accused 4-Prashant Rahi, the Investigating Officer-Suhas Bawche sought search warrant from the learned Judicial Magistrate First Class, Aheri-Nileshwar Vyas (PW 12) on 04-9-2013, to conduct the search of the house of accused 6-G.N. Saibaba. Pursuant to the search warrant issued on 07-9-2013, the Investigating Officer-Suhas Bawche along with other officers and personnel left for Delhi on 09-9-2013, sought the

assistance of the Police Station Officer Morisnagar, Delhi, and the Delhi Police accordingly provided police staff, cyber expert and videographer. The Investigating Officer-Suhas Bawche and his squad, accompanied by the posse of the Delhi Police and panchas, conducted the house search of accused 6-G.N. Saibaba. The police seized Compact Disk, Digital Versatile Disk, Pen Drive, Hard Disk, three Cell Phones, two Sim Cards, Books, Magazine and certain other articles vide panchanama (Exhibit 165). The electronic and digital gadgets and devices which were seized during the course of the house search of accused 6-G.N. Saibaba, were sent to the CFSL, Mumbai for forensic analysis and Mr. Bhavesh Nikam (PW 21) who forensically analysed the electronic gadgets and data, submitted report vide Exhibit 267, along with which report are annexed the hard copies of mirror images of the data contained in the electronic gadgets.

(xi) Investigating Officer-Suhas Bawche attempted to arrest accused 6-G.N. Saibaba, and was thwarted by the sympathizers and members of the banned organisation. The Investigating Officer-Suhas Bawche, therefore, obtained arrest warrant from the learned Judicial Magistrate First Class, Aheri on 26-2-2014 and arrested accused 6-G.N. Saibaba on 09-5-2014 vide arrest panchanama Exhibit 269. Accused 6-G.N. Saibaba was produced before the learned Judicial Magistrate First

Class, Aheri and was remanded to judicial custody. The jail authority was directed to produce accused 6-G.N. Saibaba before the Sessions Court.

(xii) Sanction under Section 45(1) of the UAPA to prosecute accused 6-G.N. Saibaba was granted by the Sanctioning Authority Mr. K.P. Bakshi (PW 18) vide order dated 06-4-2015. The learned Sessions Judge framed charges against accused 1 to accused 6 on 21-2-2015. While the sanction to prosecute accused 6-G.N. Saibaba was accorded after the cognizance was taken, and the charges were framed, supplementary charge-sheet dated 31-10-2015 was filed which was registered as Sessions Case 130/2015 and the learned Sessions Judge ordered joint trial of Sessions Case 30/2014 and Sessions Case 130/2015 vide order dated 14-12-2015.

3. THE FINAL REPORT, COGNIZANCE AND THE TRIAL :

(i) As noted supra, G.N. Saibaba was arraigned as accused 6 in the final report submitted on 16-2-2014, in which accused 1 to accused 5 were shown as arrested accused. The Director of Prosecution, which is the authority appointed by the State Government to conduct an independent review of the evidence gathered in the course of investigation and make a recommendation, submitted report dated 11-2-2014, recommending sanction against all the accused. However,

the sanction order dated 15-2-2014 issued by Amitabh Ranjan (PW 19) restricts the sanction to the arrested accused 1 to accused 5.

(ii) The learned Sessions Judge took cognizance against all the accused vide order dated 15-2-2014. It is irrefutable that not only was the cognizance taken by the learned Sessions Judge, the charges were framed on 21-2-2015 against all the accused, pleas were recorded and PW 1-Santosh Bawne was examined and it was only thereafter that the Sanctioning Authority Mr. K.P. Bakshi (PW 18) accorded sanction to prosecute accused 6-G.N. Saibaba vide order dated 06-4-2015. We must note in all fairness to the learned Special Public Prosecutor that the position that the learned Sessions Judge took cognizance of the offence against accused 6-G.N. Saibaba and framed charges in the absence of sanction, is not disputed.

(iii) Accused 6-G.N. Saibaba preferred Miscellaneous Criminal Bail Application 96/2014 which was rejected by the learned Sessions Judge, Gadchiroli vide order dated 13-6-2014. Perusal of the said order reveals that it was argued on behalf of accused 6-G.N. Saibaba that the sanction is not legal inasmuch as the report of the Advisory Committee (the reference is presumably to the authority envisaged under Section 45(2) of the UAPA), is not considered. The rejection order records the submission of the learned Counsel that the sanction order produced on

record is invalid and in absence of valid sanction the Court is precluded from taking cognizance of the offences punishable under the provisions of UAPA. Pertinently, as on the date of the filing and the consideration of the bail application, the sanction order on record was the sanction order dated 15-2-2014, and its validity was assailed on the assumption that the cognizance is taken qua against accused 6-G.N. Saibaba, relying on the said sanction order.

The learned Sessions Judge observes in the order of rejection of bail that the State Government had accorded sanction within the period of limitation and at that stage, it will have to be presumed that the sanction is accorded by following due process of law. The learned Sessions Judge observes that the validity of the sanction will be decided on merit after the examination of the sanctioning authority. The observations in the order of rejection of bail assume some significance, in the context of the vehement submission of the learned Special Public Prosecutor that in the absence of challenge to the validity of the sanction at the initial stage of the proceedings, the invalidity or absence of sanction is not a ground available to assail the judgment of conviction.

(iv) As noted supra, the learned Sessions Judge framed the charges against accused 1 to 6 and recorded their pleas on 21-2-2015.

The accused abjured guilt and claimed to be tried in accordance with law. The prosecution examined twenty-three witnesses to bring home the charge. The accused did not step into the witness box nor did the accused examine any witness in defence. The text and tenor of the cross-examination and the answers in response to the examination under Section 313 of the Code of 1973 indicate that the defence is of false implication. Accused 1-Mahesh Tirki and accused 2-Pandu Narote claimed that their confessional statements recorded under Section 164 of the Code of 1973 were not voluntary, and were retracted with promptitude. Accused 3-Hem Mishra claimed that he was arrested at Ballarshah Railway Station and no incriminatory material was seized from his possession. Accused 4-Prashant Rahi claimed that he was not arrested at Deori-Chichgarh as is the prosecution case, and there was no seizure of any incriminatory material from his possession. Similar is the defence of accused 5-Vijay Tirki. Accused 6-G.N. Saibaba claimed that there was no seizure of any incriminatory material from his house at Delhi and that he is the victim of false implication.

(v) It would be apposite to extract the details of the twenty-three witnesses examined in support of the prosecution case, and the documentary material pressed in service by the prosecution, which is culled out by the learned Sessions Judge in the judgment impugned.

P.W.No.	Name of the Witness	Exh.No.
1	Santosh Nanaji Bawne, the panch witness of seizure panchanama and seizure of article from the possession of the accused Nos. 1 to 3 (Exh.137)	136
2	Jagat Bhole, the panch witness on seizure panchanama (Exh.,165) of electronic gadgets and other articles from the house search of accused No.6 Saibaba	164
3	Umaji Kisan Chandankhede, the panch witness on the point of personal search of accused No.4 (Exh.179) and personal search of accused No.5 (Exh.180)	178
4	Shrikant Pochreddy Gaddewar, the panch witness on facebook activities of accused no.3	198
5	Ravindra Manohar Kumbhare, the police constable, who carried and deposited the muddemal to CFSL, Mumbai	210
6	Atul Shantaram Avhad, the Police Officer and informant	218
7	Apeksha Kishor Ramteke, Woman Police Constable, who brought muddemal property from CFSL, Bombay to Aheri Police Station	222
8	Ramesh Koluji Yede, Police Head Constable, who brought the accused No.4 & 5 to Police Station, Aheri	223
9	Raju Poriya Atram, the witness on the point of incident	225
10	Police Inspector Anil Digambar Badgujar	226
11	S.D.P.O Suhas Prakash Bawche, the Investigating Officer	235
12	Nileshwar Gaurishankar Vyas, the J.M.F.C. who recorded confessional statements of accused No.1 Mahesh and No.2 Pandu	277
13	Ganesh Keshav Rathod, Moharar who deposited the muddemal in Malkhana	297
14	Police Inspector Rajendrakumar Parmanand Tiwari	307
15	Narendra Shitalprasad Dube, Station Diary Duty Amaldar	308
16	Ravi Khemraj Pardeshi, Nodal officer	329
17	Khumaji Devaji Korde, Court Superintendent	339

18	Kalyaneshwar Prasad Bakshi, Addl. Secretary	345
19	Dr. Amitabh Rajan S.N.Kishore, Home Secretary	355
20	Rajneeshkumar Ratiram, Nodal Officer, BSNL	359
21	Bhavesh Neharu Nikam, Scientific Expert, CFSL Mumbai	371
22	Manoj Manikrao Patil, Circle Nodal Officer, Indian Airtel, Dadar, Mumbai	411
23	SDPO Ramesh Malhari Dhumal	414

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S.No.	Documents	Exh.No.
1	Sanction order issued by Dr. Amitabh Rajan, Additional Chief Secretary to the Government of Maharashtra Home Department against accused No.1 to 5	17
2	Seizure panchanama in respect of property seized from the possession of accused No. 1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra	137
3	Seizure panchanama in respect of property seized from the possession of accused No.6 Saibaba	165
4	Seizure panchanama in respect of seizure of property from the possession of accused No.4 Prashant Rahi	179
5	Seizure panchanama in respect of seizure of property from the possession of accused No.5 Vijay Tirki	180
6	Panchanama of proceeding in respect of activities of facebook account of accused No.3 Hem Mishra	199
7	Panchanama to the effect that CD was taken out from computer and it was put back in same condition and was sealed	200
8	Panchanama to the effect that the memory card was sealed with labels and signatures of panchas	201
9	Panchanama to the effect that the packets containing laptop, books and mobiles were sealed with labels and signatures of panchas	202
10	Panchanama in respect of seizure of mobiles of accused No.6 G.N.Saibaba	203
11	Panchanama to the effect that hard-disk was sealed with labels and signatures of panchas	204
12	Panchanama to the effect that hard-disks were sealed with labels and signatures of panchas	205

13	A letter to Forensic Laboratory, Mumbai for examination of memory-card and report	211
14	Questionair in regard to the memory card for forensic science lab	211A
15	A letter to Forensic Laboratory, Mumbai for examination of electronic gadgets seized from the house search of accused No.6 Saibaba and report	212
16	Oral report lodged by the informant P.S.I Atul Shantaram Awhad (P.W.6)	219
17	F.I.R. lodged by the informant P.S.I. Atul Shantaram Awhad (P.W.6)	220
18	Arrest panchanama of accused No.1 Mahesh Tirki, No.2 Pandu Narote and No.3 Hem Mishra	227 to 229
19	Special Report of Police Station, Aheri about registration of crime	236
20	Letter dated 25.8.2013 issued by P.W.11 Suhas Bawche for getting CDR	237
21	Arrest panchanama of accused No.4 and 5	239 & 240
22	Report addressed to P.I. Police Station Devri dated 1.9.2013	241
23	Search warrant of house search of accused No.6 Saibaba dated 7.9.2013	244
24	Letter to Morisnagar Police Station at Delhi for providing police staff, computer expert and videographer by P.W.11 Suhas Bawche	252
25	Notice sent to accused No.6 Saibaba to remain present for investigation by P.W.11 Suhas Bawche	256
26	Letter dated 17.9.2013 to S.P. Gadchiroli for obtaining CDR	257
27	Letter dated 16.1.2014 sent by P.W.11 Suhas Bawche to different mobile companies for CDR	262
28	Attested copy of charge-sheet of Nanakmatta Police Station against accused No.4 Prashant Rahi	264
29	Scientific analysis report of CFSL, Mumbai annexed with 15 pages in respect of 16 GB memory-card seized from accused no.3 Hem Mishra	266
30	Scientific analysis report of CFSL, Mumbai annexed with 247 pages in respect of Exh.1 to 25 i.e. electronic gadgets seized from the house search of accused No.6 Saibaba	267
31	Arrest panchanama of accused No.6 Saibaba	269

32	Extracts of station diary entries	275A to 275J
33	Attested extract copies of muddemal register	276A to 276E
34	Memorandum regarding questions and answers put to accused No.2 Pandu Narote	278
35	Memorandum regarding questions and answers put to accused No.1 Mahesh Tirki	279
36	Confessional statement of accused No.1 Mahesh Tirki	280
37	Certificates I, II and III affixed to confessional statement of accused No.1 Mahesh Tirki	281 to 283
38	Confessional statement of accused No.2 Pandu Narote	286
39	Certificates I, II and III affixed to confessional statement of accused No.2 Pandu Narote	287 to 289
40	Complaint made by accused No.1 Mahesh Tirki and No.2 Pandu Narote regarding retraction of confessional statement	292
41	The CDR of mobile phone numbers of accused no.3 Hem Mishra and No.4 Prashant Rahi	330 to 332
42	Certificate us/65B of the Evidence Act	333
43	Customer application form of mobile SIM card of accused No.4 Prashant Rahi	335
44	Customer application forms of mobile SIM card of accused No.3 Hem Mishra	336 and 337
45	Certificate dated 15.2.2014 u/s 65B of the Evidence Act.	338
46	Copy of the property register of Sessions Court, Gadchiroli	340
47	Letter dated 26.2.2015 to Director of Public Prosecutor issued by Desk Officer for independent review	346
48	Independent review received from Director of Public Prosecutor	348
49	Sanction order dated 6.4.2015 for prosecution of accused No.6 Saibaba	349
50	Covering letter with sanction	350
51	Letter dated 7.2.2014 to Director of Public Prosecutor issued by Desk Officer for independent review	356
52	Independent review received from Director of Public Prosecutor	358

53	Mirror images retrieved from 16 GB memory-card of Sandisk company sent along with letter dated 30.8.2013	372
54	Letters issued by P.W.23 Bhavesh Nikam to SDPO Aheri along with mirror-images of hard-disks	373 & 374
55	Certificate dated 23.3.2016 by Head of Department Assistant Director of Cyber Crime	375
56	16 GB memory-card of Sandisk company	376
57	Hard-disks	377, 381 to 384
58	Pen-drives	378 to 380
59	DVDs	387 to 394
60	CD	395
61	CDR details of mobile SIM card of accused No.6 Saibaba	413
62	Customer application form for mobile SIM card of accused No.6 Saibaba	418
63	Telephone bill in the name of accused No.6 Saibaba	419
64	Attested copy of ID card of accused No.6 Saibaba	420

The evidence on record shall be considered only to the extent imperative for the decision in the appeals.

4. JUDGMENT IMPUGNED :

(i) The learned Sessions Judge has authored a copious judgment which painstakingly marshals the material on record and concludes that the prosecution has brought home the charge to the hilt. The finding of the learned Sessions Judge that the commission of offence punishable under Section 13 of the UAPA is proved, is substantially founded on the documents seized from the possession of accused 1-Mahesh Tirki, the

digital data retrieved from the 16 G.B. memory card seized during the personal search of accused 3-Hem Mishra and the documents, photographs, video clips retrieved from the electronic gadgets seized from the house search of accused 6-G.N. Saibaba. The learned Sessions Judge rejected the submission of the accused that even if the alleged incriminatory material is assumed, *arguendo*, to have been proved in accordance with the Indian Evidence Act, the penal provisions of Sections 18 and 20 of the UAPA do not come into play. In arriving at the finding that the charge of conspiracy is proved, the learned Sessions Judge relied on the naxal pamphlets seized from the possession of accused 1-Mahesh Tirki, the text documents retrieved from the 16 G.B. memory card of Sandisk Company seized from the personal search of accused 3-Hem Mishra and the alleged incriminatory material retrieved from the electronic gadgets seized during the course of the house search of accused 6-G.N. Saibaba. The learned Sessions Judge was pleased to record a finding that accused 1-Mahesh Tirki, accused 3-Hem Mishra and accused 6-G.N. Saibaba possessed naxal literature with the intent and purpose of circulation amongst the underground naxlites at Gadchiroli and the residents of the said district, to incite the people to resort to violence. The learned Sessions Judge further found that accused 1 to accused 6 hatched criminal conspiracy, the object of which was to wage war against the Government.

Considering the submission canvassed on behalf of the accused, that in the absence of proof that the banned organisation is, as a fact, involved in terrorist act, Section 20 of the UAPA is not attracted, the learned Sessions Judge, relied on the documentary material, the photographs and the video clips retrieved from the electronic gadgets to hold that the prosecution has proved that the members of the CPI (Maoist) and its frontal organisation RDF are involved in violent activities. The learned Sessions Judge did consider the decisions of the Hon'ble Supreme Court in ***Arup Bhuyan***[1] and ***Indradas***[2] which the accused pressed in service to buttress the submission that mere membership of a banned organisation will not incriminate a person unless he resorts to violence or incites people to violence and does an act intended to create disorder or disturbance of public peace by resort to violence. The learned Sessions Judge then noted that in ***Arup Bhuyan***[3], the issue is directed to be placed before the Larger Bench. The learned Sessions Judge then proceeded to distinguish ***Arup Bhuyan*** and ***Indradas*** on facts and refrained from recording any categorial finding on the submission that the *sine qua non* for attracting Section 20 of the UAPA is not only membership, but proof that the member has indulged in acts of terror. The conviction under Sections 38 and 39 of the UAPA is based on the basis of the same evidence, and the reasoning,

1 *Arup Bhuyan v. State of Assam, (2011) 3 SCC 377;*
2 *Indradas v. State of Assam, (2011) 3 SCC 380;*
3 Arup Bhuyan v. State of Assam, (2015) 12 SCC 702;

which persuaded the learned Sessions Judge to convict the accused under Sections 13, 18 and 20 of the UAPA. We may note, that in addition to the alleged incriminatory material seized and retrieved from personal search and house search of the accused, the confessionary statements of accused 1-Mahesh Tirki and accused 2-Pandu Narote recorded under Section 164 of the Code of 1973, albeit retracted confessions, weighed with the learned Sessions Judge in arriving at the finding of guilt, and corroboration was sought from the evidence of the accomplice PW 9.

The learned Sessions Judge negated the submission that the absence of sanction to prosecute accused 6-G.N. Saibaba is fatal to the case of the prosecution. The learned Sessions Judge reasoned that no failure of justice has occasioned, and further no grievance was made by the accused at the earliest opportunity. We have noted supra that accused 6-G.N. Saibaba did assail the sanction order, albeit the sanction order on the basis of which accused 6-G.N. Saibaba and the prosecution assumed that the cognizance is taken and the charge framed, in the application for bail. The learned Sessions Judge further held that there is no infirmity in the sanction order dated 15-2-2014 pertaining to accused 1 and accused 5, which was issued by PW 19-Dr. Amitabh Ranjan after scrutinizing the investigation papers, *inter alia*, CFSL report, soft copies of the electronic gadgets and mirror images of the

data retrieved from the electronic gadgets. The learned Sessions Judge observed that the sanction order clearly demonstrates that the sanctioning authority did consider the investigation papers and the recommendation of the authority making independent review, and that the sanctioning authority did refer to the documents on the basis of which the satisfaction of existence of *prima facie* case is arrived at.

The learned Sessions Judge, *inter alia,* relying on the decision of a learned Single Judge in Criminal Application 1256/2021 (Mohammad Bilal Gulam Rasul Kazi v. State of Maharashtra and others) rejected the submission that the period prescribed in the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (2008, Rules) for making the recommendation and according sanction is mandatory.

(ii) The learned Sessions Judge was pleased to convict and sentence the accused as afore-noted. Every accused other than accused 5-Vijay Tirki was visited with the maximum punishment provided under the statute i.e. life sentence.

The learned Sessions Judge proceeded to observe that no leniency can be shown to accused 6-G.N. Saibaba who is suffering from 90% disability since accused 6-G.N. Saibaba is mentally fit and is a think tank of the banned organisation which by its violent activities has brought the industrial and other development in the naxal affected

areas to grinding halt. The learned Sessions Judge further observed that imprisonment for life is not a sufficient punishment to accused 6-G.N. Saibaba and the hands of the Court are tied in view of the fact that the imprisonment for life is the maximum punishment statutorily provided. We do not approve of the unwarranted observations of the learned Sessions Judge, which may have the unintended consequence of rendering the verdict vulnerable to the charge of lack of dispassionate objectivity.

(iii) We have consciously rested by indicating the contours of the evidence on record and the findings recorded and have refrained from dealing with the evidence on merits, since in our considered view, the appeals can be decided on the point of invalidity and absence of sanction under Section 45 of the UAPA. Ergo, we would note the submissions only to the extent necessary to answer the questions formulated in the context, and on the anvil of the statutory provisions.

5. **SUBMISSIONS :**

We have heard the learned Counsel Mr. Pradeep Mandhyan, Mr. Barunkumar and Mr. H.P. Lingayat on behalf of accused 1 to accused 5, the learned Senior Counsel Mr. S.P. Dharmadhikari assisted by Mr. N.B. Rathod on behalf of accused 6 and the learned Special Public

Prosecutor-Senior Counsel Mr. Siddharth Dave and the learned Assistant Special Public Prosecutor Mr. H.S. Chitaley on behalf of the State.

We must record, in fairness to the learned Counsel for the accused and the State, that strenuous, and at times painstaking submissions are canvassed on the basis of the oral and documentary material on record, and the correctness or otherwise of the findings recorded by the learned Sessions Judge on merits. For reasons spelt out supra, we would restrict the consideration to the submissions canvassed to the extent relevant and germane to the decision on the aspect of validity of the sanction orders.

(i) Mr. Pradeep Mandhyan would submit that the sanction order dated 15-2-2014 issued by Mr. Amitabh Ranjan (PW 19) is vitiated by non application of mind. Inviting our attention to the object and purpose of the Amending Act 35 of 2008, which inserted sub-section (2) of Section 45 of the UAPA, Mr. Pradeep Mandhyan would submit that apart from the vice of non application of mind, the sanction order dated 15-2-2014 Exhibit 17 suffers from twin defects which are fatal to the prosecution case. It is submitted that the mandate of sub-section (2) of Section 45 of the UAPA is that the appointed authority must make an independent review of the evidence collected during the

course of investigation and then submit its report to the sanctioning authority with the recommendation. Mr. Pradeep Mandhyan would argue that the report of the review committee Exhibit 358 conveys only the recommendation sans summary of the analysis of the evidence collected, with the result, that the legislative intent that the sanctioning authority must be aided and assisted by the review made by an independent and legally trained mind, is defeated. Mr. Pradeep Mandhyan would then submit that the time period which is prescribed by the 2008, Rules to make the recommendation and the grant of sanction is breached and the sequitur must be a declaration of the invalidity of the sanction order.

(ii) In support of the submission that the sanction accorded by Mr. Amitabh Ranjan (PW 19) suffers from non application of mind, Mr. Pradeep Mandhyan would invite our attention to the deposition of the sanctioning authority to the effect that conclusion of the existence of criminal conspiracy between the accused was arrived at after scrutinizing the investigation papers, particularly the CFSL report, the digital data retrieved from the seized gadgets and the mirror images. Mr. Pradeep Mandhyan would submit that since the CFSL report was collected by PW 7-Apeksha Ramteke from the forensic laboratory on 15-2-2014, the said report could not have been placed before the

sanctioning authority who accorded the sanction on 15-2-2014. The assertion of the sanctioning authority that call records were considered is inconsistent with record, inasmuch as only part of the Call Details Report (CDR) was available on the date of according sanction, is the submission. The conspectus of the submissions is that the sanction is accorded without due application of mind to the facts and evidentiary material, as would constitute the ingredients of the offences.

(iii) Mr. S.P. Dharmadhikari, who led the submissions on behalf of accused 6-G.N. Saibaba, would submit that the learned Sessions Judge took cognizance, framed charge and recorded the plea of accused 6-G.N. Saibaba, and commenced the recording of evidence in the absence of sanction, which was only accorded later on 06-4-2015. It is submitted, that in the absence of sanction, the learned Sessions Judge was precluded from taking cognizance of the offence and the proceedings are null and void. The extension of the submission is, that absence of sanction is not a curable defect, and strikes at the root of the jurisdiction of the Court. It is further submitted, that the egregious defect or absence of sanction is not curable, nor is the accused obligated to demonstrate causation of prejudice or that the objection was raised at the earliest opportunity. Inviting our attention to the provisions of Section 48 of the UAPA and emphasizing the overriding effect

envisaged, Mr. S.P. Dharmadhikari would submit that the provisions of Section 45(1) of the UAPA shall override the provisions of Section 190 and Sections 460 to 465 of the Code of 1973. Mr. S.P. Dharmadhikari would argue that even if it is assumed *arguendo* that the provisions of the Code of 1973 could be invoked, considering that the requirement of sanction is a salutary safeguard provided to the accused in the UAPA, which is a stringent penal enactment schematically different from the ordinary penal law, invalidity or absence of sanction is not an error or omission or defect envisaged under the provisions of the Code of 1973. It is further submitted, that if cognizance is taken by the learned Sessions Judge in the absence of valid sanction, the Court is not a Court of competent jurisdiction, and there is no scope for the prosecution to argue that the accused did not raise the objection to the validity of the sanction at the earliest opportunity, or that no prejudice or failure of justice is demonstrated. Mr. S.P. Dharmadhikari would hasten to submit, that as a fact, accused 6-G.N. Saibaba did assail the validity of the sanction at the earliest opportunity, in the application for bail, and the learned Sessions Judge deferred the consideration on the aspect of the validity of sanction to later stage of the proceedings. Mr. S.P. Dharmadhikari would submit, that the time period for submitting the report of the authority appointed to make independent review of the evidence collected during the investigation, and according the sanction

must be construed as mandatory, and inasmuch as there is gross delay in according sanction to prosecute accused 6-G.N. Saibaba, the sanction order stands vitiated.

(iv) The learned Special Public Prosecutor-Senior Counsel Mr. Siddharth Dave prefaced the submissions with a broad overview of the legislative path which the UAPA has travelled. In response to the submission of Mr. Pradeep Mandhyan that the sanction order dated 15-2-2014 Exhibit 17 is vitiated due to non application of mind, Mr. Siddharth Dave would, after inviting our attention to the cross-examination of the sanctioning authority and the Investigating Officer (PW 11), submit that the defence theory that the CFSL report and the call records were not available for the perusal of the sanctioning authority is speculative, and that there is no cross-examination, muchless effective cross-examination, either of the sanctioning authority or the Investigating Officer, on the said aspect. Mr. Siddharth Dave would submit that the sanction order is self explanatory and the material on the basis of which the sanctioning authority arrived at the satisfaction that a case is made out for according sanction, is spelt out with sufficient particularity in the sanction order. It is submitted that although extraneous evidence was not required to demonstrate that the relevant material was placed before the sanctioning authority and that

the sanctioning authority accorded the sanction after due consideration of the material on record and application of mind, the prosecution nonetheless examined the sanctioning authority, who withstood the test of cross-examination. Rebutting the submission that the report of the authority appointed to make independent review of the evidence collected during the course of investigation is laconic, and falls foul of the legislative intent that the report must be formulated as would aid and assist the sanctioning authority, Mr. Siddharth Dave submits that sub-section (2) of Section 45 of the UAPA does not contemplate any specific format in which the recommendation of the authority is to be worded. It is submitted that the recommendation is not justiciable and is premised on the subjective satisfaction of the appointed authority. It is further submitted that in the light of credible evidence that the authority appointed to make the review was provided the relevant material in entirety, the form in which the authority conveyed the recommendation pales into insignificance. Mr. Siddharth Dave would submit that the sanctioning authority having accorded sanction, the exercise of the power which is not fettered by the recommendation of the authority entrusted with the task of making the review cannot be assailed on the specious reasoning that the report of the reviewing authority is not elaborate or that summary of the analysis of the evaluation of evidence is not discernible.

Mr. Siddharth Dave fairly does not join issues with the submission that as on the date of the learned Sessions Judge taking cognizance of the offence, no sanction to prosecute accused 6-G.N. Saibaba was in existence. Mr. Siddharth Dave would submit, that qua accused 6-G.N. Saibaba, the trial did not proceed in the absence of sanction, inasmuch as the trial proceeded on the basis of sanction obtained at belated stage. Mr. Siddharth Dave would submit, that although sanction to prosecute accused 6-G.N. Saibaba was accorded after the learned Sessions Judge took cognizance, framed charge, recorded plea and examined PW 1-Santosh Bawne, after obtaining the sanction PW 1-Santosh Bawne was recalled and re-examined. It is submitted that accused 6-G.N. Saibaba did not object to the recalling and re-examination of PW 1-Santosh Bawne, and it is axiomatic that the belated sanction has not occasioned failure of justice, even according to accused 6-G.N. Saibaba, and is therefore a curable defect which did not affect the jurisdiction of the Court.

(v) Mr. Siddharth Dave heavily relies on the provisions of Section 465 of the Code of 1973 to buttress the submission that a finding or order rendered by a Court of competent jurisdiction is not reversible due to the irregularities unless failure of justice is proved. The extension of the submission, is that unless failure of justice has

occasioned, no inference of causation of prejudice to the accused can be drawn.

(vi) Mr. Siddharth Dave would submit that the well entrenched judicial view is that the irregularities in the cognizance order would not vitiate the proceedings. It is submitted that the decisions rendered by the Hon'ble Supreme Court in the context of the provisions of the TADA are of no avail to the accused in view of the difference between the statutory schemes of TADA and UAPA.

(vii) The learned Counsel for the appellants and the prosecution have relied on catena of decisions in support of the submissions canvassed, which decisions we shall consider and analysis at a later stage in the judgment.

6. THE VALIDITY OF THE SANCTION ORDERS :

In the light of the assiduous submissions advanced on the aspect of the validity of the sanction orders, we are confronted with the following questions :

(a) Whether in view of the cognizance taken by the learned Sessions Judge qua accused 6-G.N. Saibaba in the absence of sanction, the subsequent proceedings are rendered void?

(b) Whether the sanction order dated 15-2-2014 qua accused 1 to 5 is defective ?

(c) Whether the defects in the sanction order are curable ?

(i) Before we venture to consider the issues which arise for determination on the aspect of the validity of the sanction, it would be apposite to have an overview of the genesis of, and the legislative interventions in, the UAPA.

(ii) Pursuant to the recommendations of the Committee on National Integration and Regionalism which was set-up by the National Integration Council to examine the aspect of placing reasonable restrictions on certain freedoms in the interests of sovereignty and integrity of India, the Parliament enacted the Constitution (Sixteenth Amendment) Act, 1963 empowering imposition of reasonable restrictions in the interests of the sovereignty and integrity of India on the freedom of speech and expression, the right to assemble peaceably and without arms, and the right to form associations or unions.

(iii) The UAPA was enacted in view, and furtherance of, the Constitutional amendment, supra. The Unlawful Activities (Prevention) Bill was introduced in the Parliament with the avowed object to make powers available for dealing with activities directed against the integrity

and sovereignty of India. The Bill received the assent of the President on 30-12-1967 and was enacted as the UAPA, 1967 (37 of 1967)

(iv) The UAPA as originally enacted did not cover within its sweep terrorist activities. The anti-terrorism legislation was the Terrorist and Disruptive Activities ((Prevention) Act, 1987 (TADA). TADA which was enacted in the backdrop of the Punjab insurgency, received the assent of the President on 23-5-1985. TADA had a sunset provision for lapsing after two years and as such lapsed on 24-5-1987. Since the Parliament was not in Session, an Ordinance was promulgated to keep alive the provisions and the Ordinance was replaced with the TADA, 1987. The re-enacted Act also had a sunset provision of two years and was renewed in 1989, 1991 and 1993 and allowed to lapse in 1995. TADA was replaced by the Prevention of Terrorism Act, 2002 (POTA) which held the legislative field till its repeal by the Prevention of Terrorism (Repeal) Act, 2004 and the expansion of the ambit of the UAPA by Act 29 of 2004.

(v) The TADA and POTA were perceived as legislation bordering on the draconian. Cutting across political and ideological lines, the provisions of the aforesaid statutes faced severe criticism as susceptible to egregious misuse and weapon of stifling the voice of dissent.

(vi) The Central Government was alive and sensitive to the criticism against the misuse of the provisions of the POTA. The concerns of the Central Government culminated in the repeal of POTA and the legislative intervention in UAPA. The statement of objects and reasons of the Amendment Act 29 of 2004 echos the concerns of the Central Government as regards the misuse of the provisions of the POTA, and at the same time underscores its resolve not to compromise in the fight against terrorism which poses a serious threat to national security.

(vii) Act 29 of 2004 amended the preamble of UAPA to include within its dragnet terrorist activities and several provisions of the POTA were incorporated. The UAPA underwent extensive amendment by Amending Act 35 of 2008. The statement of objects and reasons notes the significant developments, at the national and international level, since the amendment of the UAPA, 1967 in 2004. The objects and reasons of the Amendment Act 35 of 2008 emphasize that further provisions are required to be made in the law to cover various facets of terrorism and terrorist activities, including financing of terrorism and to subserve the aim of strengthening the arrangements for speedy investigation, prosecution of trial of cases. Significantly, the need to eschew possible misuse of the provisions is also underscored.

(viii) The UAPA was further amended by Act 3 of 2013 pursuant to the recommendations of the Inter-Ministerial Group which was constituted to recommend necessary amendments to the Act, *inter alia*, in view of the commitments made by India at the time of admission to the Financial Action Task Force, which is an Inter-Governmental Organisation set-up to devise policies to combat money laundering and terror financing. The relatively recent legislative intervention is the Act 28 of 2019 which seeks to provide for more effective prevention of certain unlawful activities of individuals and associations. Act 28 of 2019 *inter alia* empowers the Director General, National Investigating Agency to grant approval for seizure of attachment of property when the case is investigated by the said agency and the Central Government to add to, or remove from, the Fourth Schedule the name of an individual terrorist and an officer of the rank of Inspector of National Investigating Agency to investigate the offices under Chapter IV and Chapter VI.

7. Of extreme significance, in our considered view, is the amendment to the provisions of Section 45 of the UAPA which is brought about by Act 35 of 2008.

(i) Section 45, as the provision now stands, 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 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.*
>
> *(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."*

(ii) Sub-section (1) is a fetter on the power of the Court to take cognizance of any offence under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf and of any offence 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.

(iii) Sub-section (2) which is inserted by Act 35 of 2008 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.

(emphasis supplied)

(iv) There is no gainsaying, and the principle is too well recognized and deeply entrenched, that sanction is not a ritualistic formality nor is an acrimonious exercise. Sanction is a solemn and sacrosanct act which lifts the bar and empowers the Court to take cognizance of offence. Sanction serves the salutary object of providing safeguard to the accused from unwarranted prosecution and the agony and trauma of trial, and in the context of the stringent provisions of the UAPA, is an integral facet of due process of law.

(v) Before we further consider the significance of the legislative intervention in the UAPA, the procedural safeguards in the TADA, inserted by the Amending Act of 1993 and the *pari materia* provision of POTA may be noted.

Section 20-A of the TADA, which was introduced by Act 43 of 1993 provided thus :

> *"**20-A. Cognizance of offence.-** (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.*
>
> *(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."*

(vi) Section 20-A(1) provided that no information about the commission of an offence under the TADA shall be recorded by the police without the prior approval of the District Superintendent of Police. Sub-section (2) precluded the Court from taking cognizance of any offence under the TADA without the previous sanction of the Inspector-General of Police or, as the case may be, the Commissioner of Police. The protective safeguards operate at two distinct stages and the plain language of Section 20-A of the TADA would suggest that strict compliance with, and adherence to, the former and the latter safeguard were *sine qua non* of valid prosecution.

(vii) Section 50 of the POTA Act also provided that no Court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or, as the case my be, the State Government. Significantly, while the TADA entrusted police officers the power of according approval to record information of offence and sanction for prosecution, the POTA empowered the Central Government

or, as the case may be, the State Government to consider according sanction.

(viii) Act 35 of 2008, which inserted sub-section (2) mandates that the Central Government or the State Government shall accord sanction only after considering the report of the authority appointed to make an independent review of the evidence gathered in the course of investigation, and to make a recommendation to the Central Government or, as the case may be, the State Government. The appointment of an authority enjoined with the responsibility of making an independent review of the evidence gathered in the course of investigation and making recommendation, ensures an additional safeguard or filter and the legislative intent is to ensure that the sanctioning authority is aided, assisted and guided by the independent review of the evidence gathered in the course of investigation.

(ix) The Oxford dictionary defines “report” as an account given of a particular matter, especially in the form of an official document, after thorough investigation or consideration by an appointed person or body. The mandate of sub-section (2), is that the authority shall make an independent review of the evidence gathered in the course of investigation and then submit the report to the Central Government or the State Government with its recommendation.

(x) Considering the legislative intent underlying the introduction of sub-section (2) on the statute book, the expression "report" cannot be equated with "communication". Implicit in the duty to make an independent review of the evidence gathered in the course of investigation and then make a recommendation, is the obligation to place on record the raison d'etre underlying the recommendation. While we are not suggesting, even for a moment, that the report of the appointed authority must be elaborate or akin to judicial order or judgment, the report must be self explanatory and must incorporate the summary of the review of the evidence gathered as would assist and aid the sanctioning authority.

(xi) The then Home Minister Mr. P. Chidambaram, who moved the Bill to amend the Act, spoke thus in the Loksabha :

> *"Sir, these are the principal amendments we are making. One important safeguard I am making is that today the Executive registers the case, the Executive arm investigates the case and the Executive arm grants sanction for prosecution. So, what we are saying is the let the Executive arm register the case, let the Executive arm investigate the case, but before you sanction prosecution, the evidence gathered in the investigation must be reviewed by an independent authority. The independent authority must make its recommendation and only acting on that recommendation you can sanction prosecution. Therefore, there is a clean sanction filter which will filter out any case where the evidence does not warrant the prosecution of the accused."*

*"**Therefore, we have introduced an important safeguard that prosecution cannot be launched without a filter, without a legally trained mind applying its mind to the evidence gathered and then saying yes, this is a fit case of prosecution or this is not a fit case of prosecution**. (emphasis supplied)*

These are the broad features of this Bill. As I said in the opening, we have tried to balance various points of view. I respect every point of view. But I cannot accept one and reject another at this stage. We have tried to balance it. We have taken into account views expressed by human rights activists, lawyers, jurists, et. We have also taken into account views expressed by people who want our laws to be strengthened to fight terror. We have put together a Bill which, I think, balances the interest."

The proceedings of the Rajyasabha dated 18-12-2009 record the articulation of Mr. P. Chidambaram thus *:*

*"The other interest is that human rights are fundamental and basic. A fair procedure, and to be tried fairly, is part of personal liberty'; and no man's personal liberty can be taken away except according to the procedure established by law. It is, simply, not a mechanical procedure, but substantive due process. Therefore, balancing the interests by strong anti-terror laws and having the need to protect the fundamental human rights of persons, including the accused, we have drafted this Bill and, I am sure, the Members who are going to speak will support it. The Minister, Mr. Ashwani Kumar, will intervene, and the Minister, Mr. Kapil Sibal will also intervene if necessary. They will explain the provisions of the Bill. But, broadly, what we are doing is imposing restrictions on the power to grant bail. We are introducing a provision of drawing a rebuttable presumption in certain cases and requiring that before prosecution is actually sanctioned, the executive Government must take the recommendation of an independent authority who will review their writs. **So, we are strengthening the law, but, at the same time, are also providing the safeguards**."*

> *"But, before sanction is granted under 45(1) we are interposing an independent authority which will review the entire evidence, gathered in the investigation, and then make a recommendation whether this is a fit case of prosecution. So, here, we are bringing a filter, a buffer, an independent authority who has to review the entire evidence that is gathered and, then, make a recommendation to the State Government or the Central Government, as the case may be, a fit case for sanction. I think, this is a very salutary safeguard."* *(emphasis supplied)*

(xii) The admissibility of Parliamentary debates as extrinsic aid to the interpretation of statutes is considered in catena of decisions. Subscribing to the view which then prevailed in England, in ***Bombay Company Ltd.,***[4] the Hon'ble Supreme Court observes thus :

> *"16. It remains only to point out that the use made by the learned Judges below of the speeches made by the members of the Constituent Assembly in the course of the debates on the draft Constitution is unwarranted. That this form of extrinsic aid to the interpretation of statutes is not admissible has been generally accepted in England, and the same rule has been observed in the construction of Indian statutes--see Administrator-General of Bengal v. Prem Nath Mallick 22nd App. 107(p.c.) at p. 118. The reason behind the rule was explained by one of us in Gopalan v. State of Madras, 1950 S.C.R. 88 thus :-*
>
> *"A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all those legislators were in accord,"*
>
> *or, as it is more tersely put in an American case-*
>
> *"Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other- United States v. Trans-Missouri Freight Association, (1897) 169 U.S. 290 at p. 318 (sic.)."*

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4 *State of Travancore-Cochin and others v. Bombay Company Ltd., AIR 1952 SC 366;*

> *This rule of exclusion has not always been adhered to in America, and sometimes distinction is made between using such material to ascertain the purpose of a statute and using it for ascertaining its meaning. It would seem that the rule is adopted in Canada and Australia - see Craies on Statute Law, 5th Ed., p. 122."*

The English view which negated the admissibility of Parliament debates as an extrinsic aid of construction of statute, in due course, gave away to the school of thought that a limited use may be made of Parliamentary history in construing statute (***Pepper (Inspector of Taxes)***[5]. The House of Lords, however, cautioned that even the limited use of the Parliamentary debates shall be permissible if the statement is of the Minister or other Promoter of the Bill.

(xiii) Noticing the decision of the House of Lords in ***Pepper (Inspector of Taxes)***, the Hon'ble Supreme Court observes in ***P.V. Narsimha Rao***[6] that the statement of the Minister who had moved the Bill can be looked at to ascertain the mischief sought to be remedied and the object and purpose for which the legislation is enacted, albeit such statement cannot be considered for interpreting the provisions of the enactment.

(xiv) In ***M/s. Surana Steels Pvt. Ltd.***[7], the Hon'ble Supreme Court referred to the speech of the Finance Minister in Parliament as

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5 *(Pepper (Inspector of Taxes) v. Hart, (1993) All E R 42;*
6 *P.V. Narsimha Rao v. State (CBI/SPL.), AIR 1998 SC 2120;*
7 *M/s. Surana Steels Pvt. Ltd. v. Commissioner of Income Tax and others, AIR 1999 SC 1455;*

explaining "the rationale behind the introduction of Section 115-J in the Income Tax Act, 1961".

(xv) In our considered view, while the use of Parliamentary debates as an extrinsic aid for the construction of statute may be a grey area, on the authority of catena of decisions of the Hon'ble Supreme Court, we are entitled to refer to and rely upon the speech in the Rajyasabha and Loksabha made by the Hon'ble Minister Mr. P. Chidambaram who moved the Bill, to understand and appreciate the legislative object.

(xvi) We have extracted supra the statement of objects and reasons of the Amendment Act 35 of 2008 from which the legislative intent to minimize, if not obliterate, the possible misuse of the provisions, is discernible. Chief Justice of India-Patanjali Shastri speaking for the majority in ***Ashwini Kumar Ghose***[8] observes thus :

> *"As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for*

8 *Ashwini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369;*

they do not form part of the Bill and are not voted upon by members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of the statute."

(xvii) Referring to ***Ashwini Kumar Ghose's***[9] case, His Lordship Shri S.R. Das, J. articulated thus in ***Subodh Gopal Bose***[10] ;

"I am not therefore referring to it for the purpose of construing any part of the Act or of ascertaining the meaning of any word used in the Act but I am referring to it only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy."

(xviii) In ***Bhaiji***[11], the Hon'ble Supreme Court summarised the use of the statement of objects and reasons in the process of construction of statutes thus :

"Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statue sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers."

(xix) While the authorities can be multiplied, the dominant judicial view appears to be that the statement of objects and reasons

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9 *Ashwini Kumar Ghose (Supra);*
10 *State of West Bengal v. Subodh Gopal Bose and others, AIR 1954 SC 92;*
11 *Bhaiji v. Sub-Divisional Officer, Tandla, (2003) 1 SCC 692;*

can be referred for understanding the antecedent state of affairs and the evil which the statute sought to remedy.

(xx) Even *de hors* the Parliamentary history, the plain language of the provision admits of no view, other than that sub-section (2) of Section 45 of the UAPA is a legislatively provided additional safeguard, and while the sanctioning authority is not bound by the recommendatory report of the authority which independently reviews the evidence, the authority must formulate the report as would aid and assist the sanctioning authority.

(xxi) The laconic report of the Director of Prosecution (Exhibit 358) reads thus ;

> *"Report regarding review of evidence gathered during Investigation in C.R.No.3017 of 2013, Registered at Police Station Aheri, District Gadchiroli*
>
> ---
>
> *I perused -*
>
> 1. *Copy of F.I.R.*
> 2. *Copy of Panchanama.*
> 3. *Copy of Statement of witnesses, etc.*
> 4. *And other related documents (Image documents).*
>
> *It is clear that there is prima facie evidence against the arrested and non-arrested accused persons in the Police Station, Aheri, Gadchiroli C.R. No. 3017/2013 (1) Mahesh K. Tiraki, (2) Pandu P. Narote, (3) Hem K. Mishra, (4) Prashant Rahi, (5) Prasad @ Vijay N. Tirki, (6) G.N. Saibaba u/s. 13, 18, 20, 38 and 39 of Unlawful Activities Prevention Act.*

I therefore recommend to accord sanction in this case.

This report regarding review of evidence is only with regard to the offences under the Unlawful Activities (Prevention) Act, 1967.

sd/-
(Vidya Gundecha)
I/c. Director,
Directorate of Prosecution,
Maharashtra State, Mumbai."

The material which is considered by the authority is blurred. The authority claims to have perused the copies of the first information report, panchanama, copies of statements of witnesses **etc.** and any other related documents (image documents) and then concludes that there is *prima facie* evidence against the arrested and non-arrested accused under Sections 13, 18, 20, 38 and 39 of the UAPA. The purported report contains the conclusion sans reasoning. The appointed authority did not have the benefit, and the position is not in dispute, of the report of the CFSL of the digital data allegedly retrieved from the electronic gadgets. The report is bereft of the summary of the analysis of the evidence collected during the investigation and axiomatically renders no assistance to the sanctioning authority, muchless the assistance expected to be rendered by the appointed authority who is a Senior Judicial Officer. In our considered view, the purported report of the appointed authority is, nothing less and nothing

more than, a communication conveying the conclusion in the form of recommendation.

(xxii) The provisions of sub-section (2) of Section 45 of the UAPA to the extent the sanction shall be granted by the sanctioning authority only after considering the report of the appointed authority, are clearly mandatory. The use of expression "only after considering the report" of such authority is a mandate that the sanctioning authority must give due consideration to the report, and to enable the sanctioning authority to be aided and assisted, the report of the authority which makes an independent review must, at the very minimum incorporate summary of the evaluation or review of the evidence gathered in the course of investigation. Any other view shall water down if not eviscerate the legislative intent of providing an additional filter or safeguard to the accused.

(xxiii) Our attention is invited to the decision of the High Court of Orissa at Cuttack in ***Subhashree Das***[12] and the decision of the High Court of Madras in ***Vaiko***[13]***.*** The factual matrix considered in the decisions supra, is that no authority to make an independent review of the evidence collected during the course of investigation was appointed, and the sanction was accorded under Section 45 of the UAPA without

12 *Subhashree Das and others v. State of Orissa (Cri.M.C. 3080/2010);*

13 *Vaiko v. State of Tamilnadu (Cri.O.P. 20417/2018);*

the aid and assistance of the recommendation of such authority. The High Court of Orissa extensively referred to the speech of the Home Minister who introduced the Bill and held that since the sanction for prosecution was not based upon review by a validly appointed authority to make independent review of evidence obtained in the course of investigation, no cognizance of the offence could have been taken. The High Court of Madras held that it is only based on the report of the authority appointed to make the review of the evidence obtained, that the State Government or the Central Government, as the case may be, is empowered to grant sanction. In our view, a laconic communication conveying only the recommendation sans summary of analysis of the review of the evidentiary material is not a report which the legislature intended the appointed authority shall submit to the sanctioning authority, and stands on the same footing as absence of report.

(xxiv) The legislative imperative is that the sanction for prosecution shall be given **only after considering the report of the appointed authority** which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation. We have noticed supra that the report of the appointed authority renders no aid or assistance to the sanctioning authority, being devoid of reasons or brief summary of the analysis of

the review of the evidence gathered. Mr. Siddharth Dave is right in submitting that the statute does not envisage that the report of the appointed authority shall be in any particular format. We are however emphasising not on the form, but on the substance. It is not even the case of the prosecution, that after receiving the communication from the authority appointed to make the review, the sanctioning authority interacted with the appointed authority in the quest for aid and assistance, if not guidance.

(xxv) The sanctioning authority asserts that the sanction was given after considering the report of the authority appointed. The term "consider" postulates application of mind to all the relevant aspects of the matter and connotes that the thought process must be discernible. In the absence of any summary of the review or other material in the report as may disclose the rationale underlying the recommendation, we unhesitatingly hold that the sanctioning authority paid lip service to the legislative mandate and the report of the appointed authority was sought, and unfortunately given as a ritualistic formality. The transgression of the legislative imperative renders the sanction order dated 15-2-2014 bad in law.

(xxvi) We are however not impressed with the submission of Mr. Pradeep Mandhyan that the relevant facts and material were not placed before the sanctioning authority and that non application of mind is writ large upon the face of the sanction order, and that the evidence of the sanctioning authority is of no assistance to the prosecution as extraneous evidence. We have scrutinized the sanction order, from which it is discernible that the broad facts constituting the offence are set out. The well entrenched position of law is that ideally the sanction order must be self explanatory. The relevant facts and circumstances on the basis of which the sanction is accorded must ordinarily appear on the face of the sanction order. Extraneous evidence may be adduced to establish that the relevant facts and evidentiary material were considered by the sanctioning authority.

(xxvii) Mr. Pradeep Mandhyan would submit that the assertion of the sanctioning authority that he duly considered the CFSL report of the forensic analysis of the digital material and gadgets seized during the course of investigation is belied by the fact that the CFSL report was collected from the Forensic Laboratory by PW 7-Apeksha Ramteke on 15-2-2014, which is the date on which the sanction was accorded. It is further submitted that the deposition of the sanctioning authority that he did consider the CDR while according sanction, is indicative of non

application of mind for two reasons; (1) CDR was received by the investigating agency, and that too not in entirety, on the day the sanction was accorded, and (2) the sanctioning authority could not have derived any advantage from the CDR to arrive at the satisfaction which he did. Again, in the absence of effective cross-examination, we are not inclined to tread on the slippery slope of surmises, conjectures and speculations. The inference that relevant material was not considered cannot be drawn lightly. Having so observed, and as recorded supra, the sanction given is none-the-less invalid in view of the infraction of the legislative safeguard of the requirement to consider the report of the appointed authority.

(xxviii) The other issue is whether period prescribed for making the recommendation and according sanction is mandatory or directory. Sub-section (2) of Section 45 of the UAPA provides that sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed, and the authority appointed to make an independent review of the evidence gathered in the course of investigation shall make the recommendation within such time, as may be prescribed.

(xxix) The period within which the recommendation shall be made by the appointed authority and the sanction shall be accorded is prescribed under the 2008, Rules. Rules 3 and 4 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."*

The pivotal question is whether the use of the word "shall" in sub-section (2) of Section 45 of the UAPA and Rules 3 and 4 of 2008 Rules admits of no construction other than that the period prescribed is mandatory.

(xxx) We are conscious of the view of the Kerala High Court in ***Roopesh***[14], that the period prescribed in Rules 3 and 4 of the 2008 Rules is mandatory. We have also noticed the contrarian view of the Punjab and Haryana High Court. We are further informed that the Special Leave Petition filed by the State of Kerala is withdrawn and the question of law is kept open. While we have no hesitation in holding that the

14 *Roopesh Ramachandran v. State of Kerala (Cri.Rev.Petition 732/2019, decided on 17-3-2022);*

requirement of independent evaluation of the evidence on record by the appointed authority and submission of report, in contradistinction with communication conveying the recommendations, is mandatory, with deepest respect to the view of the Kerala High Court in ***Roopesh***[15], we are not inclined to hold that the time limit prescribed for making the recommendation or according sanction is mandatory. The *prima facie* inference that use of the word "shall" raises a presumption that the provision is mandatory may stand rebutted by other considerations and one extremely relevant consideration is the consequences which may flow from such construction. We are not inclined to construe the time frame as inexorable, breach whereof may have the unintended consequence of nipping the prosecution in the bud. We are not suggesting even for a moment that the time period can be violated with impunity. Albeit directory, the time frame must be substantially complied with. The effect of gross delay in submitting recommendatory report and according sanction may have to be examined on case to case basis, and the principles underlying Sections 460 and 465 of the Code of 1973 may come into play.

(xxxi) Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 stipulates that the Public Analyst shall within a period of 45 days deliver to the Local (Health) Authority a report of the result of his

15 *Roopesh (Supra);*

analysis. Interpreting the said provision the Hon'ble Supreme Court in ***T.V. Usman***[16] held that the provision as to time shall have to be construed as directory unless the delay has prejudiced the right of the accused to have the samples of food analysed by the Central Food Laboratory. The Hon'ble Supreme Court quoted with approval the following passage in Craies' Statute Law ;

> *"When a statute is passed for the purpose of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory."*

T.V. Usman further enunciates thus :

> *"11. In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay*

16 *T.V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry, (1994) 1 SCC 754;*

would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 *of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under* Section 13(2) *and that depends on the facts of each case and violation of the time limit given in Sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."*

(xxxii) In our considered view, the use of the words "shall' and prescription of time frame is intended to convey a sense of urgency to the authorities entrusted with the task of discharging statutory duties. Risking repetition, we reiterate that while the period prescribed is not mandatory in the sense that the infraction *ipso facto* vitiates the sanction accorded, and while ordinarily substantial compliance is obligated, the accused will have to demonstrate some prejudice or causation of failure of justice due to the failure to adhere to the time framed statutorily prescribed.

(xxxiii) In the factual matrix, we are not inclined to consider the challenge to the sanction order on the touchstone of the prescribed time frame, since the accused did not assail, during the course of trial, the sanction order on the anvil of the infraction of the statutorily prescribed time period for making the recommendation and according the sanction.

8. <u>THE EFFECT AND IMPLICATION OF THE INVALIDITY OR ABSENCE OF SANCTION</u> :

(i) The sanction accorded to prosecute accused 1 to accused 5 is held invalid in view of the egregious defects, *inter alia*, the breach of the mandatory provisions of sub-section (2) of Section 45 of the UAPA. We have further found that the issue of validity of the cognizance qua accused 6-G.N. Saibaba poses no conundrum since the cognizance is taken by the learned Sessions Judge, the charges framed and the first witness on behalf of the prosecution examined, in the absence of sanction. The pivotal issue which falls for consideration is whether the invalidity or absence of sanction strikes at the root of the jurisdiction of the trial Court and vitiates the trial in entirety, or, as the learned Special Public Prosecutor Mr. Siddharth Dave would strenuously urge, the sequitur of the finding of invalidity or absence of sanction is not inexorably an acquittal or discharge and the defect is curable.

(ii) The preponderant school of thought is that invalidity or absence of sanction strikes at the very root of the jurisdiction of the Court, if the Court is precluded from taking cognizance without the previous sanction envisaged under the statute. The jurisprudential logic is that in the absence of valid sanction, the Court is not empowered to take cognizance of the offence, and the proceedings would be void and "no proceedings in the eyes of law".

(iii) Considering Section 23 of the Cotton Cloth and Yarn (Control) Order, 1943, which provided that no prosecution for the contravention of any of the provisions of the Order shall be instituted without the previous sanction of the Provincial Government, speaking for the Privy Council, Sir John Beaumont held that giving of sanction confers jurisdiction on the Court to try the case, and if the sanction was defective or invalid, the defect in the jurisdiction of the Court can never be cured under Section 537 of the Criminal Procedure Code, 1898 (Code of 1898). The relevant observations in ***Gokulchand Dwarkadas Morarka***[17] read thus :

> *"12. It was argued by Mr. Megaw, though not very strenuously, that even if the sanction was defective, the defect could be cured under the provisions of Section 537, Criminal P. C., which provides, so far as material, that no finding, sentence or order passed by a Court of competent jurisdiction shall be altered or reversed on account of any error, omission or irregularity in any proceedings before or during the trial,*

17 *Gokulchand Dwarkadas Morarka v. The King, AIR (35) 1948 Privy Council 82;*

> *unless such error, omission or irregularity, has, in fact, occasioned a failure of justice. It was not disputed that if the sanction was invalid the trial Court was not a Court of competent jurisdiction, but Mr. Megaw contends that there was in this case a sanction, and that the failure of the Crown to prove the facts on which the sanction was granted amounted to no more than an irregularity. Their Lordships are unable to accept this view. For the reasons above expressed the sanction given was not such a sanction as was required by Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, and was, therefore, not a valid sanction. A defect in the jurisdiction of the Court can never be cured under Section 537."*

(iv) In ***Baijnath***[18]**,** the Three Judges Bench of the Hon'ble Supreme Court, while differing on certain aspects, unanimously held that the sanction under Section 197 of the Code of 1898 which was obtained after the cognizance of the offence, is of no avail to the prosecution and entails acquittal of the accused. The learned Assistant Special Public Prosecutor Mr. H.S. Chitaley would distinguish ***Baijnath*** on the premise that the decision was rendered on the anvil of the Code of 1898, which did not contain provision *pari materia* with Section 465 of the Code of 1973. The distinction is without a difference.

Section 529 of Chapter XLV of the Code of 1898 deals with irregularities which do not vitiate the proceedings. The said provision is *pari materia* with Section 460 of the Code of 1973. Sub-section (e) of Section 529 of the Code of 1898 and sub-section (e) of Section 460 of

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18 *Baijnath v. State of M.P., AIR 1966 SC 220;*

the Code of 1973 provide that if cognizance of an offence under Section 190 sub-section (1) clause (a) or clause (b) of the Code of 1898 or Code of 1973 is taken by any Magistrate not empowered, the irregularity shall not vitiate the proceedings. The cognizance of an offence under clause (c) of sub-section (1) of Section 190 of the Code of 1898 is an irregularity which vitiates the proceedings, if the Magistrate is not empowered by law, is provided in Section 530(k) of the Code of 1898 and Section 461(k) of the Code of 1973. Section 537 of the Code of 1898 which is considered in ***Gokulchand Dwarkadas Morarka***[19] provided that no finding, sentence or order passed by a Court of competent jurisdiction shall be altered or reversed on account of any error, omission or irregularity in any proceedings before or during the trial, unless such error, omission or irregularity has, in fact, occasioned a failure of justice.

(v) While Mr. H.S. Chitaley is right in submitting that Section 465 of the Code of 1973 specifically refers to error or irregularity in any sanction for prosecution, and provides that failure of justice will have to be demonstrated as *sine qua non* for reversing finding or sentence rendered by a Court of competent jurisdiction, in our considered view, an egregious defect in sanction or absence of sanction cannot be equated with “an any error, omission or irregularity in sanction”. The

19 *Gokulchand Dwarkadas Morarka (Supra);*

Court is precluded from taking cognizance. The statutory bar is not lifted, and therefore, the cognizance and the subsequent proceedings cannot be clothed with the sanctity of finding, sentence or order rendered by a Court of competent jurisdiction.

(vi) Section 20-A(2) of the TADA fell for consideration in ***Rambhai Nathabhai Gadhvi***[20] in appeal from the conviction recorded by the Designated Court. The Hon'ble Supreme Court observes thus :

> *"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 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."*

We note that the Constitution Bench decision in ***Prakash Kumar***[21]***,*** overrules ***Rambhai Nathabhai Gadhvi*** to the limited extent ***Rambhai***

20 *Rambhai Nathabhi Gadhvi and others v. State of Gujarat, (1997) 7 SCC 744;*
21 *Prakash Kumar Alias Prakash Bhutto v. State of Gujarat, (2005) 2 SCC 409;*

Nathabhai Gadhvi[22] articulated that when trial for offence under TADA could not have been held by the designated Court for want of valid sanction envisaged in Section 20-A(2) of the TADA, no valid trial could have been held by that Court into any offence under the Arms Act also, and that a designated Court has no independent power to try any other offence.

(vii) We have noted supra that Section 20-A of the TADA incorporated procedural safeguards at two distinct stages. Sub-section (1) of Section 20-A of the TADA provided that notwithstanding anything contained in the Code, no information about the commission of an offence under the TADA shall be recorded by the police without the prior approval of the District Superintendent of Police. Sub-section (2) of Section 20-A of the TADA was a fetter on the power of the Court to take cognizance of any offence under the TADA without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police. In ***Ashrafkhan***[23], the Hon'ble Supreme Court considered the effect of non-compliance with the provisions of sub-section (1) of Section 20-A of the TADA. Emphasizing that the TADA, as originally enacted, did not contain Section 20-A which was inserted only by Section 9 of the Act 43 of 1993, the

22 *Rambhai Nathabhi Gadhvi and others (Supra);*
23 *Ashrafljam Alias Babu Munnekhan Pathan and another v. State of Gujarat, (2012) 11 SCC 606;*

Hon'ble Supreme Court held that the legislature, by using the negative word in Section 20-A(1) of the TADA had made its intention clear, and considering the scheme of TADA which is different than that of ordinary penal statute, the provisions shall have to be strictly construed. We find it apposite to reproduce the relevant observations of the Hon'ble Supreme Court verbatim.

> *"27. It is worth mentioning here that TADA, as originally enacted, did not contain this provision and it has been inserted by Section 9 of the Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993 (Act 43 of 1993). From a plain reading of the aforesaid provision it is evident that no information about the commission of an offence shall be recorded by the police without the prior approval of the District Superintendent of Police. The legislature, by using the negative word in Section 20-A(1) of TADA, had made its intention clear. The scheme of TADA is different than that of ordinary criminal statutes and, therefore, its provisions have to be strictly construed. Negative words can rarely be held directory. The plain, ordinary grammatical meaning affords the best guide to ascertain the intention of the legislature. Other methods to understand the meaning of the statute is resorted to if the language is ambiguous or leads to absurd result. No such situation exists here. In the face of it, the requirement of prior approval by the District Superintendent of Police, on principle, cannot be said to be directory in nature."*

(viii) In ***Ashrafkhan***[24]**,** the Hon'ble Supreme Court further considered the submission advanced by the State that non-compliance with Section 20-A(1) of the TADA is a curable defect under Section 465 of the Code of 1973. The Hon'ble Supreme Court, after holding that

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24 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*

the designated Court has to follow the procedure prescribed in the Code for the trial before a Court of Sessions, further held that Section 465 of the Code of 1973 is not a panacea for every error, omission or irregularity and the omission to grant prior approval under sub-section (1) of Section 20-A of the TADA is a defect which goes to the root of the matter and is not curable under Section 465 of the Code of 1973.

(ix) ***Ashrafkhan***[25] further considers the submission of the State that ***Lal Singh***[26] is an authority for the proposition that absence of sanction under Section 20-A(2) of the TADA is a curable defect. Negating the submission, the Hon'ble Supreme Court observes thus :

> *"35. The submission that absence of sanction under Section 20-A(2) by the Commissioner of Police has been held to be a curable defect and for parity of reasons the absence of approval under Section 20-A(1) would be curable is also without substance and reliance on the decision of Lal Singh v. State of Gujarat, in this connection, is absolutely misconceived. An Act which is harsh, containing stringent provision and prescribing procedure substantially departing from the prevalent ordinary procedural law cannot be construed liberally. For ensuring rule of law its strict adherence has to be ensured. In Lal Singh relied on by the State, Section 20-A(1) of TADA was not under scanner. Further, this Court in the said judgment nowhere held that absence of sanction under Section 20-A(2) is a curable defect. In Lal Singh the question of sanction was not raised before the Designated Court and sought to be raised before this Court for the first time which was not allowed. This would be evident from the following paragraph of the judgment: (SCC p.530, para 4)*

25 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*
26 *Lal Singh v. State of Gujarat and another, (1998) 5 SCC 529;*

> *4. Sub-section (2) makes it clear that when the objection could and should have been raised at an earlier stage in the proceeding and has not been raised, mere error or irregularity in any sanction of prosecution becomes ignorable. We therefore do not permit the appellants to raise the plea of defect in sanction." (emphasis supplied)*

The Hon'ble Supreme Court further held that grant or absence of approval by the District Superintendent of Police is a mixed question of law and fact, and the validity is questioned by the accused as is evident from the trend cross-examination and the arguments advanced, and therefore, it cannot be said that it was not raised at the earliest.

(x) The submission of Mr. Siddharth Dave that the enunciation in ***Ashrafkhan***[27] will have to be restricted to sub-section (1) of Section 20-A of the TADA does not commend to us.

Sub-sections (1) and (2) of Section 20-A of the TADA operate at different and distinct stages, and as is enunciated in ***Ashrafkhan,*** for successful prosecution, both the requirements have to be complied with. Sub-section (1) is a fetter on the power of the police to record information as regards offence under the TADA, while sub-section (2) is an absolute bar on the power and competence of the Court to take cognizance of the offence. The twin safeguards, which operate at different stages, are equally sacrosanct. Indeed, it would be safe to assume, that the safeguard provided under sub-section (2) which is that

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27 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*

the bar on the Court to take cognizance shall be lifted only if valid previous sanction is in existence, is legislatively placed on a higher pedestal. A fortiori, the principle that invalidity of the prior approval under sub-section (1) vitiates the trial and entails acquittal, is applicable with equal, if not more vigour, to the invalidity or absence of sanction under sub-section (2) of Section 20-A of the TADA and the *pari materia* provisions of the UAPA.

(xi) The interplay between sub-sections (1) and (2) of Section 20-A of the TADA is considered in ***Ashrafkhan***[28] thus:

> *"37. The plea of the State is that the Commissioner of Police having granted the sanction under Section 20-A(2) of TADA, the conviction of the accused cannot be held to be bad only on the ground of absence of approval under Section 20-A(1) by the Deputy Commissioner. As observed earlier, the provisions of TADA are stringent and consequences are serious and in order to prevent persecution, the legislature in its wisdom had given various safeguards at different stages. It has mandated that no information about the commission of an offence under TADA shall be recorded by the police without the prior approval of the District Superintendent of Police. Not only this, further safeguard has been provided and restriction has been put on the court not to take cognizance of any offence without the previous sanction of the Inspector-General of Police or as the case may be, the Commissioner of Police. Both operate in different and distinct stages and, therefore, for successful prosecution both the requirements have to be complied with. We have not come across any principle nor we are inclined to lay down that in a case in which different safeguards have been provided at different stages, the adherence to the last safeguard would only be relevant and breach of other safeguards shall have no bearing on the trial. Therefore, we reject the contention of the State*

28 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*

that the accused cannot assail their conviction on the ground of absence of approval under Section 20-A(1) of TADA by the Deputy Commissioner, when the Commissioner of Police had granted sanction under Section 20-A(2) of TADA."

(xii) The submission of Mr. Siddharth Dave that in ***Ashrafkhan***[29]***,*** the Hon'ble Supreme Court has held that parity between 20-A(1) and Section 20-A(2) of the TADA would not be possible, is not borne out from the decision. *Au contraire*, the parity between Section 20-A(1) and Section 20-A(2) is judicially recognized in ***Ganesh Rajaram Dube***[30], which articulates thus:

"The present case relates to infraction of the provisions of Section 20-A(1) and ratio laid down in the case of A. Sathyanarayan, although that was a case of infraction of the provisions of Section 20-A(2) of the TADA Act, would apply with equal force as both the provisions are similar, in the former prior approval is required before recording a first information report about commission of offence under the TADA Act whereas in the latter prior sanction is necessary before taking cognizance. Thus, we have no option but to hold that conviction of the appellant under Section 5 of the TADA Act was unwarranted, the same being in violation of the provisions of Section 20-A(1) of the TADA Act".

Indeed, it would be a jurisprudential incongruity to hold that while absence of approval to record information of commission of an offence is an incurable defect, the invalidity or absence of sanction to prosecute, which strikes at the very jurisdiction and competence of the Court to take cognizance, is a curable defect. In ***Rangku alias Ranjan***

29 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*
30 *Ganesh Rajaram Dube v. State of Maharashtra and others, (2004) 7 SCC 696;*

Kumar Datta[31]**,** the Hon'ble Supreme Court quoted with approval the following articulation of Lord Denning speaking for the unanimous Bench of the Judicial Committee of Privy Council in ***Benjamin Leonard MacFoy***[32]

> *"….If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."*

The articulation of Lord Denning is extracted and approved by the Hon'ble Supreme Court while holding that the non-compliance of valid prior approval under section 20-A(1) of TADA is an inherent defect which is incurable.

(xiii) In ***Hussaein Ghadially***[33], the question which fell for consideration was whether the power to accord prior approval vested in District Superintendent of Police could be exercised by either the Government or a superior officer. Answering the question in the negative, the Hon'ble Supreme Court held that permitting exercise of the power by any other authority, whether superior or inferior, will have the effect of re-writing the provision and defeating the legislative

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31 *Rangku alias Ranjan Kumar Datta v. State of Assam, (2011) 6 SCC 358;*
32 *Benjamin Leonard MacFoy v. United Africa Co.Ltd.,(1961)3 ALL E R 1169 (PC);*
33 *Hussaein Ghadially alias M.H.G.A. Shaikh and others v. State of Gujarat, (2014) 8 SCC 425;*

purpose. Emphasizing that if the statute provides for a thing to be done in a particular manner all other modes or methods of doing that thing must be deemed to have been prohibited, the Hon'ble Supreme Court adverted to the well entrenched judicial view that since the provision was couched in negative terms, the same is mandatory in nature and held that the trial and the conviction of the accused for offences under the TADA Act stand vitiated. ***Hussaein Ghadially***[34] is followed by the Hon'ble Supreme Court in ***Moinuddin Jalal Alvi***[35]**.**

(xiv) In ***Anwar Osman Sumbhaniya***[36] noticing that the learned trial Judge did not frame issue regarding validity of prior approval under Section 20-A(1) of the TADA Act or the validity of prior sanction under Section 20-A(2) of the TADA Act before taking cognizance, and the Designated Court at the outset proceeded to answer the said issues, the Hon'ble Supreme Court held that since the question of prior approval or prior sanction goes to the root of the matter and is *sine qua non* for a valid prosecution and the jurisdiction of the Designated Court, no fault can be found with the Designated Court for having answered the said issue at the outset.

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34 *Hussaein Ghadially alias M.H.G.A. Shaikh and others (Supra);*
35 *State of Rajasthan v. Moinuddin Jala Alvi and another, (2016) 12 SCC 608;*
36 *State of Gujarat v. Anwar Osman Sumbhaniya and others, (2019) 18 SCC 524;*

(xv) The prosecution draws support from the order of the Hon'ble Supreme Court in ***Lal Singh***[37] to buttress the submission that the defect in sanction is curable under Section 465 of the Code of 1973. In ***Lal Singh,*** in view of the irrefutable position that there was a sanction order on the basis of which the Court took cognizance, the Three Judges Bench did not permit the appellants to raise the question of defective sanction in the appeals against the decision of the Designated Court under TADA Act since the objection was not raised at an earlier stage in the proceedings. It is in this context that the Hon'ble Supreme Court referred to the provisions of Section 465 of the Code of 1973. ***Lal Singh*** is considered in ***Ashrafkhan***[38], and the relevant observations in the latter decision are extracted supra. It is not discernible from the brief order in ***Lal Singh,*** as to the nature of the alleged defect in the sanction order. Even *de hors* the said aspect, we find, that the question of defective sanction was indeed raised by accused 6-G.N. Saibaba in the application for bail, and the learned trial Judge observed that the objection would be determined at a later stage in the proceedings. In the light of the observations of the learned trial Judge, albeit while rejecting the bail application preferred by accused 6-G.N. Saibaba, no fault can be found with accused 1 to accused 5 not raising the objection to the validity of the sanction order, as an empty

37 *Lal Singh (Supra);*
38 *Ashrafljam Alias Babu Munnekhan Pathan and another (Supra);*

and ritualistic formality. The tenor and trend of the cross-examination and the arguments do reveal that even in the trial, the validity of the sanction was assailed.

(xvi) ***Bhooraji***[39] is pressed in service by the prosecution in support of the submission that the competence of the Court will remain unaffected by procedural lapse and that the proceedings can be quashed only on demonstration of failure of justice. The factual matrix considered in ***Bhooraji*** was that the accused were convicted for offences punishable under Section 302 read with Section 149 of IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (Atrocities Act) vide judgment dated 23.8.1996, rendered by the Additional Sessions Judge, Dhar, M.P. which was the specified Court as per Section 14 of the Atrocities Act. During the pendency of the appeal before the High Court of M.P., the Hon'ble Supreme Court decided ***Gangula Ashok***[40] in which it was held that without committal order, the specified Court under the Atrocities Act was precluded from taking cognizance. In view of the law declared in ***Gangula Ashok,*** the accused contended that the trial was without jurisdiction, in the absence of committal proceedings. The contention found favour with the High Court which quashed the entire proceedings and directed the trial Court to return the charge-sheet and the

39 *State of M.P. v. Bhooraji and others, (2001) 7 SCC 679;*
40 *Gangula Ashok and another v. State of A.P., (2002) 2 SCC 504;*

connected papers to the prosecution for re-submission to the learned Magistrate for proceeding further in accordance with law. The Hon'ble Supreme Court noted that in ***Gangula Ashok***[41], the accused moved the High Court for quashing the charge, before commencement of the trial, and that in the present case, the plea of absence of committal proceedings was not raised at any stage either before or after recording of evidence by the trial Court. The Hon'ble Supreme Court formulated the question for determination, thus:

> *"The real question is whether the High Court necessarily should have quashed the trial proceedings to be repeated again only on account of the declaration of the legal position made by the Hon'ble Supreme Court concerning the procedural aspect about the cases involving offences under the Atrocities Act ?"*

The Hon'ble Supreme Court then considered the provisions of Chapter XXXV of the Code of 1973 particularly Sections 460, 461, 462 and 465 therein and emphasized that in the factual matrix it is an uphill task for the accused to show that failure of justice had in fact occasioned merely because the specified Session Court took cognizance of the offence without the case being committed to it.

The question whether the absence of committal order put the accused to disadvantage was considered thus:

> *"18. It is apposite to remember that during the period prior to the Code of Criminal Procedure 1973, the committal court, in police charge-sheeted cases, could examine material*

41 *Gangula Ashok and another (Supra);*

> *witnesses, and such records also had to be sent over to the Court of Sessions along with the committal order. But after 1973, the committal court, in police charge-sheeted cases, cannot examine any witness at all. The magistrate in such cases has only to commit the cases involving offences exclusively triable by the Court of Sessions. Perhaps it would have been possible for an accused to raise a contention before 1973 that skipping committal proceedings had deprived him of the opportunity to cross-examine witnesses in the committal court and that had caused prejudice to his defence. But even that is not available to an accused after 1973 in cases charge-sheeted by the police. We repeatedly asked the learned counsel for the accused to tell us what advantage the accused would secure if the case is sent back to the Magistrate's Court merely for the purpose of retransmission of the records to the Sessions Court through a committal order. We did not get any satisfactory answer to the above query put to the counsel."*

Bhooraji[42] proceeds to hold that the inability to take cognizance of an offence in the absence the committal order does not mean that a duly constituted Court became an incompetent court for all purposes. It is during the course of the interpretative exercise qua the expression, "a court of competent jurisdiction" envisaged in Section 465 of the Code of 1973 that it was observed as an illustrative example that if the question of sanction was not raised at the earliest opportunity, the proceedings remain unaffected on account of want of sanction.

(xvii) Mr. Siddharth Dave invites our attention to the decision in the ***Virender Kumar Tripathi***[43] in support of the submission that in the absence of demonstrable failure of justice, the invalidity or absence of

42 *Bhooraji (Supra);*
43 *State of Madhya Pradesh v. Virendra Kumar Tripathi, (2009) 15 SCC 533;*

sanction is rendered inconsequential. ***Virender Kumar Tripathi***[44] is rendered in the context of the provisions of the Prevention of Corruption Act, 1988 ("PC Act"). The Special Court rejected the submission that the investigation was not done by authorized police officers. However, the Special Judge discharged the accused holding that the sanction accorded was defective. The High Court agreed with the learned Special Judge on both counts. The State and the accused assailed the judgment of the High Court by preferring cross appeals. The Hon'ble Supreme Court noted that undisputedly the sanction has been given by the Department of Law and Legislative Affairs, in the name of the Governor of the State, and the advise of the department is an inter departmental matter. The effect of Section 19(3) of the PC Act was considered and noting that the said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court of appeal on the ground of absence of/or an error, omission or irregularity in sanction required under sub-section(1) of Section 19 of the PC Act unless in the opinion of the Court, a failure of justice has in fact been occasioned, the Apex Court concluded thus:

> *"10.In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the*

44 *Virendra Kumar Tripathi (Supra);*

decisions of this Court in State vs. T. Venkatesh Murthy, (2004)7 SCC 763 and in Parkash Singh Badal v. State of Punjab, (2007)1 SCC 1 need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct".

The decision in **Raj Mangal Ram**[45] also considers the interplay between the provisions of Section 19(3) of the PC Act and Section 465 of the Code of 1973 to hold that the High Court erred in not answering the question whether a failure of justice has occasioned due to the alleged defects in the sanction.

(xviii) ***Deepak Khinchi***[46] is cited in support of the submission that delayed sanction is of no avail to the accused. We deem it imperative to notice the factual backdrop of the said decision. On 2.5.2006, a fire broke out in the shop of the accused and many children, women and men were burnt alive. The accused was charge-sheeted under Sections 285, 286, 323, 324 and 304 of IPC and Sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 ("Act"). However, the consent of the competent authority envisaged in Section 7 of the Act was not obtained. The learned Sessions Judge discharged the accused of the offences under the Act noting that despite several opportunities the learned Additional Public Prosecutor failed to produce the sanction. The learned Sessions Judge kept open the question whether the accused could be

45 *Raj Mangal Ram v. State of Bihar and others, 1993(2) PLJR 776;*
46 *Deepak Khinchi v. State of Rajasthan, (2012) 5 SCC 284;*

tried for offences under the Act if a sanction is produced in future. The learned Sessions Judge however framed charge under Sections 285, 286 and 304 of IPC. The prosecution then produced on record the consent letter dated 1.4.2008 issued by the District Magistrate, Chittodgarh, which the learned Sessions Judge found was not under Section 7 of the Act. The prosecution then invoked the provisions of Section 311 of the Code of 1973 armed with fresh sanction dated 1.6.2010 issued by the District Magistrate, Chittodgarh, which application was allowed by the learned Sessions Judge vide order dated 16.11.2010. The Rajasthan High Court upheld the said order.

The accused assailed the judgment of the High Court contending that in view of the delay of three years in securing the consent from the competent authority, the trial Court erred in allowing the prosecution to fill in the lacuna. Drawing support from the decision in ***Babu Thomas***[47], the Hon'ble Supreme Court negated the contention of the accused that the lapse of three years has caused prejudice to the accused. The fact that fourteen innocent persons lost their lives and several were seriously injured due to the blast also weighed with the Court.

Babu Thomas was rendered in the context of the provisions of the PC Act. Babu Thomas was charge-sheeted under Sections 7 and 13 of the PC Act and Sections 161 and 165 of the IPC. The prosecution filed

47 *State of Goa v. Babu Thomas, (2005) 8 SCC 130;*

along with the charge-sheet sanction order dated 2.1.1995 which was granted by the Company Secretary. The sanction order did not reflect any order or resolution of the Board of Directors of the Goa Shipyard Limited, the employer of the accused. The learned Special Judge took cognizance on 29.5.1995. Later, another sanction order dated 7.9.1997 was issued by the Chairman and Managing Director of the employer company which stated that the sanction was accorded retrospectively with effect from 14.9.1994. The second sanction dated 7.9.1997 was admittedly issued after the learned Special Judge took cognizance. The High Court held that the cognizance was taken without jurisdiction. In appeal, the State of Goa relied on the provisions of Sub-Section 3 of Section 19 of the PC Act to contend that in the absence of demonstrable failure of justice, the High Court erred in interdicting the prosecution. Negating the said submission, the Hon'ble Supreme Court held thus:

> *"11. Referring to the aforesaid provisions, it is contended by learned counsel for the appellant that the Court should not, in appeal, reverse or alter any finding, sentence or order passed by a special Judge on the ground of the absence of any error, omission or irregularity in the sanction required under sub-section (1), unless the Court finds that a failure of justice has in fact been occasioned thereby. In this connection, a reference was made to the decision of this Court rendered in the case of State Vs.* T. Venkatesh Murthy. *Reference was also made to the decision of this Court in the case of* Durga Dass v. State of H. P. *where this Court has taken the view that the Court should not interfere in the finding or sentence or order passed by a special Judge and reverse or alter the same on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub- section (1), unless the*

Court finds that a failure of justice has in fact been occasioned thereby. According to the counsel for the appellant no failure of justice has occasioned merely because there was an error, omission or irregularity in the sanction required because evidence is yet to start and in that view the High Court has not considered this aspect of the matter and it is a fit case to intervene by this Court. We are unable to accept this contention of the counsel. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub- section (1) of Section 19 *of the Act. It goes to the root of the prosecution case. Sub-section (1) of* Section 19 *clearly prohibits that the Court shall not take cognizance of an offence punishable under sections 7,10,11,*13 *and* 15 *alleged to have been committed by a public servant, except with the previous sanction as stated in clauses (a), (b) and (c).*

12. As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2.1.95 was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order dated 7.9.97 was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14.9.94, which is bad. The cognizance was taken by the Special Judge on 29.5.95. Therefore, when the Special Judge took cognizance on 29.5.95, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction."

Babu Thomas[48] cited by the prosecution is of assistance to the prosecution only to the limited extent, that the competent authority was permitted to issue fresh sanction order and to proceed afresh against the accused Babu Thomas from the stage of taking cognizance of the offence. The passages which we have extracted supra, however, rather

48 *Babu Thomas (Supra) ;*

than assisting the prosecution, support the submission of the accused that an egregious defect in the sanction order is not a mere irregularity, error or omission and strikes at the root of the prosecution case.

Mr. Siddharth Dave relies on the decision of the Hon'ble Supreme Court in ***Raj Mangal Ram***[49]. The State of Bihar assailed separate orders dated 23.3.2012 and 3.3.2011 rendered by the High Court of Patna which interdicted the criminal proceedings under the provisions of the IPC as well as the PC Act on the ground that the sanction for prosecution is granted by the Law Department of the State and not by the parent department. The question of law formulated by the Hon'ble Apex Court was;

> *"Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?"*

The Hon'ble Supreme Court considered the provisions of Section 19 of the PC Act and Section 465 of the Code of 1973 and observed thus:

> *"6. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or*

49 *Raj Mangal Ram (Supra) ;*

interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State vs. T. Venkatesh Murthy *wherein it has been inter alia observed that: (SCC 767, para 14)*

"14. ……Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

7. The above view also found reiteration in Prakash Singh Badal vs. State of Punjab wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal it was further held that Section 19(1)of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan vs. C.B.I.. In fact, a three Judge Bench in State of Madhya Pradesh vs. Virender Kumar Tripathi *while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report)."*

The contrary view in ***Babu Thomas***[50] was noted, and distinguished. ***Raj Mangal Ram***[51] holds that the decision in ***Babu Thomas***[52] has to be necessarily understood in the context of the facts

50 *Babu Thomas (Supra) ;*
51 Raj Mangal Ram (Supra);
52 *Babu Thomas (Supra);*

thereof, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect. The further observation is that, even otherwise, the position stands clarified by the Larger Bench in ***Virender Kumar Tripathi***[53]. The Hon'ble Supreme Court noted that the orders of the High Court did not consider the aspect of failure of justice, and more appropriate stage for arriving at the conclusion that the sanction orders suffer from non-application of mind would have been only after the recording of evidence on the issue in question.

(xix) Mr. Siddharth Dave then relies on the decisions in ***Rattiram***[54]and ***Pradeep S. Wodeyar***[55], which *inter alia* consider the effect of irregularities in committal proceedings and the cognizance taken by the Sessions Court. Before we delve deeper in the *ratio decidendi* of the said decisions, it would be apposite to note the provisions of the Code of 1898 dealing with committal proceedings. The Criminal Law Amendment Act, 1955 substituted Section 207 of the Code of 1898 by Sections 207 and 207-A which read thus:

> **"207. Procedure in inquiries preparatory to commitment. -**
>
> In every inquiry before a magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the magistrate, ought to be tried by such Court, the magistrate shall, -

53 *Virendra Kumar Tripathi (Supra) ;*
54 *Rattiram and others v. State of Madhya Pradesh, (2012) 4 SCC 516;*
55 *Pradeep S Wodeyar v. State of Karnataka, 2021 SCC OnLine 1140;*

(a) in any proceeding instituted on a police report, follow the procedure specified in section 207A; and
(b) in any other proceeding, follow the procedure specified in the other provisions of this Chapter.

207A. Procedure to be adopted in proceedings instituted on police report. -

(1) When, in, any proceeding instituted on a police report the magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the magistrate, for reasons to be recorded, fixes any later date.

(2) If, at any time before such date, the officer conducting the prosecution applies to the magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(3) At the commencement of the inquiry, the magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such document or any of them, he shall cause the same to be so furnished.

(4) The magistrate shall then proceed to take the evidence of such persons, if any as may be produced by the prosecution as witnesses to the actual commission of the offence alleged, and if the magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.

(5) The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case, the prosecutor may re-examine them.

(6) When the evidence referred to in sub-section (4) has been taken and the magistrate has considered all the documents referred to in section 173 and has, if necessary,

examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other magistrate, in which case he shall proceed accordingly.

(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(8) As soon as such charge has been framed, it shall be read and explain to the accused and a copy thereof shall be given to him free of cost.

(9) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list, the magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

(11) When the accused has given in any list of witnesses under sub-section (9) and has been committed for trial, the magistrate shall summon the witnesses included in the list to

appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly:

Provided also that if the magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witnesses material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

(12) Witnesses for the prosecution, whose attendance before the Court of Session or High Court is necessary and who appear before the magistrate shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

(13) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the magistrate shall send him in custody to the Court of Session or High Court as the case may be.

(14) When the accused is committed for trial, the magistrate shall issue an order to such person as may be appointed by the State Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the Clerk of the State or other officer appointed in this behalf by the High Court.

(15) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(16) Until and Wring the trial, the magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody."

The said provisions envisaged an exhaustive procedure prior to the committal of the case to the Court of Session. In case instituted on a police report, the Magistrate was obligated to hold an enquiry, record satisfaction on relevant aspects, take evidence as regards the offences alleged, and was empowered to record evidence of one or more witnesses. The accused was at liberty to cross-examine the witnesses, and the Magistrate was duty bound to consider the documents, if necessary to examine the accused to provide him with the opportunity of explaining incriminating circumstances, and was further empowered to discharge the accused if no case is made out for committal. In contradistinction with the substantial rights vested in the accused under sections 207 and 207-A of the Code of 1898, the limited role of the Magistrate envisaged under the provisions of the Code of 1973 is to inquire and ascertain whether the offence is exclusively triable by the Court of Session.

Noticing the vast difference in the statutory schemes under the Code of 1898 and the Code of 1973 as regards committal proceedings, the Hon'ble Supreme Court held in ***Rattiram***[56] that it is well nigh impossible to conceive of any failure of justice or causation of prejudice

56 *Rattiram and others (Supra) ;*

or miscarriage of justice due to the non-compliance of the committal procedure. The principle that after conviction, the accused is obligated to demonstrate failure of justice was invoked in view of the restricted role assigned to the Magistrate at the stage of committal under the Code of 1973 and the observations and conclusion in paragraphs 65 and 66 of the decision, which we extract below, must be read and understood in that context:

> *"65. We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the Legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the Legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial.*
>
> *66. Judged from these spectrums and analysed on the aforesaid premises, we come to the irresistible conclusion that the objection relating to non-compliance with* Section 193 *of the Code, which eventually has resulted in directly entertaining and taking cognizance by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not vitiate the trial and on the said ground alone, the conviction cannot be set aside or there cannot be a direction of retrial and, therefore, the decision rendered in Bhooraji lays down the correct law inasmuch as there is no failure of justice or no prejudice is caused to the accused.*

We may now advert to the factual backdrop of ***Pradeep S. Wodeyar***[57]. The High Court of Karnataka dismissed the petitions seeking quashing criminal proceedings for offences punishable under Sections 409 and 420 read with Section 120-B of IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and Rule 165 read with Rule 144 of the Karnataka Forest Rules, 1969. The High Court dismissed the petitions. One of the submissions canvassed in the appeals assailing the judgment of the High Court was that Section 193 of Code of 1973 bars the Session Court from taking cognizance of any offence as a Court of Original Jurisdiction unless the case is committed by the Magistrate, unless such course is permissible by specific statutory provisions. The argument was that neither the MMDR Act nor the Code empowers the Court of Sessions to take cognizance without an order of committal by the Magistrate. It was further submitted that in view of the provisions of Section 22 of the MMDR Act, the Court is precluded from taking cognizance of any offence under the Act or the Rules except upon a written complaint made by the authorized person, and in the absence of such authorization, the order of cognizance flies in the teeth of the provisions of Section 22 of the MMDR Act.

57 *Pradeep S. Wodeyar (Supra) ;*

The Hon'ble Supreme Court took an overview of the provisions of the Code of 1973, adverted to the decision in ***Gangula Ashok***[58] and ***Bhooraji***[59] and proceeded to interpret Section 193 of the Code of 1973. The Hon'ble formulated the issue for consideration thus:

> *"(i) Whether the principle encompassed in Section 465 of the 1973 Code would be applicable to orders passed at the pre-trial stage; and*
>
> *(ii) if the answer to (i) is in the affirmative, whether the order taking cognizance would lead to a failure of justice, if not quashed."*

Significantly, in the context of the heavy reliance placed on the said decisions by Mr. Siddharth Dave, we may note at the very outset, **that the challenge to the order of cognizance on the anvil of the provisions of Section 22 of the MMDR Act, was rejected by the Hon'ble Supreme Court, not on the ground that the breach of the said provision is a curable irregularity but in view of the finding recorded that as a fact, the requirement stood complied with since the report was signed by the Sub-Inspector of Lokayusta Police and the information was given by the SIT**. Considering the submission that the cognizance of offences could not have been taken in view of Section 193 of the Code of 1973, the conclusion reached was that although the Sessions Court did not have the power to take cognizance of an offence under MMDR Act in the absence of committal by the Magistrate under Section 209 of the Code

58 *Gangula Ashok and another (Supra)*
59 *Bhooraji and others (Supra);*

of 1973, the order of cognizance is an irregularity, and saved by Section 465 of the Code of 1973. It was emphasized that the cognizance order was challenged two years after the cognizance was taken without explaining the inordinate delay, and in view of the diminished role of the committal court under Section 209 of the Code of 1973 in contradistinction with the role envisaged under the erstwhile Code of 1898, the provisions of Sections 460 and 461 of the Code of 1973 come into play, and no failure of justice is demonstrable.

Mr. Siddharth Dave would invite our attention to the analysis in Section C-3 of ***Pradeep S. Wodeyar***[60]. The analysis and the ultimate conclusion reached, after an overview of the relevant decisions including the Constitution Bench decisions in ***Kishun Singh***[61] and ***Dharam Pal***[62]***,*** that in view of the provisions of Section 193 of the Code of 1973, cognizance is taken of the offence and not of offender must be read and understood in the context of the contention of the accused that the Special Judge erred in taking cognizance, not of the offences, but of the accused. The reference to "accused" in the order of cognizance was a manifestation of non-application of mind, was the extension of the submission. It is in this context that the Hon'ble Apex Court observes thus:

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60 *Pradeep S. Wodeyar (Supra);*
61 *Kishun Singh v. State of Bihar, (1993) 2 SCC 16;*
62 *Dharam Pal and other v. State of Haryana and other, (2014) 3 SCC 306;*

> *"57. In order to prove that the irregularity vitiates the proceeding, the accused must prove a 'failure of justice' as prescribed under Section 465 CrPC. In view of the discussion in the previous section on the applicability of Section 465 CrPC (and the inability to prove failure of justice) to the cognizance order, the irregularity would not vitiate the proceedings. Moreover, bearing in mind the objective behind prescribing that cognizance has to be taken of the offence and not the offender, a mere change in the form of the cognizance order would not alter the effect of the order for any injustice to be meted out.*

In ***Dilawar Singh***[63]**,** the submission considered was that since the Court takes cognizance of offence and not of an offender, the High Court committed no error in holding that in exercise of power under Section 319 of the Code of 1973, Dilawar Singh could have been summoned as co-accused even in the absence of sanction. The Hon'ble Supreme Court observes thus :

> *"8. The contention raised by learned counsel for the respondent that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Cr.P.C. The observations made by this Court in Raghubans Dubey v. State of Bihar were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See Godde Venkateshwar Rao v. Govt. of A.P., State of Bihar v. Dr. Yogendra Singh and Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth). Therefore, the provisions of*

63 *Dilawar Singh v. Parvinder Singh Alias Iqbal Singh and another, (2005) 12 SCC 709;*

> *Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P.C. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."*

(xx) In ***Jamiruddin Ansari***[64]**,** the question which fell for consideration in appeal assailing the decision of the Bench of Three Judges of this Court constituted to resolve two conflicting views of the Division Bench, was whether the Special Court under the provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) could take cognizance of an offence on a private complaint under Section 9(1) of the MCOCA and order investigation. The Three Judges Bench of this Court rendered a split verdict with the majority holding that private complaint filed under Section 9 of the MCOCA was independent of Section 23 and compliance with the provisions of Section 23(2) was not a precondition for the learned Special Judge to take cognizance of an offence under the MCOCA. The Hon'ble Supreme Court held that in view of the stringent provisions of the MCOCA, the learned Special Judge is precluded from taking cognizance of offences under the MCOCA even on a private complaint, in the absence of sanction under

64 *Jamiruddin Ansari v. Central Bureau of Investigation and another, (2009) 6 SCC 316;*

Section 23(2) of the MCOCA. It would be apposite to note the provisions of Section 23 of the MCOCA, which read thus.

> *"23. Cognizance of, and investigation into, an offence.*
>
> *(1) Notwithstanding anything contained in the Code,-*
>
> *(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;*
>
> *(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.*
>
> *(2) No Special Court shall take cognizance of any offence under this Act without the precious sanction of the police officer not below the rank of Additional Director General of Police."*

Overruling the majority view of the Full Bench of this Court, the Hon'ble Supreme Court held that in view of the mandate of Section 25 of the MCOCA, the provisions of the said enactment would have an overriding effect over the provisions of the Code of 1973. The Hon'ble Supreme Court further emphasised that sanction is an important safeguard in the context of the extremely stringent provisions of the MCOCA. Section 48 of the UAPA is *pari materia* with Section 25 of the MCOCA and provides that the provisions of the UAPA or any Rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the UAPA.

(xxi) We are not persuaded to construe or understand ***Pradeep S. Wodeyar***[65] as laying down the proposition that invalidity or absence of sanction, envisaged under the provisions of the erstwhile TADA Act or POTA or Section 45 of the UAPA, would be a curable defect. We are of the considered view, that the requirement of sanction, envisaged in stringent penal statutes, and the fetter on the power of the Court to take cognizance, cannot be equated with the bar envisaged under Section 193 of the Code of 1973 and we are fortified in the said view by the schematic distinction succinctly articulated by the Hon'ble Supreme Court between the provisions of the erstwhile Code of 1898 and the Code of 1973. We hold, on the authority of the Constitution Bench decision of the Hon'ble Supreme Court in ***Baij Nath Prasad Tripathi***[66], that if cognizance is taken without complying with the requirement of valid sanction, entire trial shall stand vitiated, and the conviction or acquittal recorded would not be by Court of competent jurisdiction. The Constitution Bench decision in ***Baij Nath Prasad Tripathi*** is a complete answer to the strenuous submission of Mr. Siddharth Dave, that the invalidity or absence of sanction is a curable defect, and that the provisions of Sections 460 and 465 of the Code of 1973 come into play, and failure of justice shall have to be demonstrated, inasmuch as the

65 *Pradeep S. Wodeyar (Supra);*
66 *Baij Nath Prasad Tripathi v. The State of Bhopal & another, AIR 1957 SC 494;*

trial is conducted, and judgment of conviction recorded, by a Court of competent jurisdiction within the meaning of the aforesaid provision.

(xxii) Baij Nath Prasad Tripathi was convicted for offences punishable under Section 161 of the IPC and Section 5 of the Prevention of Corruption Act, 1947 (PC Act, 1947). Section 6 of the PC Act, 1947 precluded the Court from taking cognizance of offence committed by public servant except with the previous sanction of the appropriate Government. The appellate Court held that since the sanction was invalid, the proceedings are null and void. The prosecution obtained fresh sanction, which was assailed on the ground of infringement of the doctrine of double jeopardy enshrined in Article 20(2) of the Constitution of India and Section 403(1) of the Code of 1898.

(xxiii) Negating the submission of the accused, the Constitution Bench, held, drawing support from the decision of the Privy Council in ***Yusofalli Mulla***[67]***,*** the decision of the Federal Court in ***Basdeo Agarwalla***[68] and the decision of the Hon'ble Supreme Court in ***Budha Mal***[69]*;*

(a) in the absence of valid sanction, the trial Court cannot be said to be a Court of competent jurisdiction and the trial is null and void,

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67 *Yosofalli Mulla v. The King, AIR 1949 PC 264;*
68 *Basdeo Agarwalla v. King Emperor, AIR 1945 FC 16;*
69 Budha Mal v. State of Delhi, Criminal Appeal 17/1952, decided o 03-10-1952;

(b) the accused was not tried, in the earlier proceedings, by a Court of competent jurisdiction, nor was there any conviction or acquittal in force within the meaning of Section 403(1) of the Code of 1898, as would bar trial for the same offence.

(c) Section 529(e) of the Code of 1898 has no bearing in a case where sanction is necessary, and no sanction in accordance with law has been obtained.

(xxiv) Pertinently, the attention of the Constitution Bench was invited to certain observations made by Justice Braund in ***Basdeo Agarwalla***[70] drawing distinction between "taking cognizance" and "jurisdiction".

The Constitution Bench noted that the distinction drawn was in the context of the non-compliance of the provisions of Section 254 of the Code of 1898, which the committing Magistrate disregarded, and the submission that such non-compliance renders the Sessions Court incompetent to try the case. The Constitution Bench found the reliance on the observation of Justice Braund and the distinction drawn between "taking cognizance" and "jurisdiction" wholly misconceived in the context of the effect of invalidity of sanction on the competence of the Court to conduct the trial.

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70 *Baseo Agarwalla (Supra);*

(xxv) There is no gainsaying, that the UAPA makes a departure from the ordinary criminal law. The time frame within which the investigating agency is obligated to complete the investigation is enlarged. The power of the Court to grant bail is to a certain extent fettered by the provisions of sub-sections (5) and (6) of Section 43-D of the UAPA. The presumption under Section 43-E of the UAPA, the overriding effect to the UAPA envisaged under Section 48 and the severe punishment which conviction entails render it imperative that the provisions of the UAPA must be strictly construed, notwithstanding that unlike the TADA and POTA the confession to police officer is not admissible, and to that extent the UAPA may not be a draconian legislation. Considering the negative words in which Section 45(1) of the UAPA is couched, the object and rationale underlying the legislative intervention by Amending Act 35 of 2008, we are not persuaded to accept the submission of Mr. Siddharth Dave, that egregious defect in or absence of sanction is a curable defect.

We are inclined to hold, that every safeguard, however miniscule, legislatively provided to the accused, must be zealously protected. In interpreting the provisions of Section 45 of the UAPA, we deem it safer to be guided by the authoritative enunciation of the Hon'ble Supreme Court while considering *para materia* provisions of the TADA.

(xxvi) The sequel of the discussion supra, is that the accused shall have to be discharged from Crime 3017/2013 for offences punishable under Sections 13, 18, 20, 38 and 39 of the UAPA read with Section 120-B of the IPC.

(xxvii) Verily, terrorism poses an ominous threat to national security. Vile and abhorrent acts of terror do evoke collective societal anger and anguish. While the war against terror must be waged by the State with unwavering resolve, and every legitimate weapon in the armoury must be deployed in the fight against terror, a civil democratic society can ill afford sacrificing the procedural safeguards legislatively provided, and which is an integral facet of the due process of law, at the alter of perceived peril to national security. The Siren Song that the end justifies the means, and that the procedural safeguards are subservient to the overwhelming need to ensure that the accused is prosecuted and punished, must be muzzled by the voice of Rule of Law. Any aberration shall only be counter productive, since empirical evidence suggests that departure from the due process of law fosters an ecosystem in which terrorism burgeons and provides fodder to vested interests whose singular agenda is to propagate false narratives.

9. **CONCLUSIONS** :

We record our conclusions thus :

(i) In view of the findings recorded by us, we hold that the proceedings in Sessions Trials 30/2014 and 130/2015 are null and void in the absence of valid sanction under Section 45(1) of the UAPA, and the common judgment impugned is liable to be set aside, which we do order.

(ii) We are conscious of the demise of accused 2-Pandu Pora Narote during the pendency of the appeal. We are of the considered view, that in view of the decision of the Hon'ble Supreme Court in ***Ramesan (Dead) through LR. Girija***[71]**,** which is rendered on the anvil of the provisions of Section 394 of the Code of 1973, appeal preferred by accused 2-Pandu Pora Narote does not abate.

(iii) The prosecution did submit that if the appeal is decided, not on merits, but only on the point of sanction, we may grant liberty to the prosecution to obtain proper sanction and try the accused. In view of the well entrenched position of law, that the rule against double jeopardy has no application if the trial is held vitiated due to invalidity or absence of sanction, we see no reason to dilate any further on the said submission.

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71 *Ramesan (Dead) through LR. Girija v. State of Kerala, AIR 2020 SC 559:*

(iv) Accused 5-Vijay Nan Tirki is on bail, his bail bond stands discharged.

(v) Accused 1-Mahesh Kariman Tirki, accused 3-Hem Keshavdatta Mishra, accused 4-Prashant Rahi Nrayan Sanglikar and accused 6-G.N. Saibaba be released from custody forthwith, unless their custody is required in any other case.

(vi) The appellants shall execute bond of Rs.50,000/- (Rupees Fifty Thousand) each with surety of like amount, to the satisfaction of the trial Court, in compliance with the provisions of Section 437-A of the Code of 1973.

(vii) The appeals are disposed of in the aforestated terms.

(Anil L. Pansare, J.) **(Rohit B. Deo, J.)**

adgokar