

(2002) 09 BOM CK 0053

In the Bombay High Court

Case No : Criminal W.P. No's. 247 and 255 of 2002

Ollala Kamlakar Lachaiah and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 30
Prevention of Terrorism Act, 2002 — Section 3(3)

Citation : (2003) 2 ALD(Cri) 40 : (2003) BomCR(Cri) 678 : (2003) 1 MhLj 849

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : S.V. Sirpurkar, in Cri. W.P. No. 247 of 2002, V.R. Manohar and M.M. Rizwy, in Cri. W.P. No. 255 of 2002, for the Appellant; Loney, Assistant Public Prosecutor In Cri. W.P. No. 247 and 255 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—These petitions arise out of the same F.I.R. which is a subject matter of challenge in both the petitions and as such the petitions were heard together and are being disposed of by common order. We shall first refer briefly to the facts in these petitions.

2. In Criminal Writ Petition No. 247/02, the petitioners case is that the F.I.R. does not disclose any offence against them and that there is no material to show that they are involved in any sort of terrorist activities and as such they seek quashing of the prosecution of the petitioners under Prevention of Terrorism Act, 2002 (hereinafter referred as POTA). According to the petitioners, petitioner No. 1 is an investing partner and petitioner No. 2 has working knowledge of business of Tendu leaves. Both the petitioners are Tendu Leave Contractors. Petitioner No. 1 is also a Registered P.W.D. Contractor. Petitioner No. 1 had applied to the Government for permission to collect Tendu Leaves and after complying with the necessary formalities entered into an Agreement with the Forest Department of

State of Maharashtra for collection of Tendu Leaves. According to the petitioners, they had entered into a Contract with A. A. Nayeem - Bidi Contractor who purchases Tendu Leaves and supplies it to other Bidi Factories. The petitioners were running out of fund and as such they were paid Rs. 8 lacs as advance for supplying Tendu Leaves by the said Bidi Contractor A. A. Nayeem who is the petitioner in other Writ Petition No. 255/02. Out of the said amount of Rs. 8 lacs, a sum of Rs. 5.5 lacs was seized by the Police at Ballarshah on 28-5-2002 from the Vehicle parked in front of Hotel Arjun. At the time of seizure, the driver of the vehicle was present but the petitioners were away. According to the petitioners, they came to know about the registration of the F.I.R. and as such they surrendered before the additional Superintendent of Police on 4-6-2002. According to the petitioners, the names of the petitioners do not figure anywhere in the F.I.R. lodged by Bapu Reddy. The petitioners had, therefore, sought a writ of Habeas Corpus as also for quashing and setting aside the prosecution of the petitioners for the offence under Sections 366, 367 of the Indian Penal Code and Arms Act and under the provisions of POTA. The prayer for Habeas Corpus has not been pressed.

3. In Criminal. Writ Petition No. 255/2002, the petitioner has referred the contents of the F.I.R. in various paragraphs of the petition. According to the petitioner, he was called by respondent No. 3 on 12-6-2002 for the purpose of investigation and he was arrested for the offence under Sections 363, 368, 143, 146, 147, 148, 149 and 121 of the Indian Penal Code read with Section 3(25) of the Arms Act and u/s 3(3) of POTA. According to the petitioner, he is not, in any manner, involved in the matter and the petitioner is at the most a victim of the crime and can never be associated in the crime. According to the petitioner, there are no allegations whatsoever for even the remotest possible involvement; that a sum of Rs. 8 lacs was advanced by the petitioner to the Unit Contractors viz. Khawaja Moiddin and Kamlakar (petitioners in Criminal Writ Petition No. 247/02), it was a business transaction between two contractors and at any rate other than what has been scribed in the receipt "Annexure C" the petitioner is not aware for what purpose the amount was borrowed by the said Unit Contractors; that assuming but without admitting that the money was allegedly passed on to Bakkanna Naxalite gang by the Unit Contractors viz. M/s Khawaja Moiddin and Kamlakar, the same cannot amount to voluntary contribution or assistance rendered by the petitioner when there is nothing on record to infer that he had any knowledge that M/s Bapu Reddy and Narendra Reddy were kidnapped by the gang of Naxalites. It is also urged by the petitioner that the Government is not able to control the Naxalite activities and if at all somebody is required to part with money in order to protect himself and submits to extortion by the Naxalites, same cannot be construed as abetting the activities of the Naxalites and, therefore, no offence u/s 3(3) of POTA is made out. The petitioner, therefore, prays for quashing of registration of Crime No. 27/02 of Police Station, Sironcha, District : Gadchiroli.

4. In the Return filed by the State, it is stated that on 2-6-2002 Bapu Reddy

gave a written report in Telgu language stating that he was abducted on 19-5-2002 along with Narendra Reddy by the members of Bakkanna gang from Kaleshwar Unit to forest of Nandigaon. Bapu Reddy was threatened by Bakkanna to bring party fund of Rs. 9.84 lacs from his Unit contractor and he was compelled to write one chit. Narendra Reddy was sent with the said chit to his Contractor and after Narendra Reddy left, Bapu Reddy inquired from Bakkanna what he would do with such huge amount. Bakkanna replied that same would be required to fight against the Government and to procure arms and ammunition to sustain naxal activities to overthrow the Government and to sustain and secure their cadre. According to Bapu Reddy he managed to escape from the clutches of the gang under the pretext of ill health. He also disclosed that Adi Reddy was in their captivity when he escaped from the clutches of Bakkanna. The Police Station Officer registered offence under Sections 363, 368, 147, 148 read with Section 149 and 121 of the Indian Penal Code and Section 3/25 of the Arms Act vide Crime No. 27/2002. Prior to that on 25-5-2002 two trucks of Tendu Leaves belonging to Satyanarayan Reddy and his associates were burnt by Naxalite Bakkanna and his associates near Mahadeopur and Police has registered a Crime No. 34/2002 at Mahadeopur and another Crime No. 51/02 at Kataram under Sections 143, 364(A), 121-A read with Section 149 of the Indian Penal Code and also u/s 25 of the Arms Act. In those crime, petitioner No. 1 in Criminal Writ Petition No. 247/02 and one Kalimuddin (brother-in-law of Khwaja) were made accused in this connection, A. A. Nayeem was called by respondent No. 2 on 28-5-2002 and inquiry was made about abduction of his men from Geda Unit near Etapalli. Said A. A. Nayeem, however, denied of such abduction or receipt of any demand for party fund or ransom from Naxalites. On 28-5-2002 a night raid was conducted after receiving a clue that petitioner Kamlakar was hiding at Ballarshah and in the said raid the Police recovered Rs. 5.5 lacs cash from the Jeep used by the petitioner Kamlakar but said Kamlakar managed to escape. Subsequently, the Police raided a room where father of the petitioner No. 2 in Criminal Writ Petition No. 247/02 was found in possession of Rs. 1 lac which was seized by the Police. On 4-6-2002, the petitioners in Criminal Writ Petition No. 247/02 had surrendered before respondent No. 2 but despite interrogation they have not given any information. They were again interrogated on 5th and 6th of July, 2002. On 6th July, 2002 the petitioners disclosed certain facts on the basis of which Section 3(3) of POTA was added in Crime No. 27/02 and the petitioners in Criminal Writ Petition No. 247/02 were arrested. We shall refer to the said statements of the said petitioners at a later stage. According to the respondents, during interrogation on 28-5-2002, A. A. Nayeem had declined having made any payment for release of his abducted workers but during the investigation on 30-5-2002 he had shown a slip on plain paper written in Telgu language and said that the same was a receipt of payment made to Khawaja Moiddin, but the document recovered from Khawaja Moiddin was in English and according to Khawaja Moiddin the said document was prepared after his return from Hyderabad on 4-6-2002 in the back date showing the date as 28-5-2002. Therefore, according to the respondents, the petitioners have fabricated the

evidence. According to the respondents, the Additional Superintendent of Police, Chandrapur, to whom the said chit was shown by A. A. Nayeem during the interrogation, had forwarded a report wherein it was stated that on the said document there were no signatures and the date given was 29-5-2002. Therefore, according to the respondents, money paid by A. A. Nayeem to the petitioners in Criminal Writ Petition No. 247/02 was not for the purpose of trade but in fact, it was to be paid to Bakkanna as party fund to sustain and strengthen the ongoing Naxalite movement in Gadchiroli District, out of which Rs. 6.5 lacs have been seized by Police on 28-5-2002. According to the respondents, the petitioners were in constant touch with Bakkanna and his people willingly, deliberately and actively helped the naxalites in furtherance of their activities on account of which they were arrested u/s 3(3) of POTA. Respondents further contended that in Crime No. 15/01 of Sub Police Station Permili Police, certain documents have been seized from the Naxalities which proves that A. A. Nayeem paid a sum of Rs. 11.90 lacs as well as several other goods for the same purpose. In additional affidavit which is on record of Criminal Writ Petition No. 247/02 at pages 43 to 53, it is submitted that the investigation has revealed that petitioner No. 3 (reference to A. A. Nayeem) had not paid money under duress because the abducted person was released by Naxalites much before the time of actual payment. It is also stated therein that said A. A. Nayeem did not disclose in his statement on 28-5-2002 that any such payment was made. This statement was recorded in the afternoon whereas according to the prosecution case the said amount of Rs. 8 lacs was paid in the morning on 28-5-2002. Of course, the petitioner A. A. Nayeem in the affidavit filed by him has stated that the said amount of Rs. 8 lacs was paid after recording of the said statement on 28-5-2002.

5. Learned advocates for the petitioners as also learned A.P. P. were heard in the matter at length.

6. Shri V. R. Manohar, Senior Counsel appearing on behalf of the petitioner in Criminal Writ Petition No. 255/02 has basically and substantially made the following submissions before us.

i) That no case of abetment u/s 3(3) of POTA is made out; ii) there is no legal evidence against the petitioner to invoke the provisions of POTA and in this connection the evidence of confession of co-accused has been dealt with by him; iii) the entries referred to by the prosecution in relation to Crime No. 15/01 cannot be used against the petitioners; iv) the payment of Rs. 8 lacs is purely a business transaction and has nothing to do with any Naxalite activities or funding any naxalite activities.

7. The learned Senior Counsel has placed before us a number of rulings in support of his submissions. We shall deal with the details of his submissions and rulings upon which reliance has been placed at an appropriate stage later.

8. Learned Advocate Shri Sirpurkar on behalf of the petitioners in Criminal Writ

Petition No. 247/02 has also submitted before us that no case of abatement has been made out and in this connection, our attention has been drawn to Section 107 of the Indian Penal Code. Relying upon the Judgment in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, it is submitted that there is absolutely no evidence as against the petitioners except for the confession recorded by the Police u/s 32 of POTA. In this connection, it is further stated that the confession is, in fact, only of petitioner No. 2. It is also contended by him that petitioner No. 1 has entered into Tendu Leaves Business for the first time and that he has absolutely no nexus with the Naxalites. In short, it is urged by him that there is no material to invoke Section 3(3) of POTA and as such the F.I.R. is required to be quashed.

9. Shri Loney, A.P.P. appearing on behalf of the respondents urged before us that the confession of the petitioner in Criminal Writ Petition No. 247/02 is substantive evidence under the amended Section 32 of POTA and at this stage the theory of business transaction which is propounded by the petitioner cannot, on the face of it, be accepted; that investigation conducted reveals involvement of the petitioners in connection with the payment to be made to Bakkanna Gang; that during the course of investigation statements of number of persons have been recorded to prima facie show the involvement, of the petitioners thereby attracting Section 3(3) of POTA. It was submitted that Bapu Reddy who has filed the F.I.R. is not an employee of the petitioner and one Sajid Khan who was an employee of the petitioner A. A. Nayeem had already been released on 25-5-2002 whereas the amount which was sought to be paid was handed over by A. A. Nayeem to the petitioner Khawaja Moiddin and Kamlakar on 28-5-2002, out of which a sum of Rs. 5.5 lacs was attached from a jeep used by Kamlakar; that the said Mr. Kamlakar and Khawaja Moiddin absconded after the attachment of the said amount and surrendered only on 4-6-2002 after getting receipt prepared in order to take the plea that said amount was in connection with the loan transactions/ advance for sale of Tendu Leaves to A. A. Nayeem. It is pointed out that A. A. Nayeem was interrogated on 28-5-2002 but he did not speak of any such loan transaction/ advance and that it is subsequently that the receipt has been created in order to take stand that the amount recovered was relating to the business transaction between the petitioners. According to the learned A.P.P., receipts have been fabricated. Learned A. P. P. has urged that a sum of rupees 8 lakhs was agreed to be paid by the petitioners after negotiations, with Bakkanna Dalam through petitioner No. 2 in Writ Petition No. 247/02 and the amount to be paid is not extortion money. According to him, there is sufficient material on record to show involvement of the petitioners and at this stage the investigation should not be scuttled which is in progress. He also placed reliance on some authorities to which reference shall be made at the appropriate stage later. The learned A.P.P. had initially urged before us that Bakkanna gang of Naxalite is covered under Schedule of list of Terrorist Organizations referred to Section 16 of the POTA. Since it had been urged by the learned Senior Counsel that the gang of Bakkanna does not figure in the said

schedule of Terrorist Organization, subsequently, an affidavit was filed by respondent No. 2 wherein it is stated that it is difficult to state with certainty that Bakkanna Dalam belongs to an organization which is renowned as a terrorist organization under POTA.

10. In the light of rival contentions, we shall now examine the material on record as also the material collected during investigation. On 2-6-2002, P.S.O. Sironcha had registered Crime No. 27/02 on a complaint given to him by Bapu Reddy. The complaint was given in Telgu and English translation of the same has been filed in Criminal Writ Petition No. 255/02 which reads as under :

"I Bappu Reddy s/o Kachraya, R/o Chennur Aged 30 years at Kaleshwar Firm at Pusukpalli on 19-5-2002 was Kidnapped by members of Naxalite gang of Bakkanna under threat of Fire Arms. They took me and one Narendra Reddy who was already kidnapped by the above Naxalite gang from they took us from Pentayal to forests of Nandiyal, Bakkanna and the members of his gang has installed tents for living there. The abovesaid members of Naxalite gang threatened me to collect the sum of Rs. 9,84,000/- only from my unit Contractor for their party fund. They scribed a chit and handed over the same to Narendra Reddy to be delivered to our Unit Contractor. They sent Narendra Reddy. I, thereafter, enquired with them what they would do with such a huge amount? Bakkanna replied that the same would be used by them for purchase of Fire arms and ammunition to fight the Government and the Police force, for the purpose of saving ourselves and for further establishing their party. Thereafter sometime I feigned illness and escaped from the clutches of the Naxalites I reached Nandi and Laxmipur from there I came to Chennur. This is my report and I pray for the Registration of the Offence. Note : The above "Dalam" gang had kidnapped me. Prior to my kidnapping Reddy was already Kidnapped and in their custody.

sd/-Yours."

11. On 28-5-2002 the petitioner A. A. Nayeem was called and inquiries were made with him about the abduction of his men from Geda Unit near Ittapali. According to Police, petitioner A. A. Nayeem denied any such abduction or receipt of any demand or party fund or ransom from Naxalites. On 28-5-2002, Police recovered a sum of Rs. 5.5 lacs from the Jeep alleged to have been used by the petitioner Kamlakar on 28th night but said petitioner Kamlakar is alleged to have escaped. Police have then recovered a sum of Rs. 1 lac from the possession of the father of petitioner No. 2 Kamlakar. The petitioners in Criminal Writ Petition No. 247/02 had surrendered on 4th July, 2002 and after their interrogation on 6th July, 2002 their confessional statements were recorded, on the basis of which an offence u/s 3(3) of POTA was registered on 12-6-2002 and petitioner A. A. Nayeem was arrested. The learned Senior counsel for the petitioner in Criminal Writ Petition No. 255/02 had urged before us that for the applicability of Section 3(3) of POTA mens rea and knowledge is essential and for this proposition he placed reliance on the Judgment of the Apex Court on Kartarsingh v. State of

Punjab, 1994 Cri.L J. 3139. In this case, the Apex Court was dealing with the expression "abet" found in Section 2(1)(i)(a) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA"). The Apex Court found that meaning of the wording "abet" as defined therein was vague and imprecise, and as such "actual knowledge or reason to believe" on the part of a person sought to be brought within the definition, should be read into that provision instead of reading that provision down. In this connection, the Apex Court made following observations;

"In order to remove the anomaly in the vague and imprecise definition of word, "abet" the person who is indicated of communicating or associating with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists should be shown to have actual knowledge or to have reason to believe that the person or class of persons with whom he is charged to have communicated or associated is engaged in assisting in any manner the terrorists and disruptions. The expressions "communication" and, "association" deployed in the definition should be qualified so as to save the definition, in the sense that "actual knowledge or reason to believe" on the part of a person to be roped in with the aid of that definition should be read into it instead of reading it down and Clause (i) of the definition Section 2(1)(a) should be read a meaning "the communication or association with any person or class of persons with the actual knowledge or having reason to believe that such person or class of persons is engaged in assisting in any manner terrorists or disruptions" so that the object and purpose of that clause may not otherwise be defeated and frustrated."

12. There can be no two opinions that in expression abets, mens rea and knowledge have to be an essential ingredient without which an offence of abetment may not be completed. A reading of Section 107 of the Indian Penal Code would also lead us to some conclusion. The same principle has to be applied to the expression "abet" used in Section 3(3) of POTA which reads as under :

"3(3) : Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

13. The question, therefore, to be determined is whether in the facts and circumstances disclosed in the F.I.R. as also investigation papers, the F.I.R. or investigation should be quashed. On the question of quashing of F.I.R, reliance has been placed on a number of authorities and at this stage we shall refer to the authorities upon which reliance has been placed by learned Advocates, for the petitioners, the learned A.P.P., as also some of the rulings referred to in the said Judgment.

14. In R. P. Kapur v. State of Punjab, 1960(3) SCC 388 the F.I.R. which was

lodged against the petitioner was sought to be quashed u/s 561-A of the Code of Criminal Procedure, 1898. Pending hearing of the petition, the Police had submitted a report u/s 173 of Criminal Procedure Code, after which the petition was heard by the High Court and was rejected on the ground that no case was made for quashing the proceedings. The Apex Court while dismissing the appeal held :

"that no case for quashing the proceedings was made out. The inherent jurisdiction of the High Court could be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The following are some categories of cases where the inherent jurisdiction could and should be exercised to quash proceedings;

(i) where there was a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint did not make out the offence alleged; and

(iii) where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge.

In exercising its jurisdiction u/s 561-A of the Code the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not. In the present case there was no legal bar to the institution of the proceedings or to their continuance; the allegations made in the first information report did constitute the offences alleged and it could not be contended that on the face of the record the charge was unsustainable."

15. In *Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc.*, while following the Judgment in *R. P. Kapur* (cited supra), reiterated that in exercise of jurisdiction u/s 561-A, the High Court does not ordinarily enquire as to whether evidence is reliable or not. The same principle was followed by the Apex Court in *Jehan Singh Vs. Delhi Administration*, , wherein also it was observed that in exercise of jurisdiction u/s 561-A, the High Court can not embark upon inquiry as to whether evidence in the case is reliable or not.

16. In *Pratibha Rani Vs. Suraj Kumar and Another*, , it has been laid down that it is well settled by a long course of decisions of this Court that for the purpose of exercising its power u/s 482 Criminal Procedure Code to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se and it has no jurisdiction to examine the correctness or otherwise of the allegations."

17. In *Union of India (UOI) Vs. Prafulla Kumar Samal and Another*, , upon which a reliance was placed by the learned Senior Counsel for the petitioner in Criminal Writ Petition No. 255/02, the Apex Court was dealing with the question of discharge u/s 227 of the Criminal Procedure Code after filing of the charge sheet

and in this connection it is necessary to refer to the views expressed by the Apex Court as under :

"The Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

In exercising his jurisdiction u/s 227 of the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18. It is pertinent to note that the Apex Court has laid down that where material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justifying in framing the charge and proceeding with the trial, though some suspicion may not be sufficient. It is further observed that it does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence.

19. The next Judgment upon which reliance was placed by the learned Senior Counsel is in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, . In this case, the Apex Court was dealing with quashing of investigation in exercise of powers, under Article 226 of the Constitution in a case where the F.I.R. did not disclose commission of cognizable offence. In this Judgment, the Apex Court has laid down that; Per A. N. Sen J :

"If an offence is disclosed, the High Court under Article 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper

investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

Y.V. Chandrachud, C.J. and A. Varadarajan, J (Concurring with A. N. Sen, J.) :--

A First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

An investigation can be quashed if no cognizable offence is disclosed by the F.I.R.. It is surely not within the province of the police to investigate into a Report (F.I.R.) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases.

The condition precedent to the commencement of investigation u/s 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence the Court would be justified in quashing the investigation on the basis of the information as laid or received. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code."

20. The next ruling upon which reliance is placed by the learned Senior Counsel as also by the learned Advocate Shri Sirpurkar is the State of Haryana and others Vs. Ch. Bhajan Lal and others, . In this case also the Apex Court was dealing

with the question of quashing of F.I.R. in exercise of powers u/s 482 of Criminal Procedure Code/ Article 226 of the Constitution of India. In this case after reviewing the entire case law, the Apex Court has laid down that;

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482 Criminal Procedure Code can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is pertinent to note that the Apex Court has further laid down that the power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice and the Court will not be justified in embarking

upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

21. The learned A.P.P. has placed reliance on the case of *Rajesh Bajaj Vs. State NCT of Delhi and Others*, . In this case, the Apex Court was dealing with the quashing of the FIR on the ground that the complaint did not disclose any offence, in this connection, the following observations are made by the Apex Court.

"It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at the stage of investigation. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence."

22. In *State of Kerala and Others Vs. O.C. Kuttan and Others*, the Apex Court was dealing with quashing of F.I.R. and investigation under Article 226 of the Constitution of India. The High Court had quashed the F.I.R., by shifting the materials and evidence on record, it was held that the order of the High Court was illegal as it exceeded its jurisdiction while quashing FIR and investigation against the accused persons.

23. The learned A.P.P. has relied upon the Judgment of the Apex Court in *Hardeo Singh Vs. State of Bihar and Another*, . In this case, the Apex Court was dealing with the question of quashing of criminal proceedings u/s 482 of Criminal Procedure Code. In this case, the Apex Court found that there were circumstances raising suspicion regarding payment of illegal gratification by appellant to the Manager which would require investigation and no interference was called for.

24. In the light of the above position of law, we shall examine the matters under consideration. We shall first deal with the Criminal Writ Petition No. 247/02. In this case, the petitioners have sought quashing of prosecution of the petitioners. In fact, the prayer is not happily worded since the prosecution of the petitioners has not yet started what probably the petitioners seek to set aside is the F.I.R. or investigation pursuant to the F.I.R.. We have already reproduced the F.I.R. in para 10 and the bare reading of the F.I.R. does disclose the offence and it cannot be said that no offence is disclosed in the F.I.R.. The contention of the petitioners is that their names does not figure in the F.I.R. but only on account of the fact that the name of the person is not mentioned in the F.I.R., the F.I.R. still cannot

be quashed. During the course of investigation, the Police had recorded confessional statement of both the petitioners. Section 32(1) of POTA reads as under :

"32. Certain confessions made to police officers to be taken into consideration.-- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of such sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder."

25. Our attention was drawn to Section 15 of TADA as it stood before amendment of 1993 and after amendment. Section 15 of TADA before amendment reads as under :

"15. Certain confessions made to police officers to be taken into consideration.-- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like , cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made hereunder.

(2) The Police officer shall, before recording any confession under subsection (1), explain to the making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

26. By Amendment Act, Section 15 was amended and after the words "trial of such person" the words "or co-accused, abettor or conspirator" were inserted. A proviso was added to Section 15(1) which reads :

"provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused".

27. A number of Judgments under the TADA Act were cited before us and we shall make brief reference to some of them since the same shall be helpful while dealing with Section 31(1) of POTA which is *pari materia* to amended Section 15(1).

28. In *State of Tamil Nadu v. Nalini and Ors.*, 1999 Cri. L. J. 3124 the Apex Court had dealt with the question as to admissibility of confession by accused against himself and as against co-accused under amended Section 15 of TADA. In this Judgment while overruling the Judgment in *Kalpna Rai Vs. State* (through CBI), , it was held that the confession recorded by the authority u/s 15 of TADA

is substantive piece of evidence as against the maker since Section 15 clearly lays down that the confession made u/s 15 of TADA shall be admissible in the trial of such person in contrast with the words may be taken into consideration used in Section 30 of the Evidence Act. Besides this it was also pointed out that the non-obstante clause in Section 15 rules out applicability of Section 30 of the Evidence Act. This case also dealt with the question as to whether the confession made by the accused is admissible as against the co-accused and in the light of the 1993 amendment to Section 15 it was held that the confession made by the accused would also be admissible against the co-accused as substantive evidence.

29. In *Ravinder Singh @ Bittu v. State of Maharashtra*, 2002 All MR (Cri.) 1603 (Supreme Court), the position has been made crystal clear. It has been laid down therein;

"Sections 17 to 31 in Chapter II of Part I of the Indian Evidence Act, 1872 deal with admission and relevance, effect and consequence thereof. Sections 24, 25, 26, 28 to 30 deal with confessions. Confession is a specie of admissions. Sections 25 and 26 make a confession made by an accused before a Police Officer inadmissible. Section 15 of the TADA Act is an exception to the provisions which make the confession inadmissible. A confession made by a person to a Police Officer not lower in rank than a Superintendent of Police and recorded in the manner provided in the section is admissible in the trial of such person or co-accused, abettor, or conspirator for an offence under the TADA Act or Rules made thereunder.

It is thus well established that a voluntary and truthful confessional statement recorded u/s 15 of the TADA Act requires no corroboration. Here, we are concerned primarily with the confessional statement of the maker. The weight to be attached to the truthful and voluntary confession made by an accused u/s 15 of the TADA Act came to be considered again in a recent three Judge Bench decision in *Devender Pal Singh Vs. State National Capital Territory of Delhi and Another*, . It was held in the majority opinion that the confessional statement of the accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself."

30. The learned A.P.P. has placed before us the confessional statements of both the petitioners recorded on 10-6-2002 by the Superintendent of Police, Gadchiroli u/s 32 of POTA. A bare perusal of the said confessional statements of the petitioners show their association with Bakanria, demand of party fund and involvement in the whole affair which would prima facie attract Section 3(3) of POTA for the purpose of further investigation into the matter. In addition to that there is also other evidence on record which we have already referred. In *Devender Pal Singh Vs. State National Capital Territory of Delhi and Another*, it was held per majority that conviction of an accused can be solely based on his confession without any corroboration. Besides confession there is also other evidence on record which shall be referred while discussing the case of petitioner in W. P. No. 255/02.

31. In view of the above, we do not find that any case whatsoever has been made by the petitioners in Criminal Writ Petition No. 247/02 for quashing of investigation pursuant to F.I.R. dated 2nd June, 2002.

32. Coming to the case of the petitioner in Criminal Writ Petition No. 255/02, in view of Section 32(1) of POTA which is pari materia to unamended Section 15(1) of TADA, law relating to use of confession of accused against co-accused under the amended TADA provisions cannot be applied in this case. It is, however, not disputed before us that the confession of the accused can be used against co-accused within the parameters of Section 30 of the Indian Evidence Act. In this connection, our attention was drawn by the learned Senior Counsel to a number of Judgments which we shall refer at this stage. In Suresh Budharmal Kalani @ Pappu Kalani Vs. State of Maharashtra, , the Apex Court was dealing with a case of quashing of charge under unamended provisions of TADA and in this Judgment observations made in the case of Kashmira Singh Vs. State of Madhya Pradesh, have been quoted in the context that if the confession of accused is voluntary the same can undoubtedly be brought on record u/s 30 of the Evidence Act as against the co-accused, but what shall be its evidentiary value against co-accused has been succinctly answered in the following words;

"The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

The view so expressed has been consistently followed by this Court, Judged in the light of the above principle the confession of Suryarao cannot (be) called in aid to frame charges against Kalani in absence of any other evidence to do so."

Reliance was also placed by Senior Counsel upon the two Judgments of the learned Single Judges of this Court wherein same proposition of law is found based upon the Judgment of the Apex Court in Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, . The ratio of this Judgment is that confessional statement of co-accused is a weaker type of evidence, it may or may not be taken into consideration and it alone exclusively cannot be a base of conviction of the accused. Thus, even though the confession of the co-accused is a weaker piece of evidence yet the same can be taken into consideration in order to supplement the other evidence available on record.

33. The learned A.P.P. has relied upon the entries contained in document found in Crime No. 15/01 that petitioner A. A. Nayeem had earlier also paid Rs. 11.90 lacs

to the Naxalities. In this respect, the learned Senior Counsel has stated before us that the petitioner is not an accused in the said case and the proceedings therein have been closed. He had also placed reliance on the Judgment in L.K. Advani Vs. Central Bureau of Investigation, and Central Bureau of Investigation Vs. v.C. Shukla and Others, in support of his contention that the entry on loose sheet is not admissible in evidence and that such statement or entries shall not alone be sufficient evidence to charge any person with liability. In both these cases, charge sheet had already been filed. In relation to the evidence relating to receipt, it is urged that the receipt is in respect of the business transaction. In this connection, it is pertinent to note the following facts.

34. There is controversy in relation to the receipt and the prosecution case is that the receipts have been fabricated as much as on 30-5-2002 the petitioner had shown a plain paper written in Telgu stating that the receipt was for payment to Khwaja. The report of Additional Superintendent of Police shows that the documents which were shown did not have any signatures and the date mentioned therein as 29-5-2002. The loan/advance receipt is on simple paper and the amount was not advanced either by cheque or draft. The learned Senior Counsel had, in this connection, drawn our attention to the Judgment in Assistant Director of Inspection Investigation Vs. Kum. A.B. Shanthi, and submitted before us that u/s 273(B) of the Income Tax Act, any failure to comply with the provisions of Section 271(D) can be proved by showing reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise by account payee cheque or account payee demand draft, then the penalty may not be levied. There is no agreement for purchase of Tendu Leaves between the petitioners and no such agreement has been placed before the Court. Therefore, prima facie, at this stage, thorough investigation is required into the whole affair. There are also statements recorded by the Police of other witnesses including Sajid Khan and Vyankayya. Sajid Khan worker of the petitioner though abducted, had been released on 25-5-2002. He has stated that he was brought back by Khawja petitioner No. 2 in W. P. No. 247/02. According to the prosecution case, the amount of Rs. 8 lacs to be paid by the petitioner in W.P. No. 255/02 was settled after negotiation with petitioner No. 2 in W.P. No. 247/02 and it is not extortion money. In the light of the above evidence, we do not consider that this is a fit case where extraordinary jurisdiction of the Court should be exercised in order to scuttle the investigation of the matter. There is sufficient material on record so as to continue further investigation into the matter in addition to the material which is already there against the petitioner.

35. In view of the above, we do not find any merit in the petitions and the petitions are hereby rejected.