

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CRIMINAL PETITION No.659 OF 2022

AND

WRIT PETITION No.6479 OF 2022

% Delivered on: 11-03-2022

Between in Crl.P. No.659 of 2022:

Mr. A. Ramakrishna Reddy & another .. Petitioners

Vs.

\$ The State of Telangana, rep.by its Public Prosecutor
T.S. High Court, Hyderabad & another .. Respondents

With

Between in W.P. No.6479 of 2022:

Mrs. K. Sirisha W/o Akkiraju Haragopal @ RK Ramakrishna .. Petitioner

Vs.

\$ The State of Telangana, rep.by its Principal Secretary,
Home Department, Hyderabad & another .. Respondents

! For Petitioners in Crl.P. 659/22 : Sri Nandigam Krishna Rao

For Petitioner in W.P. No.6479/22 : Sri D. Suresh Kumar

^ For Respondent No.1 in Crl.P. 659/22 : Sri Khaja Vizarath Ali
Asst. Public Prosecutor

For Respondents in WP 6479/22 : Sri S. Rama Mohana Rao
Asst. Government Pleader

< Gist :

> Head Note :

? Cases Referred :

1. 1982 (2) APLJ (HC) 275
2. 2021 SCC OnLine SC 315
3. AIR 2010 Guj. 30 (FB)
4. (1962) 2 SCR 487
5. AIR 1992 SC 604
6. (2018) 9 SCC 725

THE HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL PETITION No.659 OF 2022****AND****WRIT PETITION No.6479 OF 2022****COMMON ORDER:**

Since the *lis* involved in both the matters is the same, they were heard together and are disposed of by way of this Common Order.

2. CrI.P.No.659 of 2022 is filed to quash the proceedings in Cr.No.439 of 2021 of Amberpet Police Station. The petitioners are A.1 and A.2 in the said crime. The offence alleged against them is under Section 8(2) of the Telangana Public Security Act, 1992 (for short, 'the Act')

3. W.P.No.6479 of 2022 is filed by the wife of Akkiraju Hara Gopal @ Ramakrishna @ RK to quash the above said crime and to issue a consequential direction to all the respondents to release the seized book titled "Sayudha Shanthi Swapnam" written on her husband, by handing over all the 1000 seized copies to her and also direct the respondents not to obstruct the petitioner in conducting the Book Release Meeting.

4. Heard Sri D. Suresh Kumar, learned counsel for the petitioner in W.P.No.6479 of 2022 and Sri Nandigam Krishna Rao, learned counsel for the petitioners in CrI.P.No.659 of 2022, Sri S.Rama Mohan Rao, learned Assistant

Government Pleader for Home, and Sri Khaja Vizarath Ali, learned Asst. Public Prosecutor. Perused the record.

5. Brief facts of the case:

i) The 1st petitioner in CrI.P. No.659 of 2022 is proprietor of Navya Printers. The 2nd petitioner is his wife.

ii) The allegations against the petitioners are that they have undertaken printing of a book titled 'Sayudha Shanthi Swapnam' with the photos of Akkiraju Hara Gopal @ Ramakrishna @ RK and the said book conveys banned Maoist ideology.

iii) The printing of the said book was undertaken on the request of the wife of Akkiraju Hara Gopal @ Ramakrishna @ RK, who is the petitioner in W.P.No.6479 of 2022, free of cost and out of sympathy for the banned Maoist party. The Police have also seized the following items:

1. 513 imposed Books (tied 10 bundles, each bundle contains 50 books and one bundle of 13 books).
2. 1000 copies of title of books.
3. 487 approximately not imposed books and in loose forms.
4. 25 Aluminium Printing Sheets.
5. (Left Blank).
6. (Left Blank).
7. Two Dell desktop Computers and two CPUs.
8. 1 DVR.
9. MSME Certificate.
10. One pen drive.
11. Two Bill Books.

iv) Thus, the allegation against the petitioners in Crl. P. No. 659 of 2022 is that they have committed the offences under Section 8(2) of the Act.

6. **CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONERS IN CRL.P.No.659 OF 2022:**

i) The contents of the complaint dated 12.11.2021 lacks the ingredients of the Section 8(2) of the Act.

ii) No notification mandated under Section 9(2) of the Act was issued.

iii) The 2nd respondent has not followed the procedure laid down under the Cr.P.C. while conducting the search.

iv) Though the impugned notification was said to have been issued on 12.11.2021 issued by the Asst. Commissioner of Police, Hyderabad, there was no mention about the same in the complaint dated 12.11.2021 and the counter affidavit filed by the Police in Crl.M.P. No.962 of 2021 in Crime No.439 of 2021 filed by the petitioners under Section 457 of Cr.P.C. seeking interim custody of the seized material.

v) Further, the issuance of the impugned notification dated 12.11.2021 was also not mentioned in the search warrant issued under Section 165 of Cr.P.C. by the Asst. Commissioner of Police, Hyderabad.

vi) The entire action of the 2nd respondent in registering the said crime conducting search and seizing the above said material is in violation of the procedure laid down under law.

vii) The said book is printed by the petitioners on the request of the Smt.K.Sirisha W/o Akkiraju Hara Gopal @ Ramakrishna @ RK in the memory of her husband.

viii) The book contains articles, reports, editorials, letters and interviews which were already published and telecasted.

ix) The book does not contain any objectionable content.

ix) The 2nd respondent seized the said books without examining its contents and without reaching the conclusion that the content is objectionable.

x) The respondents have also seized the entire printing press where 44 workmen have been working. Thus, the entire printing press came to a standstill.

xi) With the said submissions, he sought to quash the proceedings in the subject crime against the petitioners.

7. CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONER IN W.P.NO.6479 OF 2022:

i) The police have conducted search and seized the material without following the due procedure laid down under the law and the contents of the complaint lacks the ingredients of the offence alleged against the accused therein.

ii) There is no objectionable content in the said book.

iii) Seizing of the printing press, the books and material is in violation of the Articles 14 and 19 of the Constitution of India.

iv) Placed reliance on the principle laid down by the three Judge Bench of High Court of the then Andhra Pradesh in **P. Venkatshwarlu Vs. State of Andhra Pradesh**¹.

v) With the said submissions, he sought to quash the proceedings in the subject crime and to release the seized material and hand over the 1000 seized copies of the book to the petitioner and also issue a direction to respondents-Police not to obstruct the petitioner in conducting the book release meeting.

8. CONTENTIONS OF LEARNED PUBLIC PROSECUTOR:

i) 2nd respondent has followed the procedure laid down under law, more particularly under the Cr.P.C. while conducting search and seizing the property.

ii) The 2nd respondent had received credible information that the petitioners/accused have been undertaking printing of a book which contains objectionable contents with a photo of Akkiraju Hara Gopal @ Ramakrishna @ RK who is a Politbureau /Central Committee Member of Moist Party, a banned organization. Publication of the said book will have a bad impact on the society, more particularly on the youth.

iii) The Investigating Officer has recorded the statements of 14 witnesses and the investigation is still pending.

¹. 1982 (2) APLJ (HC) 275.

iv) Therefore, there is no illegality in registering the subject crime and conducting search and seizing the material.

v) Placing reliance on the principle laid down by the Apex Court in **M/s Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra**², learned Asst. Public Prosecutor would submit that quashing the FIR at the initial stage is not warranted.

9. CONTENTIONS OF LEARNED ASST.GOV.T.PLEADER FOR HOME:

i) Referring to the written instructions of the Inspector of Police, Amberpet Police Station, Hyderabad, learned Asst.Govt.Pleader would submit that 2nd respondent in Writ Petition i.e. Commissioner of Police, Hyderabad City had issued notification in L&O/ LO2/0076-I/2021, dated 12.11.2021 notifying Navya Printers situated at Amberpet.

ii) The Additional Inspector of Police, Amberpet Police Station had obtained search proceedings under Section 165 of Cr.P.C. dated 12.11.2021 from Assistant Commissioner of Police, Malakpet Division, Hyderabad and he has conducted search and seizure and prepared panchanama.

iii) There is no irregularity and illegality in the same. With the said submissions, he sought to dismiss the present writ petition.

². 2021 SCC OnLine SC 315.

10. CONSIDERATION BY THE COURT:

i) Despite granting time, more particularly 7 adjournments, the respondents/Police in the writ petition have not filed any counter affidavit. However, Sri S. Rama Mohan, learned Asst. Govt. Pleader for Home, has submitted written instructions of Inspector of Police, Amberpet Police Station along with the notification dated 12.11.2021 issued by the Asst. Commissioner of Police, Hyderabad, memo dated 14.02.2022, search proceedings under Section 165 of the Cr.P.C. dated 12.11.2021, panchanama dated 12.11.2021, and also notice dated 12.11.2021 under Section 41-A of Cr.P.C., along with the statements of the witnesses recorded under Section 161 of the Cr.P.C.

ii) Perusal of the record including complaint, panchanama, search proceedings and statements of the witnesses recorded under Section 161 of Cr.P.C. would reveal the following sequence of events:-

a. According to Sri T. Sridhar, Detective Inspector of Police, Amberpet Police Station, he had received credible information on 12.11.2021 at 17:00 hours.

b. In the search proceedings issued under Section 165 of Cr.P.C. dated 12.11.2021, it was mentioned that on the same day at 17:15 hours, the said Detective Inspector of Police, Amberpet Police Station had placed the information before the Assistant Commissioner of Police that Navya Printers, Amberpet, is

printing books which promotes banned Maoist ideology and is attracting youth towards Maoism.

c. The subject FIR mentions that on 12.11.2021 at 21:00 hours, police, P.S. Amberpet have received complaint from T. Sridhar, Additional Inspector of Police, Amberpet Police Station.

d. In the statements recorded under Section 161 of the Cr.P.C. the said T. Sridhar, Detective Inspector of Police, has mentioned that he had addressed a letter to the Tahsildar to send two mediators to conduct search and accordingly the Tahsildar had sent two Government officials of his office namely Kothapally Srikanth, Senior Assistant and Muthyala Badrinath VRO.

e. The confession statement and panchanama, mentions that the search was conducted at 18:30 hours on 12.11.2021. The above said two witnesses stated that they went to Amberpet Police Station and met Sri T.Sridhar, Detective Inspector, Amberpet Police Station, who informed about printing of books in Navya Printers.

iii) Thus, the entire controversy revolves around the printing of book titled “Sayudha Shanthi Swapnam”.

iv) The offence alleged against the accused is under Section 8(2) of the Act. In view of the same, certain relevant provisions of the said Act are extracted below:-

“Section 2(d) of the Act:- ‘Notification’ means a notification published in the Telangana Gazette and the word ‘notified’ shall be construed accordingly.

Section 2(e) of the Act:- ‘Unlawful activity’ in relation to an individual or association means activity:-

- (i) which constitutes a danger or menace to public order, peace and tranquility; or
- (ii) which has interfered or tends to interfere with the maintenance of public order; or
- (iii) which interfered or tends to interfere with the administration of law or its established institutions and personnel; or
- (iv) of indulging in or propagating acts of violence, terrorism, vandalism or other acts generating fear and apprehension in the public or indulging in or encouraging the use of fire arms, explosives and other devices or disrupting communications by rail or road; or
- (v) of encouraging or preaching disobedience to established law and its institutions; or
- (vi) of collecting money or goods forcibly to carry out any one or more of the unlawful activities mentioned above;

Section 2(f) of the Act:- ‘Unlawful Association’ means any association which indulges in or has for its object or abets or assists or gives aid, succour or encouragement, directly or indirectly, through any medium, device or otherwise to, any unlawful activity.

Section 8(2) of the Act:- Whoever manages or assists in the management of an unlawful association or promotes or assists in promoting a meeting of any such association or of any members thereof, or in any way assists, abets or aids the unlawful activities of any such association through whatever manner or whatever medium or device shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Section 9(1) of the Act:- The Government or in any area for which a Commissioner of Police is appointed, the Commissioner of Police and elsewhere the District Magistrate, may notify any place which in its opinion or his opinion is used for the activities of an unlawful association. Such Officer shall be known as the Competent Authority.

Section 9(2) of the Act:- (2) When any place is notified under sub-section (1), the Competent Authority or any officer authorised in this behalf power to notify and take possession of places used for the purpose of unlawful activities, in writing by him may take possession of the notified place and evict there from any person found therein, and shall forthwith make a report of the taking possession to the Government:”

v) It is to be noted that Section 9 grants power to the State Government/Commissioner of Police/District Magistrate to notify and take possession of any place, which in his/her opinion is used for the purpose of committing unlawful activities. Issuing notification and forming an opinion are essential ingredients to be complied with before taking action under Section 9 of the Act.

vi) It is also relevant to note that the terms ‘notify’ and ‘notified’ used in Section 9 shall be interpreted in light of the definition of the word ‘notification’ as provided under Section 2(d) of the Act. Therefore, the terms ‘notify’ and ‘notified’ means a notification published in the Telangana Gazette.

vii) In the written instructions dated 21.02.2021, the Inspector of Police, Amberpet Police Station, has stated that a notification in terms of Section 9(1) was issued on 12.11.2021 and he has also enclosed a copy of the said notification.

viii) Sri Nandigam Krishna Rao, and Sri D.Suresh Kumar, learned counsel for the petitioners in both the writ petition and criminal petition have contended

that the Commissioner of Police has not issued the notification dated 12.11.2021 in terms of Section 9 of the Act and it was created only to cover up the illegal action of conducting search and seizure. Therefore, to appreciate the contention of the petitioners, it is apposite to extract the impugned notification dated 12.11.2021:

GOVERNMENT OF TELANGANA
(Police Department)

No.L&O/L02/0076-1/2021

Office of the Commissioner of
Police, Hyderabad City.

Date: 12-11-2021

NOTIFICATION

WHEREAS, reports have been received that **Navya Printers located at premises No.2-3-655/C/20, GHMC Dumping Yard Road, Durga Nagar, Amberpet** is printing books with banned Maoist ideology and attracting youth towards Maoism and that proprietor of Navya Printers Mr. A. Ramakrishna Reddy assists and promotes unlawful activities by printing such Maoist Ideology Books:

WHEREAS, it is considered desirable to take speedy and immediate steps to control such acts, as such uncontrolled acts may cause disturbance to maintenance of Law & Order & public tranquility.

Therefore, in exercise of the powers conferred upon me under sub-section (1) of section (9) of the Telangana Public Security Act, 1992 (Act No.21 of 1992) I, Anjani Kumar, IPS, Commissioner of Police, Hyderabad City, do hereby pass this written order and notify that, Navya Printers located at premises No.2-3-655/C/20, GHMC Dumping Yard Road, Durga Nagar, Amberpet is being used for unlawful activities and instruct Sri T. Sridhar, Detective Inspector of Amberpet PS to take the possession of the said premises.

(Anjani Kumar, IPS)
Commissioner of Police,
Hyderabad City

To

The Station House Officer,

Amberpet PS.

Amberpet PS.

Sri T. Sridhar, Detective
Inspector,

ix) There is force in the contention of the petitioners that the impugned notification dated 12.11.2021 was not issued in terms of Section 9 of the Act. As stated above, under Section 2(d) of the Act, a notification issued under the Act shall be published in the Telangana Gazette. A bare perusal of the impugned notification shows that it was not published in the Telangana Gazette.

x) Further, Section 9 of the Act mandates that action taking of possession of the place should be based on the opinion of the authority issuing the notification. It is trite law that formation of opinion should be based on reasons which are to be stated. In other words, the grounds of forming an opinion are to be disclosed. The requirement of stating the grounds on which an opinion is formed is part of the due process and acts as a safeguard against arbitrary action of the State.

xi) In the present case, the impugned notification dated 12.11.2021 only states that Nyaya Printers were publishing books which promote Maoist ideology and will disturb maintenance of law & order and public tranquility. The impugned notification dated 12.11.2021 fails to state the reasons behind such opinion. Nothing has been stated to show that how the publication of the subject books will disturb law & order.

xii) Dealing with a similar notification under Section 95 of the Cr.P.C., a Full Bench of the Gujrat High Court in **Manishi Jani v. State of Gujarat**³ referring to the various decisions of the Supreme Court has held as follows:

10. Language of the opening portion of the notification denotes that it has come to the notice of the Government of Gujarat about publication of the book. Government have therefore noticed only about the publication of the Book and not what the book contains. Rest of the paragraphs of the notification have to be understood in light of the above-mentioned paragraph. If so understood, it is difficult to believe that the author of the notification has really read or comprehended what the author of the book has to say. Notification further says that contents of the books are 'highly objectionable and against the national interest' and in what manner the contents are objectionable and against the national interest, is not discernible from the text of the notification. Further, it is stated that contents of the books are 'misleading to the public and are against public tranquility and against interests of the State'. Notification is silent as to how the contents of the books would affect and disturb public tranquility or interest of the State. No opinion has been expressed by the State in the notification. Lack of opinion means lack of thinking. Lack of thinking means lack of understanding. Remember, the State is dealing with the fundamental rights of its citizens and therefore, great amount of caution, prudence and care is expected. Further, notification refers to Section 153A and 153B of IPC. Nothing is discernible from the notification as to how the contents of the book would promote enmity between different groups on the grounds of

³. AIR 2010 Guj. 30 (FB).

religion, race, place of birth, residence, language etc., and result ill-feeling amongst them. Law is settled that when the Government is exercising the powers under Section 95 of the Cr.P.C., the government has to form an opinion and those opinion will give rise to the grounds and grounds have to be stated in the notification issued in exercise of the powers under Section 95 of the Cr.P.C.

13. Apex Court in the case of Narayan Das Indurkha v. The State of M.P. AIR 1972 SC 2086 had occasion to examine the legality of the order of the Government issued under Section 5 of the Criminal Law Amendment Act (Act of XXIII of 1961) forfeiting the copies of a book published by the appellant. Contention was raised that the order did not disclose the grounds of the opinion formed by the State Government. Apex Court held that there is a considerable body of statutory provisions which enable the State to curtail the liberty of the subject in the interest of the security of the State or forfeit books and documents when in the opinion of the Government they promote class hatred, religions intolerance, disaffection against the State etc. ***In all such cases, instances the State Government has to give the ground of its opinion. Ground must be distinguished from opinion. Grounds of the opinion must mean the conclusion of facts on which the opinion is based and there can be no conclusion of fact which has no reference to or is not ex facie based on any fact. Same is the view taken by the Apex Court in the case of The State of Uttar Pradesh v. Lalai Singh Yadav AIR 1977 SC 202.*** That case was relating to forfeiture of a book captioned Ramayan: A True Reading' in English and its translation in Hindi. View of the Government was that the book was sacrilegiously, outrageously objectionable, being `deliberately and maliciously intended to outrage the religious feelings of a class of citizens of India. Notification contained an appendix setting out in tabular form the particulars of the relevant pages and lines in the English and Hindi

versions which presumably, were the materials which were regarded as scandalizing. Court examined whether the notification fulfills statutory requirements. Upholding the judgment of the High Court, the Apex Court concluded that where there is a statutory duty to speak, silence is a lethal sin for a good reason disclosed by the scheme of the fascicules of sections. Court held, Section 99C enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court has to examine the grounds of Government given in the order and may affirm or upset it. It was held Court cannot make a roving enquiry beyond the grounds set forth in the order. Reference may also be made to the decision of the Full Bench (Jaipur Bench) of Rajasthan High Court in the case of *Virendra Bandhu v. State of Rajasthan* AIR 1980 Rajasthan 241, where the Full Bench of Rajasthan High Court has examined the scope of Section 95 of Cr.P.C. and other related provisions and the Court held that total absence of grounds for the opinion of the Government in the order of forfeiture would render such an order invalid and void. Similar view is taken by the Allahabad High Court in the case of *Lalai Singh Yadav v. State of U.P.* : 1971 Cri.L.J. 1519. Full Bench of Delhi High Court in the case of *The Trustee of Safdar Hashmi Memorial Trust v. Govt of NCT of Delhi* 2001 Cri.L.J. has also taken the same view. Special Bench of Bombay High Court in the case of *Varsha Publications Pvt. Ltd and Anr. v. State of Maharashtra and Ors.* 1983 Cri.L.J. 1446 has also taken the similar view.

xiii) Further, the Supreme Court in **Harnam Das v. State of Uttar Pradesh**⁴ has held that an opinion cannot be formed without considering or examining or knowing the material. In other words, an opinion can be

⁴. (1962) 2 SCR 487.

formed only after the relevant material is examined by the authority. The relevant portion is extracted below:

“17. What then is to happen when the Government did not state the grounds of its opinion ? In such a case if the High Court upheld the order, it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture itself and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under s. 99D. It seems clear to us, therefore, that in such a case the High Court must set aside the order under s. 99D, for it cannot then be satisfied that the grounds given by the Government justified the order. *You cannot be satisfied about a thing which you do not know. This is the view that was taken in Arun Ranjan Ghose v. State of West Bengal MANU/WB/0338/1955 : 59 C.W.N. 495 and we are in complete agreement with it. The present is a case of this kind. We think that it was the duty of the High Court under s. 99D to set aside the order of forfeiture made in this case.*

xiv) As stated above, the impugned notification fails to provide any grounds behind the conclusion that Maoist ideology was being promoted. The impugned notification dated 12.11.2021 does not even

mention the names of the books published which promote maoist ideology, let alone the relevant parts of the books which promote such ideology. The Commissioner without examining the material cannot come to a conclusion that the books being published to promote maoist ideology. Merely because reports are received that books promoting maoist ideology are being published is not a ground to take action under Section 9 of the Act, unless the content of such books are examined and the grounds for forming the opinion is recorded. Therefore, the impugned notification dated 12.11.2021 was not issued in terms of Section 9 of the Act.

xv) At this juncture, it is relevant to discuss Section 165 of the Cr.P.C. under which search was conducted by the respondents. The same is extracted as follows:-

“165. Search by police officer.

(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such

officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub- section (1), shall, if practicable, conduct the search in person.”

xvi) As stated above, the subject crime was registered at 21:00 hours on 12.11.2021. In the search proceedings dated 12.11.2021, it is stated that the Additional Inspector of Police, had approached the Asst. Commissioner of Police, Malakpet at 17:15 hours. Therefore, at the time of issuance of search proceedings under Section 165 of Cr.P.C. dated 12.11.2021, the subject crime was not registered. Thus, search conducted by the Police and seizure is in violation of the procedure laid down under Section 165 of Cr.P.C.

xvii) It is also relevant to note that issuance of notification dated 12.11.2021 under Section 9 of the Act was not mentioned in any of the proceedings issued by the respondent authorities.

xviii) The issuance of the impugned notification dated 12.11.2021 was never mentioned in the complaint dated 12.11.2021; search

proceedings dated 12.11.2021 issued under Section 165 of Cr.P.C. by the Asst. Commissioner of Police, Malakpet Division, Hyderabad; counter affidavit dated 29.11.2021 filed by the respondents/police in CrI.M.P.No.962 of 2021 in Cr.No.439 of 2021 filed by the A.1 seeking interim custody of the seized material. It is before this Court that the respondents, for the first time, have filed a copy of the said notification dated 12.11.2021.

xix) According to this Court, it is highly improbable that the impugned notification was issued on 12.11.2021. If the notification was issued on 12.11.2021, it would have been mentioned by the respondent authorities in any of the proceedings issued by them, as it was the notification based on which action of search and seizure was undertaken. Learned Asst. Public Prosecutor and Learned Asst. Government Pleader failed to show why the details of the impugned notification were not mentioned in earlier proceedings and the complaint. Therefore, according to this Court, the impugned notification was issued as an afterthought and was certainly not issued on 12.11.2021.

xx) Further, it is relevant to discuss the entire sequence of events which resulted in the search and seizure. According to the respondents, information was received by the 2nd respondent/de facto-complainant at 17:00 hours and he informed the same to the Commissioner of Police, Hyderabad, which is at Basheerbagh, Hyderabad and obtained the impugned notification dated 12.11.2021. At the same time, he also informed about the receipt of information to the Asst. Commissioner of Police, Malakpet Division and obtained search proceedings under Section 165 of the Cr.P.C. Immediately, after obtaining the search proceedings, a letter was addressed to the Tahsildar, Amberpet, with a request to send two mediators. The said mediators reached the Amberpet Police Station after which they were briefed by the 2nd respondent and the search was conducted and panchanama was recorded by 18.30 hours.

xxi) Thus, entire proceedings were completed within one hour thirty minutes i.e., from 17.00 hours to 18.30 hours on 12.11.2021. According to this Court, the entire action of the respondents/Police in conducting search and seizure is highly improbable.

xxii) With regard to Cr. No. 439 of 2021, it is relevant to note that the accused therein was charged Section 8(2) of the Act. The allegation against the accused is that he published the said book on the request of the petitioner in W.P.No.6479 of 2021. A person is punishable under Section 8(2) of the Act, if he/she manages or assists or promotes any unlawful association or its members or aids in commission of such unlawful activity by such unlawful association. As stated above, the respondents have failed to show how publishing of the subject books is aiding or promoting any unlawful association or unlawful activity. *Prima facie*, no offence under Section 8(2) of the Act is made out.

xxiii) It is also relevant to note that the punishment prescribed for the offence is below seven years. Therefore, the Investigating Officer has already served notice under Section 41-A of Cr.P.C. and recorded statements of 14 witnesses. The Investigation is pending. Even then, the respondents-Police had conducted search and seized the material in hasty manner and in utter violation of the procedure laid down under the Act and Cr.P.C.

xxiv) In light of the aforesaid events, the entire conduct of the respondents reeks of arbitrary conduct. Such arbitrary action restricting an individual's liberty and free speech is nothing but abuse of process and the same falls within the parameters laid down by the Apex Court in **State of Haryana Vs. Bhajanlal**⁵, which are extracted below:-

“....

- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;

⁵. AIR 1992 SC 604.

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C.. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C. only has to consider whether or not the allegations in the FIR disclose the commission of a

cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

xxv) Therefore, viewed from any angle, the proceedings in the subject crime are liable to be quashed and are accordingly quashed.

During the course of hearing, learned Asst. Govt. Pleader for Home opposing the release of seized material would submit that the petitioners/Accused have filed an application under Section 451 r/w 457 of Cr.P.C. seeking interim custody of the material seized vide Crl.M.P.No.962 of 2021 in Cr.No.439 of 2021 and the same was dismissed by the learned IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad dated 14.12.2021. The petitioner No.1/accused No.1 in Crl.P.No.659 of 2022 has not challenged the said order. Therefore, they are not entitled for interim custody of the seized material. Perusal of the said order would reveal that the Court below has dismissed the said application on the ground that the Police have not deposited the above said material. Therefore, the said contention of the learned Asst. Govt. Pleader is not sustainable.

xxvi) Given that the whole issue revolves around publication of books, it is necessary to examine the issue in light of Article 19 of the Constitution of India. Freedom of speech and expression is one of the basic human rights. The right of freely expressing one's own views and opinions without arbitrary interference of the state is recognised under Article 19. The restrictions on free speech should be interpreted narrowly and restricted to the grounds under Article 19(2). The rights of authors and publishers under Article 19 cannot be restricted merely on a speculation that law & order problems will arise. It is the duty of the state to maintain law & order and only in exceptional cases free speech is to be restricted.

xxvi) The right of artistic freedom stems from Article 19 and the same is important for a democratic nation like India. In the context of books and its banning, the Supreme Court in **N. Radhakrishnan v. Union of India**⁶ has held as follows:

“33. It would usher in a perilous situation, if the constitutional courts, for the asking or on the basis of some allegation pertaining to scandalous effect, obstruct free speech, expression, creativity and imagination. It would lead to a state of intellectual repression of literary

⁶. (2018) 9 SCC 725.

freedom. When we say so, we are absolutely alive to the fact that the said right is not absolute but any restriction imposed thereon has to be extremely narrow and within the reasonable parameters as delineated by Article 19(2) of the Constitution. Here, we may remind ourselves of the expression used by George Orwell. It is free thinking and intellectual cowardice. Creative writing is contrary to intellectual cowardice and intellectual pusillanimity.

37. If books are banned on such allegations, there can be no creativity. Such interference by constitutional courts will cause the death of Article True it is, the freedom enjoyed by an author is not absolute, but before imposition of any restriction, the duty of the Court is to see whether there is really something that comes within the ambit and sweep of Article 19(2) of the Constitution. At that time, the Court should remember what has been said in *S. Rangarajan v. P. Jagjivan Ram and Ors.* (1989) 2 SCC 574 wherein, while interpreting Article 19(2), this Court borrowed from the American test of clear and present danger and observed:

45. ... Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

xxvii) In the present case, the petitioner in W.P.No.6479 of 2022

is wife of Akkiraju Hara Gopal @ Ramakrishna @ RK. According to the petitioner, her husband died on 14.10.2021 due to ill-health and she came

to know about the death of her husband through print and electronic media. He was the state leader of Peoples War Party. Her husband led his team of Peoples War Party when Y.S.Rajasekhar Reddy was Chief Minister and was involved in peace talks between Naxalites and the Government in the year 2004. During the said talks, her husband was known in every household due to coverage of the peace talks by print and electronic media. She wanted to respect her husband who throughout his life was engaged to work for the cause of people. She wanted to inspire people through his memories. She became a Member of Amarula Bandhu Mithrula Sangham (ABMS). With all the friends and relatives on behalf of ABMS, they held RK memorial meeting on 24.10.2021 at their native place Alakurapadu village of Prakasam District in Andhra Pradesh and about thousand people attended to the said meeting despite police surveillance. There was a proposal to bring out a book on RK with memories on him and articles by him. In the said meeting, a call was given to send songs, poetry and memories of Akkiraju Hara Gopal @ Ramakrishna @ RK and his articles, interviews and the statements given in the newspapers to collect and compile them in a book. As her husband led the peace talks between the Government and naxalites, they wanted to

name the book as “Sayudha Santhi Swapnam”. They wanted to publish the said book in Hyderabad by holding book release meeting on 14.11.2021 at Sundaraiah Vijnana Kendram.

xxviii) According to her, there is no objectionable content in the book. The said book contains articles, interviews and statements given by her husband in the newspapers. The Police without conducting any enquiry, without verifying the contents of the said book, came to a conclusion that it has objectionable contents, searched and seized the Navya Printers in an arbitrary and illegal manner.

xxix) As stated above, the respondents without verifying the content of the book, seized its copies. According to the petitioners, the book contains articles, interviews, editorials and statements etc., of Akkiraju Hara Gopal @ Ramakrishna @ RK which were already published. The authorities must have cogent reasons before taking an action. The respondents in the present case, without following the procedure under the Act, and without considering the fact that the publisher Navya Printers has been in business since 1991 had seized their machinery and material within a matter of one and half hour. The conduct

of the respondents is arbitrary, illegal and in violation of the procedure laid down under the Act and also the Cr.P.C.

xxx) At the cost of repetition, this Court is emphasizing that the offences under the Act are serious in nature. The said fact is clear from Section 12, according to which every revision petition shall only lie before the High Court and shall be heard by a bench of three judges. Therefore, legislative intent is very clear with regard to seriousness of the offence.

xxxi) The Commissioner of Police, Hyderabad city, a Senior Police Officer is expected to go through the provisions of the Act before issuing the impugned notification dated 12.01.2021, which has oppressive and penal consequences. Without publishing the same in the Gazette as mandated, he has allowed his subordinates to proceed with the search and seizure of the material in utter violation of procedure laid down under the Act and also Cr.P.C.

xxxii) During the course of arguments, Sri Nandigam Krishna Rao, learned counsel for the petitioners in CrI.P.No.659 of 2022, contended that the Commissioner of Police had committed perjury as he did not

issue the impugned Notification on 12.11.2021. A person is said to commit perjury if the following elements are satisfied:

- a) That the declarant took an oath to testify truthfully;
- b) That the declarant willfully made a false statement contrary to their oath;
- c) That the declarant believed the statement to be untrue;
- d) That the statement relates to a material fact.

In the present case, none of the above elements are attracted and, therefore, no perjury is made out.

11. **CONCLUSION:**

In view of the above discussion, both the petitions viz., W.P.No.6479 and 2022 and Crl.P.No.659 of 2022 are allowed as under:

- (i) The entire action of respondent police in conducting search and seizure of Navya Printers is illegal and contrary to the procedure laid down under the Act and the Cr.P.C.
- (ii) The proceedings in Cr.No.439 of 2021 of Amberpet Police Station are hereby quashed against the petitioners in Crl.P.No.659 of 2022.

- (iii) Respondents - Police are directed to unseal 'Navya Printers' and permit the petitioners/accused Nos.1 and 2 in Crl.P.No.659 of 2022 to operate the said press without creating any problem.
- (iv) The respondents - Police are directed to return and hand over the seized material in Cr.No.439 of 2021 of Amebrpet Police Station, to the petitioners in the above said Criminal Petition and also to the petitioner in Writ Petition under proper acknowledgment.

As a sequel, miscellaneous petitions, if any, pending in both the petitions shall stand closed.

11th March, 2022

K. LAKSHMAN, J

Note:

L.R. copy to be marked.

(B/O.) vvr