

IN THE SPECIAL COURT FOR NIA CASES, ERNAKULAM, KERALA

Present:-

Sri.K.M.Balachandran, B.Com., LL.B., Judge, Special Court for NIA Cases, Ernakulam

Wednesday the 25th day of November, 2015/4th Margaseersha, 1937.

SESSIONS CASE NO. 1/2011/NIA

(R.C.No. 3/2010/NIA)

Complainant : State of Kerala represented by National
Investigation Agency, Ernakulam.

By Adv. P.G.Manu, Public Prosecutor, NIA

Name of the Accused : (1) P.A.Shaduly @ Haris, S/o. Abdul Karim,
Peediyakkal House, Nadakkal,
Erattupetta Village, Kottayam Dist., Kerala.
(2) Abdul Rasik, S/o. Abdul Rahim,
Perakathusseri House, Nadakkal, Erattupetta
Village, Kottayam District, Kerala-686 124.
(3) Ansar @ Ansar Nadvi, S/o. Abdul Rasak,
Perunthelil House, Kunjini Kara,
Kadungalloor village, Ernakulam, Kerala.
(4) Nizamudeen @ Nizumon, S/o. Muhammed,
Jasmin Manzil, Panayikkulam Kara,
Alangadu village, Ernakulam District, Kerala.
(5) Shammi @ Shammas, S/o. Jamal,
Ambazhathingal House, Vadakkekara,
Erattupetta Village, Kottayam Dist., Kerala.



- (6) Shameer, S/o. Yousuf,
House No.XII/408. Karukappadath Putthan
Veettil, Eriyadu Village, Thrissur Dist., Kerala.
- (7) Abdul Hakeem, S/o. Muhammed Iqbal,
House No. XV/365, Kadakathakathu House,
Azheekodu Village, Eriyadu Panchayat,
Kondungalloor Taluk, Thrissur, Kerala.
- (8) Nizar, S/o. Muhammed,
Mundikunnel House, Pooppara village,
Murikkumthotty Kara, Udumbanchola Taluk,
Idukki District, Kerala.
- (9) Mohayudheenkutty @ Thaha,
S/o.Saidu Muhammed, Ulliyattu House,
Adivadu, Pallarimangalam Kara,
Pothanikkad Village, Kothamangalam Taluk,
Ernakulam District, Kerala.
- (10) Muhammed Nissar, S/o. Ummer,
Kattilparambil House, Vayalakkad,
Kurumalloor Village, Paravur Taluk,
Ernakulam District, Kerala.
- (11) Ashkar, S/o. Muhammed Ali,
House No. XIII/131, Ilamthuruthi House,
Azheekode village, Eriyadu Panchayat,
Kodungallur Taluk, Thrissur District, Kerala.
- (12) Nissar @ Muhammed Nissar, S/o. Abu,
House No. XVI/123, Ettuthenguparambil (H),
Azheekode village, Eriyadu Panchayat,
Kodungallur Taluk, Thrissur District, Kerala.

(13) Salih, S/o. Abdul Rasik, - **(Split up being found juvenile in conflict with law)**

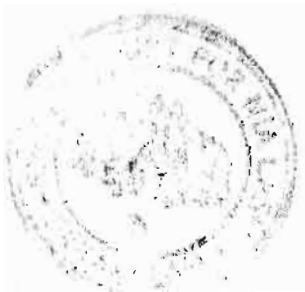
Puzhakkarayil House, Karakkad,
Nadakkal Kara, Erattupetta Village,
Kottayam District, Kerala.

(14) Hashim, S/o. Ahamed Ashraf,
Madathil House, Panayikkulam Kara,
Alangadu village, Ernakulam District, Kerala.

(15) Riyas, S/o. C.P.Aliyar,
Chittethukudyil House,
near Thaikkavumpadiyil Juma Masjid,
Thrikkariyoor village,
Ayakkad Karayil, Ernakulam District, Kerala.

(16) Muhammed Naizam, S/o. Pareed Hamsa,
Kollamkudiyil House, Mudikkal Bhagam,
Palliparam Kara, Marampilli village,
Ernakulam District, Kerala.

(17) Nissar, S/o. Ibrahim,
Vettuvellil House, Uliyanloor, Kunjini Kara,
Kadungalloor village, Ernakulam District,
Kerala.



A1 & A3 By Adv. V.T.Reghunath

A2, A4, A5, A6,
A7, A8, A11, } By Adv. S.Shanavas
A12, A15 & A16 }

A9 By Adv. Issac Sunjay

A10 & A17 By Adv. K.S.Madhusoodanan

A14 By Adv. Issac Thomas

- Charges** : Offences Punishable under sections 120B,124A IPC and Sections 10(a)(i), 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act.
- Plea of the accused** : Not guilty.
- Finding of the Judge** : 1) Accused 1 to 5 have committed the offences under section 120B IPC r/w section 124A IPC and under sections 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act and under sections 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act.
 2) Accused 2 and 3 have committed the offence under section 124A IPC.
 3) Accused 1 and 2 have committed the offence under section 10(a)(i) of Unlawful Activities (Prevention) Act.
 4) The prosecution has not succeeded in proving guilt fastened on the accused 1, 4 and 5 under section 124A IPC, the guilt fastened on the accused 6 to 12 and 14 to 17 under section 10(a)(ii) of Unlawful Activities (Prevention) Act and on 6th accused under section 10(a)(i) of Unlawful Activities (Prevention) Act.
- Sentence or Order** : 1) The 1st accused (P.A.Shaduly) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w section 124A IPC.

2) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

3) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a) (ii) of Unlawful Activities (Prevention) Act.

4) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(i) of Unlawful Activities (Prevention) Act.

5) The 2nd accused (Abdul Rasik) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 124A IPC.

6) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

7) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of



3 months for the conviction under section 10(a) (ii) of Unlawful Activities (Prevention) Act.

8) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(i) of Unlawful Activities (Prevention) Act.

9) The 3rd accused (Ansar @ Ansar Nadvi) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 124A IPC.

10) The 3rd accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

11) The 3rd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a) (ii) of Unlawful Activities (Prevention) Act.

12) The 4th accused (Nizamudeen @ Nizumon) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w 124A IPC.

13) The 4th accused is further sentenced to undergo Rigorous Imprisonment for a period of 7

years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

14) The 4th accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a) (ii) of Unlawful Activities (Prevention) Act.

15) The 5th accused (Shammi @ Shammas) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w 124A IPC.

16) The 5th accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

17) The 5th accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a) (ii) of Unlawful Activities (Prevention) Act.

18) The sentences shall run consecutively with the result the accused 1 and 2 will have to undergo substantive sentence of 14 years each and the accused 3, 4 and 5 will have to undergo a substantive sentence of 12 years each.



19) All the material objects exhibited in this case, namely, MO1 series, MO2 series, MO3 series MO4 series, MO5, MO6 series, MO7 series, MO8 to MO10 shall be kept along with the case records.

20) Set off under section 428 Cr.PC. is allowed as below :-

To 1 st Accused	The period from 15.08.2006 to 20.10.2006 and from 21.04.2014 to 30.11.2015.
To 2 nd Accused	The period from 15.08.2006 to 20.10.2006 and from 25.11.2015 to 30.11.2015.
To 3 rd Accused	The period from 15.08.2006 to 20.10.2006 and from 21.04.2014 to 30.11.2015.
To 4 th Accused	The period from 15.08.2006 to 20.10.2006 and from 20.05.2010 to 24.05.2010 and from 25.11.2015 to 30.11.2015.
To 5 th Accused	The period from 15.08.2006 to 20.10.2006 and from 25.11.2015 to 30.11.2015 date.

21) The accused 6 to 12 and 14 to 17 are acquitted under section 235(1) Cr.PC. with respect to all charges levelled against them. Their bail bonds are cancelled and they are set at liberty.

22) The accused 2, 4 and 5 are acquitted with respect to the charge under section 124A IPC.



DESCRIPTION OF THE ACCUSED

Sl.No	Name of Accused	Father's Name	Occupation	Age	Residence
1.	PA.Shaduly @ Haris (A1)	Abdul Karim	Service in Private company	33	Peediyakkal (H), Nadakkal, Erattupetta Village, Kottayam
2.	Abdul Rasik (A2)	Abdul Rahim,	Business	36	Perakathusseri House, Nadakkal, Erattupetta Village, Kottayam
3.	Ansar @ Ansar Nadvi (A3)	Abdul Rasak	Business	34	Perunthelil House, Kunjini Kara, Kadungalloor village, Ernakulam
4.	Nizamudeen @ Nizumon (A4)	Muhammed	Business	33	Jasmin Manzil, Panayikkulam Kara, Alangadu village, Ernakulam District, Kerala.
5.	Shammi @ Shammas (A5)	Jamal	Running computer shop	30	Ambazhathingal House, Vadakkekara, Erattupetta Village, Kottayam
6.	Shameer (A6)	Yousuf	Clerk in Orphanage	37	House No.XII/408 Karukappadath Putthan Veetil, Eriyadu Village, Thrissur
7.	Abdul Hakeem(A7)	Muhammed Iqbal	Service in Private company	28	House No.XV/365 Kadakathakathu House, Azheekodu Village, Eriyadu Panchayat, Kodungallur Taluk, Thrissur
8.	Nizar (A8)	Muhammed	Working in	33	Mundikunnel

			Restaurant		House, Pooppara village, Murikkumthotty Kara, Udumbanchola Taluk, Idukki
9.	Mohayudheenkurty @ Thaha (A9)	Saidu Muhammed	Trade man in Technical HS	38	Ulliyattu House, Adivadu, Pallarimangalam Kara, Pothanikkad Village, Kothamangalam Taluk, Ernakulam
10.	Muhammed Nissar (A10)	Ummer	Service in Private company	27	Kattilparambil(H) Vayalakkad, Kurumaloor Village, Paravur Taluk, Ernakulam
11.	Ashkar (A11)	Muhammed Ali	Aluminium fabrication work	35	HouseNo.XIII/131 Ilamthuruthi House,Azheekode village, Eriyadu Panchayat, Kodungallur Taluk, Thrissur
12.	Nissar @ Muhammed Nissar (A12)	Abu	Fisherman	40	HouseNo.XVI/123 Ettuthenguparambil House, Azheekode village, Eriyadu Panchayat, Kodungallur Taluk, Thrissur

A13 Salih, S/o. Abdul Rasik Split up being found juvenile in conflict with law

13.	Hashim (A14)	Ahamed Ashraf	Unemployed	26	Madathil House, Panayikkulam Kara, Alangadu village,Ernakulam
14.	Riyas (A15)	C.P.Aliyar	Service in	31	Chittethukudyil

			Private company		House, near Thaikkavumpadiyil Juma Masjid, Thrikkariyoor Village, Ayakkad Karayil, Ernakulam
15.	Muhammed Naizam (A16)	Pareed Hamsa	Service in Private company	29	Kollamkudiyil House, Mudikkal Bhagam, Palliparam Kara Marampilli village, Ernakulam
16.	Nissar (A17)	Ibrahim	Nil	29	Vettuvellil House, Uliyannoor, Kunjini Kara, Kadungalloor village, Ernakulam

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment / Date of filing
15.08.2006	15.08.2006	A1 – 15.08.2006 21.04.2014	20.10.2006 ---	30.12.2010
		A2 – 15.08.2006	20.10.2006	
		A3 – 15.08.2006 21.04.2014	20.10.2006 ---	
		A4 – 15.08.2006 20.05.2010	20.10.2006 24.05.2010	
		A5 – 15.08.2006	20.10.2006	
		A6 – 06.10.2008	29.10.2008	
		A7 – 06.10.2008	29.10.2008	
		A8 – 14.10.2008	10.11.2008	
		A9 – 21.10.2008	05.11.2008	
		A10 – 21.10.2008	05.11.2008	
		A11 – 21.10.2008	05.11.2008	
		A12 – 21.10.2008	05.11.2008	
		A14 – 31.12.2008	09.01.2009	

		A15 – 31.12.2008	09.01.2009	
		A16 – 08.06.2009	11.06.2009	
		A17 – 20.03.2011	23.03.2011	

Commence- ment of trial	Close of trial	Date of Judgment	Sentence / order	Service of copy of judgment for finding on accused	Explanation for delay
15.07.2014	02.06.2015	25.11.2015	30.11.2015	30.11.2015	-----

This Case coming on for final hearing before me on 16.11.2015 and upon perusing the records of evidence and proceeding and upon duly considering the same and after hearing the Public Prosecutor and Counsel for the accused, I do adjudge and deliver the following :-

JUDGMENT

The Superintendent of Police, National Investigation Agency, New Delhi laid final report before this Court alleging commission of offencens punishable under section 120B and 124A IPC and Sections 10(a)(i), 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act.

2. There are altogether 17 accused in the Final Report. Out of the offences alleged all these 17 accused are charged with the offence under section 10(a)(ii) of the Unlawful Activities (Prevention) Act. The accused 1 to 5 are alleged to have committed the offences under section 120B IPC and 124A IPC and

under section 13(1)(b) of the Unlawful Activities (Prevention) Act. The accused 1, 2, 6 and 13 are alleged to have committed the offence punishable under section 10(a)(i) of the Unlawful Activities (Prevention) Act.

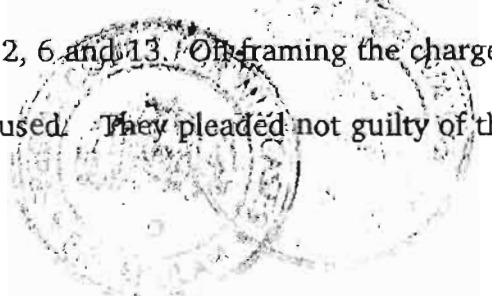
3. Now I may come to the prosecution allegations against the accused which can be stated as below :- The accused 1 to 5 on or about August 2006 entered into a criminal conspiracy at Ernakulam and other places to do illegal act of advocating, inciting and abetting unlawful activities for cession of Kashmir from India and to bring hatred and contempt towards the Government of India and in pursuance of the said criminal conspiracy the accused 1 to 5 organised a secret meeting in Happy Auditorium at Panayikulam in Ernakulam District on 15.08.2006 which was attended by the accused 6 to 17, that the accused 1 to 5 brought books and pamphlets containing anti national, seditious and inflammatory writings with intent to bring hatred and contempt against Government of India, that the accused 2 to 4 addressed the audience and advocated for cession of Kashmir through Jihad and for bringing back Muslim rule in India, stirring up communal feelings, that the books and pamphlets brought by accused 1 to 5 to the said meeting were actually publications of SIMI, a banned organisation, that the meeting of SIMI was thereby convened with intent to cause disaffection towards the Government of India, to conduct Jihad for cession of Kashmir from India and to bring back Muslim rule in India by inciting communal feelings and accused 1 to 5 thereby entered into a criminal conspiracy committed the act of sedition and advocated, abetted and incited the commission of unlawful activities and thereby committed the offences

punishable under section 120B and 124A IPC and under section 13(1)(b) of the Unlawful Activities (Prevention) Act, that the accused 1 to 17 took part in the meeting to SIMI, an association banned by Government of India, on 15.08.2006 in Happy Auditorium, Panayikulam and thereby committed an offence under section 10(a)(ii) of the Unlawful Activities (Prevention) Act and that the accused 1, 2, 6 and 13 were members of SIMI, an organisation banned by Government of India and continued to be the members of said association as on 15.08.2006 and thereby committed an offence punishable under section 10(a)(i) of Unlawful Activities (Prevention) Act.

4. The accused persons were granted bail during crime stage. But A1 and A3 were in Gujarat Jail and were produced on Production Warrant on 21.04.2014 on which day they were sent to the jail on the request of Prosecution. Hence from that date onwards they are treated as in Judicial custody in this case.

5. The accused persons appointed counsel of their own choice for defending the case on their behalf.

6. On hearing the learned Public Prosecutor and the learned counsel for the accused charges under sections 120B and 124A IPC, Sections 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act were framed against the accused 1 to 5, charge under section 10(a)(ii) Unlawful Activities (Prevention) Act was framed against the accused 6 to 17 and charge under section 10(a)(i) Unlawful Activities (Prevention) Act was framed against the accused 1, 2, 6 and 13. On framing the charges the same were read over and explained to the accused. They pleaded not guilty of those charges and claimed to be tried.



7. In this context it is to be noted that at a later stage after the completion of the prosecution evidence, it was noticed by me that as against the 1st accused charge under section 10(a)(i) of the Unlawful Activities (Prevention) Act was not framed. Hence the charge was amended and charge under the said offending portion was framed against the 1st accused, read over and explained to him and he pleaded not guilty.

8. The charge was once again amended to add the allegation against the accused 2 to 4 that they addressed the audience.

9. On the side of the prosecution PW1 to PW50 were examined and Exhibits P1 to P213 were marked and MO1 to MO10 were identified.

10. On closing the prosecution evidence, the accused were questioned individually with respect to the incriminating circumstances appearing against each and every one of them. The denied all those circumstances.

11. After conducting the questioning under section 313 Cr.PC., all the accused filed separate statement as contemplated under section 313(4) Cr.PC.

12. In his statement the 1st accused raised the following contentions :- The 1st accused is completely innocent of any of the allegations made in this case. He has not committed any kind of offences as alleged against him and he is unaware of the incident in this case. The Police and the NIA have fabricated false oral and documentary evidence against the accused. The 1st accused does not have any sort of acquaintance with any other accused except the 2nd accused in this case. The 2nd accused is the husband of the sister of the 1st accused. He had seen the accused 3

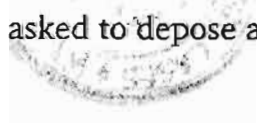
to 5 for the first time when the accused 1 to 5 were together produced before the Magistrate. He had seen the accused 6 to 7 for the first time when they appeared in this court as co-accused. He had no acquaintance with PW1 and has seen him for the first time when he had come to the witness box for giving evidence. The 1st accused was not taken in custody on 15.08.2006 from the Happy Auditorium, Panayikulam. On that day he had not gone to the said auditorium. He has no knowledge about any meeting allegedly held in the said auditorium on 15.08.2006. He had not participated in any such meeting. Shri. Rameez Raj, the brother of the 2nd accused met with a road traffic accident and sustained grievous injury on his brain. In connection with the treatment of the said Rameez Raj, himself and the 2nd accused came to Ernakulam on 15.08.2006. At that time they were apprehended by the Police and the 1st accused was taken to the Dy.SP Office, Aluva. Thereafter he had seen the 2nd accused only on the next day when they were taken for production before the Magistrate. No books or pamphlets were recovered from the possession of the 1st accused. The 1st accused has absolutely no connection with any of the books or pamphlets produced in evidence by the prosecution. The Binanipuram Police had indulged in a conspiracy with the other police personnels in Kerala collected so many books like the books produced in court, created false seizure mahazar, search list etc. and produced those books, pamphlets as if they were recovered from the accused persons. The 1st accused has no connection with any of the books or documents allegedly recovered from a room on an impression that the 1st accused was in occupation of the said room. He has not resided in any

such room. "Shakeer Azeem" alleged to have resided in the room is not at all acquainted to the 1st accused. The documents in connection with the said Shakeer Azeem have no connection with this accused. The Police have compelled the official witnesses and independent witnesses to give statements against the accused in Court as well as before the police in the course of creating false evidence. The 1st accused has never worked in SIMI. He is not a sympathizer of such an organisation. All the documents produced by the prosecution connecting the 1st accused with SIMI are fabricated documents. Exhibit P12 and P98 documents are falsely created by the Police antedating the same. To give sanctity to the incorrect allegations made in this case, the Police had falsely made the 1st accused and some other accused in some other cases alleged to have taken place in Kerala and other places. All the searches alleged to have made in houses, places of occupation, book shop, library etc. are falsely created evidence. The audio and video CDs produced by the prosecution are also fabricated ones. The 1st accused had no opportunity to hear the contents of any such audio or video CDs. The identification of the 1st accused by the prosecution witnesses is also not correct. When the 1st accused was taken to the Court in police escort from the jail and was standing in the varandah of the court, the officers in connection with the conducting of this litigation pointed out him to the various witnesses and it is only on the said basis the witnesses have deposed in court that they could identify the 1st accused. PW1 was in the array of the accused from the beginning itself. The police had influenced him and made him to give Exhibit P1 complaint, the statement before the Magistrate etc. The

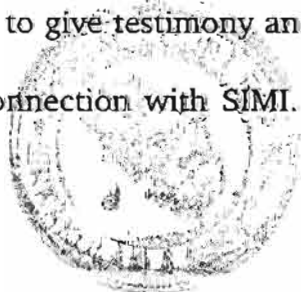
prosecution has come to know that if there is no independent eye-witness it may not be possible to prove the case and therefore PW1 was made an approver by influencing him and in the course of creating false evidence against the accused. The Hubli Sessions Court had conducted a trial against the 1st accused and some other accused in similar offences and found them not guilty and acquitted them.

13. In his statement, the 2nd accused has raised the following contentions :- The 2nd accused is completely innocent of the various allegations. He has been made accused by the NIA and Police by creating false evidence. The 2nd accused has absolutely no connection with SIMI prior to and after its ban. The 2nd accused has got acquaintance with no other accused in this case except the 1st accused. The 1st accused is the brother of his wife. He had seen the accused 3 to 5 for the first time when they together were taken to the Magistrate on 16.08.2006. He had seen the accused 6 to 17 for the first time when they appeared in court as co-accused. He has seen PW1 for the first time when he appeared before this court to give oral evidence. He had not gone to Happy auditorium, Panayikulam on 15.08.2006 nor he had attended any meeting therein nor was he taken in custody by the police from such a place on such a day. He has absolutely no connection with any of the books, pamphlets etc. which the prosecution alleges as recovered from him. Those are all falsely collected documents to create false evidence against the 2nd accused. On 30.11.2005 Rameez Raj, the younger brother of the 2nd accused met with a road traffic accident and sustained grievous injury on the brain. Thereafter, he was in continuous treatment. Since he became paralytic partly, there was suggestion to

take ayurvedic treatment and hence he was admitted in Saburban hospital, Palarivattoam wherein both Ayurvedic and Alopahy treatment were provided. When the Remeez Raj was in the said hospital his father was undergoing treatment for cardiac disease and at that time the entire responsibility for maintaining the family was on his shoulder. On 15.08.2006 himself and the 1st accused had come over to Ernakulam. While they were returning, at Aluva, during the course of vehicle inspection, the police had taken him custody and was taken to the CI office. He had seen the 1st accused only on next day when they were taken to the Magistrate. He had never resided in Kozhikode as alleged by the prosecution. He has no acquaintance with PW4 and PW5. He has seen them for the first time when they were giving testimony in court. He had not resided in any building under the ownership of PW4 and PW5 in the name of Atheek Rahman or in any other name. He has no connection with the Nanma books. Exhibit P22(c) Reliance Telephone bill was fabricated by the prosecution for the purpose of implicating the 2nd accused. The 2nd accused has never taken any membership in the Library in the Hira Complex, Kozhikode. He had never gone to any such library nor had taken any books therefrom. The photographs and videographs of the 2nd accused and other accused were taken on 17.08.2006 and were aired through all the mediums. Thereafter, the NIA officials have summoned the 2nd accused to the NIA office and also took photographs and video-graphs, showing those photographs and video-graphs instruction were given to the witnesses to identify the 2nd accused and they were asked to depose against the 2nd accused.



14. In his statement the 3rd accused raised the following contentions :-
The 3rd accused is completely innocent of the allegations raised in this case. He has not committed any of the offences alleged against him. The case has been levelled against him by creating false evidence by the prosecution. He has no acquaintance with any of the other accused in this case. He had seen the accused 1,2 ,4 and 5 for the first time when all of them together were produced before the Magistrate. He had seen the accused 6 to 17 for the first time when they had appeared in this Court as co-accused. He had seen PW1 for the first time when he had come for giving evidence in this case. The 3rd accused had not gone to Happy auditorium, Panayikulam on 15.08.2006 nor was he taken in custody from such an auditorium on the said day. He has no idea of any meeting alleged to have held in the said auditorium nor he had attended any such meeting. On 15.08.2006 he had gone for seeing a friend at which time from the Aluva Bus Stand, the police had taken him in custody and took to Dy.SP office and on the next day he was taken to the Magistrate. No books or leaflets were recovered from his possession as alleged by the prosecution. He has no connection with any of the books and leaflets exhibited in evidence by the prosecution. Those books, pamphlets etc. were collected by the Police from so many places only for creating false evidence. For the said purpose the police had created false mahazars. In order to bring evidence against the 3rd accused police had influenced the official witnesses and independent witnesses and compelled them to give testimony and statements against him. The 3rd accused has absolutely no connection with SIMI. He has never been a member of SIMI or a



sympathizer of SIMI. All the documents relied on by the prosecution to connect the 3rd accused with SIMI are illegal, baseless and fraudulently created. In an attempt to show sanctity to this case, police had falsely implicated the 3rd accused and other accused in similar offences alleged to have done in other parts of Kerala and other places. The police had not conducted any search in the places of occupation, houses, book shops, library etc. as alleged nor any recoveries were made therefrom. The evidence let in as if such searches were conducted and recoveries were made are all false evidence. The officials in connection with the conducting of litigation introduced the 3rd accused to the witnesses from the court varandah and that is how the witnesses stated before the court that they could identify the 3rd accused. The police had influenced PW1 who was originally an accused and obtained Exhibit P1 complaint, Exhibit P8 statement etc. The NIA was convinced that the case could not be proved for want of independent witness and therefore by influencing PW1, made him an approver. The Sessions Court, Hubli had acquitted the 3rd accused and others in similar cases.

15. The 4th accused raised the following contentions in his statement :- He is completely innocent of any of the allegations raised against him in this case. He has been implicated in this case by the Police and NIA purposefully and basing on falsely created documents. He has absolutely no connection with SIMI either before or after its ban. He has no acquaintance with any other accused in this case. He was conducting a bakery along with his father. On 15.08.2006 from the bakery in the afternoon period he had gone for consuming the food. On the way he

had gone to the shop of one Alikka from where he used to purchase groceries. From the said shop the police had apprehended him and forcefully taken him to the Dy.SP Office, Aluva. The 4th accused has no previous acquaintance with PW1. He does not belong to the Salafi sect of Islam. Hence he never had attended any mosque belonging to the Salafi sect. He is a member of Sunni Muslim Jama-ath, Panayikulam and used to go for offering prayers to the Mosque coming under the said jama-ath. He used not to cooperate with Mujahid and therefore would not attend their Mosque. He has not convened the meeting alleged in this case and had not invited anybody to attend such meeting. He had not participated in the meeting nor had controlled the said meeting placing himself on the dais. The police had not taken him from any such meeting place. He had seen PW1 for the first time when he had come over to the Court for giving deposition. PW1 had deposed untrue facts before the Court that 4th accused had invited him to a meeting alleged in this case. Similarly, PW2 also deposed falsehood before the court that he had booked the hall for convening the meeting. Such wrong version was given by PW2 as intimidated her by the investigating officer. Exhibit P10 diary was created falsely and it is a fabricated document. The books detailed in Exhibit P63 Mahazar as recovered from the possession of A4 are actually collected by the prosecution agency from very many places for using it as a false evidence against the accused. None of the books detailed in Exhibit P63 were recovered from the possession of the 4th accused. He had seen the accused 1 to 3 and 5 for the first time when they were produced before the Paravur Magistrate on 16.08.2006 along

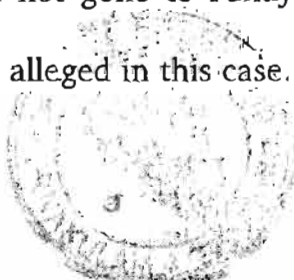
with him. He had seen the accused 6 to 17 for the first time during the course of the trial in this case. After the NIA had taken over the investigation, they had summoned him to their office and had taken his photographs in various poses. Using those photographs and showing the same to the witnesses a false identification was done in this court. The investigating officer after arresting him on 16.08.2006 had obtained signatures in various papers, many of which were blank papers. He had never been implicated in any other criminal cases.

16. The 5th accused filed a statement raising the following contentions :- The 5th accused is innocent of the various allegations raised in this case. The Police and NIA have created false evidence, brought in false witnesses and had falsely implicated him. The 5th accused has no connection with SIMI either before or after its ban. He has no acquaintance with any other accused in this case. After the completion of his studies, because of the poor situation in his house he himself had searched for a job and was conducting a computer sales-service in Aluva and Ernakulam. His paternal uncle's son's family is residing in Aluva. The 5th accused is residing with the said family at the time of his doing computer service work. On 15.08.2006 for doing computer service with a service bag he was proceeding in the motor cycle of his brother. On inspection by the police the vehicle rider did not have licence and other books of the vehicle. Hence he was taken to the CI office. Thereafter, he was made an accused in this case. The documents alleged to have been seized from the possession of the 5th accused were not actually in his possession and no such documents were recovered from him. Those were falsely

managed by the police for the purpose of implicating the 5th accused. About 3 weeks prior to the commencement of the trial the 5th accused was summoned to the NIA office at Ernakulam. From there various photographs of him were taken and those photographs were shown to the witnesses for false identification in the Court. PW31 was present in court throughout from the date of commencement of trial. He interacted with the 5th accused and obtained his address and thereafter pretended that he could identify the 5th accused.

17. The 6th accused contended as below in his statement :- He is innocent of the allegations . He has no connection with the organization by name SIMI and has not worked in the said organisation either before or after its ban. He had not gone to Panayikulam on 15.08.2006 and not attended any meeting alleged to have held in this case. He was not taken by the police from any such meeting place. He was attending his ailing father who was admitted in Lourdes Hospital, Ernakulam. On 05.10.2008 at about 8 p.m. he was taken by the police from the said hospital and taken to the Ernakulam Police Club and then to the Ernakulam North Police Station and thereafter on the next day was produced before the Court. Some days prior to the commencement of the evidence in this case, he was taken to the NIA office and his photographs were taken therefrom.

18. The 7th accused contended as below in his statement :- He has no connection with the SIMI and has not worked in the said organisation either before or after its ban. He had not gone to Panayikulam on 15.08.2006 nor he had attended any such meeting alleged in this case. He was not taken in custody by the



Binanipuram police on 15.08.2006. He was taken in custody by the police at about 10 a.m. on 06.10.2008 from a place known as Azheekode and was taken to the Kodungallur Police Station. On the said date at about 5.30 p.m. his arrest was recorded. Some days prior to the commencement of trial in this case, he was summoned to the NIA office and his photographs were taken therefrom.

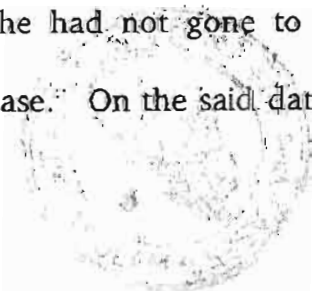
19. The 8th accused raised the following contentions in his statement :- He has no connection with the SIMI nor he had worked in any such organisation either before or after its ban. He had not gone to Panayikulam on 15.08.2006 nor he had attended any such meeting alleged in this case. He was not taken by the Binanipuram police on the said date. He was working in Royal Hotel at Aluva. On 13.10.2008 at about 2 p.m. while he was working in the said hotel he was apprehended by the police and taken to the Dy.SP office, Malappuram. His arrest was recorded on the next day. Some days prior to the commencement of evidence in this case, he was summoned to the NIA office and his photographs were taken therefrom.

20. The 9th accused raised the following contentions in his statement :- He is completely innocent of the allegations in this case. He had not gone to the Happy auditorium, Panayikulam on 15.08.2006 nor had attended any meeting therein on the said date. He does not know how his name and address were obtained by the police. He has no connection with other accused in this case till 2008. PW1 was the Imam in a Masjid at Adivad near Kothamangalam in 2011. The said Masjid is nearby to the house of the 9th accused and he used to go there for offering prayers.

During 2011 he was an active worker in connection with the said Masjid and thereby he had acquainted with PW1. Prior to that he had no acquaintance with him. It is because of the above said acquaintance only PW1 identified 9th accused from the Court. PW31 was in the Court varandah from the date of the commencement of the evidence in this case. He got acquainted with the 9th accused and other accused in this case and at that time he had understood the name and address of the 9th accused. Because of the said acquaintance only PW31 deposed that he could identify the 9th accused in Court.

21. The 10th accused raised the following contentions in his statement :- He had not gone to Panayikulam on 15.08.2006 nor had attended any meeting therein. In fact such a meeting was never conducted in the said hall on the said date. PW48 has arrayed the 10th accused as an accused only on the basis of conjectures and surmises. The 10th accused is an ordinary Indian citizen following all Indian Laws. He had not taken part in any of the meeting of SIMI nor he had taken any membership in any such organization. He was a student at the time of the incident alleged in this case. He had not committed any of the offences alleged in this case.

22. The 11th accused filed statement raising the following contentions :- He is completely innocent of the allegations in this case. He has absolutely no connection with the SIMI. He has not worked with SIMI either before or after its ban. On 15.08.2006 he had not gone to Panayikulam nor had attended any meeting alleged in this case. On the said date he was not taken in custody by the



Binanipuram police. He was taken in custody by the Police on 21.10.2008 at about 10 p.m. from Azheekode. Prior to the commencement of evidence in this case, he was summoned to the NIA office and his photographs were taken.

23. The 12th accused filed statement raising almost identical contentions as raised by the 11th accused. He would contend that he was taken in custody by the police on 20.10.2008 at Eriyad and his arrest was recorded from the Kozhikode Police Club on the next day.

24. The 13th accused filed statement raising contentions identical to the contentions raised by the 11th accused.

25. The 14th accused filed statement raising the following contentions :- At the time of the incident alleged in this case, the 14th accused was a Plus Two student. At that time and thereafter throughout he has been residing in a place 400 meter south of Happy auditorium. He has never worked in SIMI. He had not gone to Happy auditorium on 15.08.2006. PW1, Rasheed Moulavi came to acquainted with the 14th accused only when PW1 was arrested along with him by PW48. He identified the 14th accused in court because of such an acquaintance. PW31 came over to the court on very many days during the course of evidence and thus he happened to acquainted with the 14th accused. The 14th accused was never taken in custody by PW37 as alleged in this case. His photographs were taken by the NIA officials. He is completely innocent of the allegations in this case.

26. The 15th accused filed statement raising the contentions identical to the contentions of the 11th accused. He would say that he was arrested on 31.12.2008

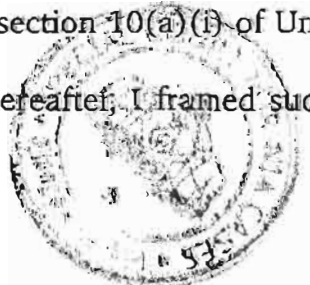
at about 11 a.m. while he was studying for MBA from the Feroke College, Kozhikode. Thereafter, he was taken to the Dy.SP Office, Malappuram.

27. The 16th accused raised contentions identical to the contentions raised by the 11th accused. He would further contend that on 07.06.2009 at about 10 a.m. he was summoned to the Perumbavoor Police Station and his arrest was recorded.

28. The 17th accused filed statement raising the following contentions :- A meeting as alleged by the prosecution had not taken place in the Happy auditorium at Panayikulam on 15.08.2006 and the 17th accused had not participated in any such meeting. The 17th accused had taken up a job abroad and had gone there. PW48 had arrayed him as an accused in this case only on the basis of surmises and conjectures. He is an Indian citizen obeying the laws in India. He has never taken a membership in SIMI. He had not participated in any activities of SIMI prior or after the ban of SIMI. He is completely innocent of the allegations in this case.

29. Thereafter, I have heard the Public Prosecutor and learned counsel for the accused as mandated under section 232 Cr.PC. Since I found that this is not a case wherein prosecution has not let in any evidence, I did not pass an order acquitting the accused under the said provision of law.

30. Thereafter, I have called upon accused to enter on their evidence. It was when the case posted for defence evidence I noticed the mistake of non framing of charge under section 10(a)(i) of Unlawful Activities (Prevention) Act against the 1st accused. Thereafter, I framed such a charge against the 1st accused also read

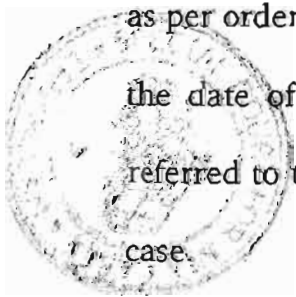


over the explained to him to which he pleaded not guilty. A1 was then asked as to whether he intends to recall any prosecution witnesses already examined. It was submitted that no prosecution witnesses need be recalled and examined again.

31. It was submitted that there is no oral evidence for the accused persons. During the course of the examination of the prosecution witnesses, Exhibits D1, D3, D4, D5 series, D6 series which are the case diary contradictions in the statement of PW16, PW37, PW32, PW47 and PW48 were exhibited as defence evidence. Moreover, through PW30 the copy of Exhibit P51 letter annexing the audio and video CDs were exhibited as Exhibit D2 on the side of the defence. After the order under section 232 Cr.PC, the accused 1 and 3 have produced the common judgment in SC 49/2008 and SC 112/2009 of the Sessions Judge, Dharwad, State of Karnataka. The same has been marked with consent as Exhibit D7. Thus, the evidence on the side of the defence are Exhibits D1 to D7.

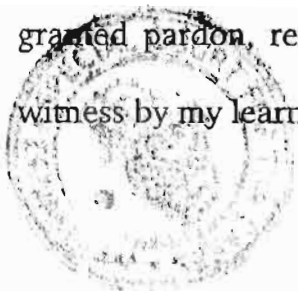
32. Thereafter I heard the learned Public Prosecutor for NIA and the learned counsel for accused persons in detail.

33. During the course of hearing it was brought to my attention that in the final Report A13 is shown to have born on 30.05.1989 and hence had not completed the age of 18 years on the date of incident. I conducted an enquiry and as per order dated 29.10.2015 found that A13 was a Juvenile in conflict of law on the date of incident. Hence, the case against him was bifurcated and he was referred to the Juvenile Justice Board. Thus, now there are only 16 accused in this case.



34. Before proceeding to raise points and to discuss on the evidence on record, I feel it would be better to give a brief description of the witnesses examined on the side of the prosecution and their role for the sake of convenience.

35. PW1 is Rasheed.V. He was the Imam of the Salafi Masjid, Panayikulam from February 2006 to March 2010. He said that he was invited to attend the meeting arranged by Nisarnudheen(A4) at the Happy auditorium, Panayikulam on 15.08.2006 on the subject – The role of Muslims in the Indian Freedom struggle (ഇന്ത്യൻ സ്വാതന്ത്ര്യ സമരത്തിൽ മുസ്ലീങ്ങളുടെ പങ്ക്). PW1 attended the said meeting on the said date. He deposed about versions of the speakers in the meeting especially that of A2 and A3. He along with the other accused in this case were taken to the police station by PW37, the Sub Inspector of Police, that in the night on the said date PW1 lodged the Exhibit P1 First Information Statement basing on which the Exhibit P1(a) FIR in this case was registered. After PW48 had taken over the investigation, PW1 along with other 12 persons who attended the meeting were also booked as accused and he was also arrested. However, after the NIA had taken over the investigation PW1 expressed his willingness to give a confession under section 164 Cr.PC and it was done so and that thereafter on an application moved by NIA before this court, PW1 was summoned and he expressed his willingness to disclose the entire aspects about the case known to him and accordingly he was granted pardon, removed from the array of the accused and made a prosecution witness by my learned predecessor in office.



36. Razia Ali, who gave testimony as PW2 is the wife of Ali (CW1). The said Ali was the owner of Happy auditorium at Panayikulam. PW2 deposed about the giving of this auditorium to A4 for conducting Quran class on 15.08.2006 and she would also depose about the fact of apprehending of A4 and so many other people at about 1 p.m. on that day from that place by Police. She also proved Exhibit P10 Diary and Exhibit P10(a) page therein regarding giving of the auditorium to A4 for conducting Quran class.

37. PW3, that is Muhammed Asharaf V.K. was an active worker of SIMI and was member of the Ernakulam District Committee of SIMI, prior to its ban. He was brought in to prove the activities of SIMI subsequent to its ban including the activities of many accused therein. But on that aspect he turned hostile to the prosecution. He did not identify any of the accused persons in court.

38. PW4, S.Manoharan Pillai is a business man in Kozhikode. He also owns buildings which are given on rent which buildings are located at Puthiyambalam, Kozhikode. He said that he knows the 2nd accused herein, that the 2nd accused had occupied a building on rent in the name of Athique Rahman on the basis of a licence deed, that is Exhibit P13. He also would say that the said licence deed was entrusted by him to the police, at which time he had seen the 2nd accused from the Police Club at Kozhikode.

39. PW5, P.M.Mukesh is the son of PW4. He also gave versions in consonance with the versions of PW4 and his special role herein is to prove Exhibit

P14 Seizure mahazar with respect to the taking in custody of Exhibit P13 licence deed.

40. The Scene Mahazar in this case is Exhibit P15. PW6, that is Rafeek.PJ is an attester to the said scene mahazar. His version is that he gave signature to the Exhibit P15 on the day succeeding the day of incident in Happy auditorium.

41. Mahin.C.A. who testified as PW7 is a DTP operator. He would admit that he had worked in Nanma Book stall in Kozhikode from 2004 to 2006. According to the prosecution, PW7 is a person having acquaintance with Rasik (A2) while working in Nanma book stall in Kozhikode. But he refused to identify any of the accused in the dock and in that context he did not fully support the prosecution.

42. Shihab Ibrahim, PW8 was an executive committee member of Islamic Youth Movement (IYM) for about 1 ½ years during 2004-05. His version is that the 4th accused was also member of IYM, that he had disassociated with A4 because of the difference of opinion. He knows about the incident in this case and knows about the arresting of A4 in the said incident. He would say that SIMI does not follow the concepts of Islam.

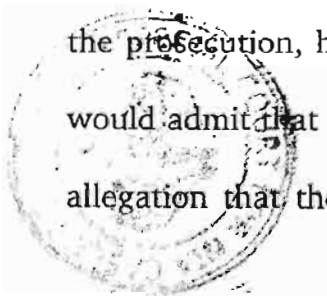
43. P.A.Muhammed Shereef who testified as PW9 was a Laboratory Assistant in an school. He identified A2 from the Court stating that A2 was residing about 200 meters from his house. He knows about the incident in this case. He was a member of Islamic Call Association (ICA). He would say that he never had worked in SIMI even though the prosecution wanted to prove that PW9 was a SIMI worker. In that context the prosecution declared him hostile.

44. Ashraf.V.S. who testified as PW10 identified the 4th accused stating that his acquaintance with 4th accused was from his childhood. PW10 is a member of solidarity and prior to that he had worked in Students Islamic Organization (SIO) which is a students wing of Jama-ath-a-Islami. He would say that he never had worked with A4 in any association. He denied of having gathered any knowledge about this case and in that context he was declared hostile by the prosecution.

45. PW11, Abdul Sathar PM would say that 5th accused is the son of his sister. However he pretended ignorance as to the association where in 5th accused was working. He would admit gathering of knowledge about A5 booked in this case. He also turned hostile to the prosecution.

46. Fahad Salim, PW12 had run a publication by name 'Kaison Books' in Kozhikode during 2006. At that time he also had worked in Sunni Students Federation (SSF). The prosecutor wanted to prove that PW12 had gathered sufficient information about the search conducted by Police in Nanma Book Stall, Kozhikode. But on that aspect PW12 turned hostile to the prosecution. However, he would admit some documents as that of him which according to the prosecution were recovered in the search at Nanma Book stall.

47. PW13, Nadeer.V.M was working as a computer operator during 1996. He identified A1 and A2 in court since they are closely related to him. According to the prosecution, he also was a member of SIMI but he had denied the same. He would admit that Shibily, his brother-in-law and A1 were in Ahmadabad jail on the allegation that they continue their activities in SIMI. He would say that he had



never participated in the activities of SIMI during 1996. He also was declared hostile by the prosecution.

48. Shri.Madhu.K.P, PW14 is the Land Assignment Deputy Tahsildar in Rajakkad in Idukki District. He was the Village officer in Alangad Village during 2008-09. He gave Exhibit P29 Possession Certificate to the effect that on 15.08.2006, the Happy auditorium, Panayikulam was in the possession of Ali, S/o. Muhammed, Panikkaru Parambil. He also proved the site plan prepared in this case as Exhibit P31 which was prepared by Special Village Officer PK.Vijayan who is no more at present.

49. Shri.N.T.George, PW15 has seen part of the incident, according to the prosecution. It is his version that on 15.08.2006 while he had gone near the Happy Auditorium, Panayikkulam he saw a police jeep coming and 3-4 police officers ascending the steps of the auditorium and he followed them. He also paid attention to the voices coming from the auditorium which according to him were anti-national speeches and he immediately left the place.

50. Shri.Kareem who testified as PW16 is an attestor to the Seizure Mahazar of Exhibit P10 diary. The said seizure mahazar is Exhibit P32.

51. Shri.T.K.Thulasidasan, PW17 is the owner of a six line quarters at Nattakam in Kottayam District. He said that the 16th accused in this case was an occupant in one of the said quarters on rent. He also said that one day police had come and asked for the key of the quarter occupied by A16 and police took a bag containing some posters and notices. He attested the Exhibit P35 search list in

respect of the same.

52. Shri.Abdul Azeez.M.A., PW18 is a religious teacher in a Mosque. He had worked in the Indian Youth Movement at Panayikkulam. He turned hostile to the prosecution since he pretended ignorance about the incident in this case. However, he would say that he had acquaintance with the 4th accused who also was a worker of IYM.

53. Shri.Mohammed Shabeer.M.A., PW19, belongs to Nadakkal in Erattupetta. He identified the 2nd accused stating that the elder brother of A2 was his class mate and they used to go to school together at which time A2 also accompanied them. According to the prosecution, PW19 also worked in the SIMI during 1996-97. But he turned hostile by denying the same. Exhibit P12 showing the list of SIMI members was drawn to his attention and he would say that "Shabeer Manakkaparambil, Nadakkal" mentioned therein is himself only.

54. Smt.Geetha Kumari.N., PW20, was the Village officer of Kadungallur village during 2009-2010. She gave Exhibit P38 report giving residential address of A3 Ansar and A17 Nissar.

55. Shri. Tomy Sebastian, PW21, was the Village Officer of Alangad Village in Ernakulam District during 2009. He gave Exhibit 39 certificate showing the residence of A4 Nisamudeen and A14 Hashim.

56. Shri.Shaji.K.G., PW22, was the Village officer of Erattupetta village in the month of September 2009. He gave the Exhibit P40 residential certificate in respect of A1 -Shaduly, A2 -Rasik, A5 - Shamas and A13-Salih

57. Shri. Sangeeth.T.R., PW23, was the Village Officer of Azheekode village in Thrissur District during 2009. He gave Exhibit P41 permanent residential certificate in respect of A7-Abdul Hakkeem, A11- Ashkar and A12 – Nissar @ Muhammed Nissar.

58. Smt.K.Bindu, PW24, was the Village Officer of the Eriyad village in Kodungallur Taluk during 2009. She gave Exhibit P42 permanent residential certificate in respect of Shameer (A6).

59. Shri. Satheesan Nair, PW25, was the Village Officer of Pooppara village in Udumban Chola Taluk in 2009. He gave Exhibit P43 certificate showing the permanent residence of Nissar, A8.

60. Smt.K.E.Hajira, PW26, was the Village Officer of the Pothanikkara village in Ernakulam District during 2009. She gave Exhibit P44 residence certificate in respect of Mohiyudeen @ Taha, A9.

61. Shri.Gouthaman.A.S., PW27, was the Village Officer of Karumallur village in Paravur Taluk. He gave Exhibit P45 residence certificate in respect of A10 Muhammed Nissar.

62. Shri.Sunil Mathew, PW28, was the Village Officer of Thrikkariyoor village of Kothamangalam taluk. He gave Exhibit P46 permanent residence certificate in respect of Riyas, A15.

63. Shri.PS.Raveendran Nair, PW29, was the Village Assistant of Marambilly village in Ernakulam District during 2009. He gave Exhibit P47 permanent residence certificate in respect of Muhammed Naisam, A16.



64. Shri. K.P.Thampi, PW30, was the Tahsildar, Paravur. He gave Exhibits P48 and P50 reports after verifying the contents of certain VCDs, CDs, Floppy discs etc. with the help of some of his subordinate staffs in his office computer.

65. Shri.PB.Pradeep, PW31, was the Police Constable in Binanipuram Police Station. He accompanied PW37 to the Happy Auditorium and also had seen part of the incident. He also spoke about the portion of the speeches heard by him. He also deposed about the registration of the FIR, arrest of the accused 1 to 5 and the seizure of various books, pamphlets etc. from the accused. He identified A1 to A5 and some other accused also.

66. Shri.Sakeer.PM., PW32, also was a Police Constable of the Binanipuram Police Station and he also accompanied PW37 along with PW32 to the Happy auditorium, Panayikulam on the day of the incident. He said that he heard some portion of the speeches which were against India. He also identified A1 to A5. He also stated about registering of a case against A1 to A5, arresting of them, seizing of books etc. from them.

67. Shri. Shaiju.PL, PW33, was the Sub Inspector of Police, Nadakkavu Police Station in Kozhikodu during 2006. He conducted a search in the library in the Hira Complex in Mavoor Road at Kozhikode and seized certain books therefrom. He also seized the issuing register from the library. He identified those articles seized by him.

68. Shri.Mohandas.P, PW34, was a member of the Special Investigation team and was present when Dy.SP Sasidharan (PW48) questioned the owner of

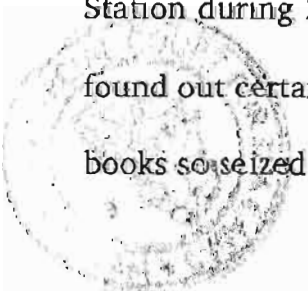
Happy Auditorium. He would say that the said owner gave an old diary stating that entries regarding the leasing out of the auditorium are made therein. He also attested Exhibit P32 seizure mahazar of the said diary.

69. Shri.A.J.Babu, PW35, was the Circle Inspector of Kozhikode Town during 2006. He conducted search in the Nanma Book Stall in Kozhikode, recovered certain books therein as per Exhibit P73 search list. He identified the articles seized by him.

70. Shri.G.Sreedharan, PW36, was the Dy.SP, Internal Security in the Head Quarters of SBCID at Thiruvananthapuram. He deposed about the verification of files regarding the SIMI activists by Dy.SP Sasidharan and recovery of the copies of the relevant pages of the said file. He attested Exhibit P97 seizure mahazar in respect of the same.

71. Shri.K.N.Rajesh, PW37, was the Sub Inspector of Police, Binanipuram Police Station from 23.11.2005 to 25.08.2006. He is the detecting officer herein and he also registered the case on the basis of the first information given by PW1. He arrested accused 1 to 5 and seized the books, pamphlets etc. which were concealed inside their dress and he also conducted part of the investigation. He is the most important witness as far as this case is concerned.

72. Shri.N.B.Asainar, PW38, was the Sub Inspector, Vazhakkala Police Station during 2006. He conducted search in the house of A5 on 16.08.2006 and found out certain books therefrom. Exhibit P130 is the search list. He identified the books so seized therefrom.



73. Shri.Tomy Sebastian, PW39, was the Police Circle Inspector, Muvattupuzha during 2006. He conducted search in the house of Rasik (A2), but could not trace out any incriminating materials therefrom.

74. Shri.PVikraman, PW40, while working as the Circle Inspector, Tirurangadi was a member of the Special Investigation Team of this case. On 07.10.2008 he conducted the search in the house of Shameer, A6 and recovered two VCDs therefrom. He also conducted search in the house occupied by A7 on the very same date. He seized one book therefrom. He identified the search lists, search memorandum, item seized etc. as per his two searches.

75. Shri.B.P.S.Parihar, PW41, was the SHO, Pithampur in District Dhar, Madhya Pradesh during 2008. He arrested A1 and A3 herein in connection with Crime No. 120/2008, Pithampur Police Station. He proved the certified copy of the FIR, Seizure Mahazars and translated copies of the same in the said case. He identified A1 and A3 from the Court.

76. Shri.Virendra Kumar, PW42, was the Under Secretary in the Ministry of Home Affairs in New Delhi in 2010. He was competent to authenticate any instrument in the name of President of India. He signed the order sanctioning to prosecute the accused in this case. The said sanction order is Exhibit P147.

77. Shri.Vivekanandan.K, PW43, was the Crime Branch Detective Sub Inspector, Kozhikode in 2008. As directed by the investigating officer herein he had gone for enquiry about Shakeer Azeem at Madras and gave his report after such enquiry.

78. Shri.Johny Mathew, PW44, was the Vigilance Dy.SP, Kottayam. He gave a report to the Special Branch CID, Head Quarters, Thiruvananthapuram narrating the activities and office bearers of SIMI.

79. Shri.Assinar, PW45, was the Kasaba Circle Inspector in Kozhikode City during 2006. He conducted search in Triveni Quarter on 18.08.2006. He recovered so many items therein and identified those items.

80. Shri.C.Radhakrishna Pillai, PW46, is the Dy.SP, NIA, Cochin unit. He proved the re-registered FIR by the NIA. As part of the investigation he questioned some accused herein. He arrested A17 while he was brought to India on the basis of look out circular.

81. Shri.K.G.Babu Kumar, PW47, was the Circle Inspector, Aluva from 14.08.2006 to 19.05.2008. He took over the investigation in this case and conducted investigation. He recorded the statement of some witnesses.

82. The Kerala Government, some time after the investigation by PW47 was over, constituted a Special Investigation Team for conducting the further investigation in this case. The head of the said investigation team was PW48. He started investigation on 16.09.2008. According to him during investigation he was convinced that the persons who attended the meeting by sitting as the audience also had an active role in the convening of meeting and hence filed the report arraying them as additional accused 6 to 18. It is to be noted that during said course PW1 herein was arrayed as A16. He arrested all the accused except A17 who were added by him. He questioned many of the witnesses in this case and recorded their

statement.

83. Shri.Ravi Gambhir, PW49, was working as DSP, NIA on deputation during 2009-2010. He conducted investigation in this case partly after the case was taken over by the NIA. He arrested A4 because warrant was pending against him. He identified A4. He examined some witnesses herein.

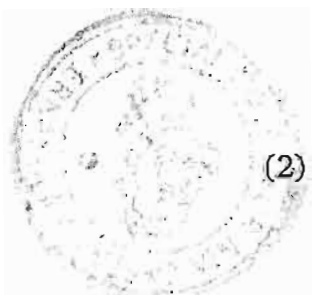
84. Shri. Lhari Dorjee Lhatoo, PW50, was the Superintendent of Police, NIA, Delhi. He was the Principal Investigating officer in this case after the same was taken over by the NIA. He personally examined PW1 and recorded his statement. He requested the court to tender pardon to PW1 and thereafter only PW1 was tendered pardon and made an approver. He produced Gazette Notification declaring SIMI as an unlawful organisation.

85. Thus, I have dealt with the evidence of witnesses in brief. I will be touching with their evidence elaborately during my course of discussion under points that would be raised for the purpose of consideration in this case.

86. The points that arise for consideration in this case are :

(1) Whether the accused 1 to 5 had in or about August 2006 entered into a criminal conspiracy at Ernakulam and other places to do unlawful activities for cession of Kashmir from India and to bring hatred and contempt towards the Government of India as alleged by the prosecution ?

(2) Whether the accused 1 to 5 organized a meeting of Students Islamic Movement of India (SIMI) on 15.08.2006 at Happy Auditorium,



Panayikulam as alleged by the prosecution ?

- (3) Whether the accused 1 to 5 in pursuance of the criminal conspiracy, in the aforesaid meeting of SIMI attempted to spread anti-national and seditious feelings by way of speeches and publications in SIMI with intent to bring hatred and contempt towards Government of India and to conduct Jihad for cession of Kashmir and thereby committed an offence of sedition as contended by the prosecution ?
- (4) Whether the accused 1 to 5 in the aforesaid meeting advocated, abetted or incited the commission of unlawful activity for the cession of Kashmir from India and to bring back Muslim rule in India and thereby committed unlawful activity as alleged by the prosecution ?
- (5) Whether the accused 1 to 12 and 14 to 17 took part in the meeting of SIMI, an unlawful association on 15.08.2006 at Happy Auditorium, Panayikulam as alleged by the prosecution ?
- (6) Whether the accused 1, 2 and 6 continued to be members of SIMI on 15.08.2006 as alleged by the prosecution ?
- (7) If the offences are established, what shall be the order as to sentence ?

87. **Points 1 to 6** :- I am considering these points together since the

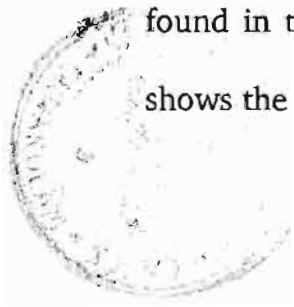
discussion on evidence on these points is common and interlinked, for the sake of convenience.



88. According to the prosecution, the accused 1 to 5 convened the meeting of an unlawful association by name Students Islamic Movement of India (for short SIMI) on 15.08.2006 at Happy Auditorium, Panayikulam which was attended by the accused 6 to 17, for the purpose of advocating, abetting and inciting unlawful activities of cession of Kashmir from India, disclaimed the sovereignty and integrity of India and was intended to cause disaffection against India and in the said meeting seditious speeches were made by the accused 2 to 4 which were supported by all those who attended the meeting.

89. Before proceeding further something has to be stated about Students Islamic Movement of India (SIMI). The same is a terrorist organization as per the First schedule to the Unlawful Activities (Prevention) Act (for short UAP Act). Over and above the fact that SIMI is a terrorist organisation it was declared as an unlawful association also by notification by the Government and last such notification being Exhibit P213 dated 07.02.2008. The incident in this case was on 15.08.2006. At that time SIMI was under declaration as an unlawful association as per a notification dated 08.06.2006. The said notification is Exhibit P210.

90. Some of the literature on SIMI also would be useful to be verified in this context. I have taken one literature of the "Institute for Conflict Management" found in the "South Asia Terrorism Portal" available in the web site. The same shows the formation of SIMI as below :-



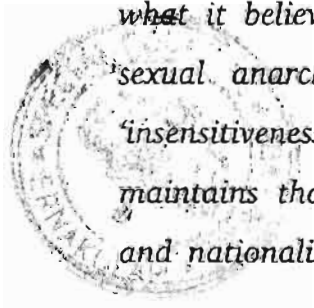
"The SIMI was formed at Aligarh in the State of Uttar Pradesh on April 25, 1977. Mohammad Ahmadullah Siddiqi, Professor of Journalism and Public Relations at

the Western Illinois University Macomb, Illinois, was the founding President of the outfit. It originally emerged as a student wing of the Jamaat-e-Islami Hind (JIH). The alliance, however, lasted only till 1981, when SIMI activists protested against Palestine Liberation Organisation (PLO) leader Yasser Arafat's visit to India, and greeted him with black flags in New Delhi. Young SIMI activists identified Arafat as a western puppet, while the senior JIH leaders saw Arafat as a champion of the cause of Palestine. JIH decided to abandon SIMI and floated a new student wing, the Students Islamic Organization (SIO)."

91. The said article also gives the following details.

"SIMI also attempts to utilize the youth in the propagation of Islam and also to mobilize support for Jihad and establish a Shariat-based Islamic rule through "Islami Inqulab". As the organization does not believe in a nation-state, it does not believe in the Indian Constitution or the secular order. SIMI also regards idol worship as a sin and considers it to be a holy duty to terminate idol worship.

SIMI is widely believed to be against Hinduism, western beliefs and ideals, as well as other 'anti-Islamic cultures'. Among its various objectives, the SIMI aims to counter what it believes is the increasing moral degeneration, 'sexual anarchy in the Indian society as also the 'insensitiveness' of a 'decadent' west. Ideologically, SIMI maintains that the concepts of secularism, democracy and nationalism, keystones of the Indian Constitution,



are antithetical to Islam. Parallel to its rejection of secularism, democracy and nationalism is its oft-repeated objective of restoration of the 'khilafat', emphasis on 'ummah' (Muslim brotherhood), and the need for a Jihad to establish the supremacy of Islam.

The outfit is known to have adopted an extremist and militant posture on various issues of concern to the Muslim community.

According to the SIMI, Al Qaeda chief Osama bin Laden is an outstanding example of a true Mujahid, who has undertaken Jihad on behalf of the 'ummah'.

SIMI's interpretation of Islam is influenced to a great extent by the writings of Syed Abul A'ala Maududi, founder of the Jamaat-e Islami.

According to the scholar Yoginder Sikand, Nationalism, for SIMI, is seen as a false idol, and one devised by the non-Muslim 'enemies of the faith' to divide the Muslims and thereby weaken them. All non-Muslims are branded by the SIMI as 'kafirs', and no distinction is made among them. Because the 'enemies of God' are expected to show stiff resistance to Islam, violent Jihad is to be waged."

92. It is stated in the said article that SIMI receives generous funds from contacts in Pakistan, that the SIMI has links with the various terrorist organisations operating in Pakistan and Bangladesh. In the said article it is also stated as below:-

"SIMI cadres consider Osama bin Laden as a 'true believer of Islam' and regard him as an epitome of 'Islamic Hero'. According to Safdar Nagori, a prominent

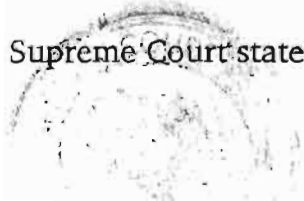


SIMI leader, bin Laden is "not a terrorist" and neither is Jammu and Kashmir an "integral part of India." At its congregations, messages and recorded speeches have been relayed from the Palestinian Hamas leader Sheikh Ahmed Yasin and Qazi Hussein Ahmed, chief of the Jamaat-e-Islami in Pakistan.

Official sources have indicated that the SIMI has established links with terrorist outfits and is also supporting extremism/militancy in Punjab, Jammu and Kashmir and elsewhere. The outfit is reported to have published objectionable posters and literature, which are intended to incite communal feelings and which question the territorial integrity of India."

93. The said article also states that SIMI publishes several magazines in various languages, including "Vivekam" in Malayalam, Sedhi Madal in Tamil, Rupantar in Bengali, Iqraa in Gujarati, Tahreek in Hindi, Al Harkah in Urdu and the Shaheen Times.

94. Thus, SIMI is not only an unlawful association but also is a terrorist organization. The basic ideologies of terrorist organization and unlawful association are dealt with in detail by the Hon'ble Supreme Court of India in Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra & others (AIR 2010 SC 2633) . In paragraph 57 of the aforesaid decision after describing the terrorist organizations mentioned in the First schedule to the UAP Act, the Hon'ble Supreme Court stated as below :-



"The precise reason why we have extracted the list of terrorist organizations under the UAPA herein before is to bring to the fore the contrast between the two legislations which are in question before us. The exhaustive list of terrorist organizations in the First Schedule to the UAPA has been included in order to show the type and nature of the organizations contemplated under that Act. A careful look of the same would indicate that all the organizations mentioned therein have as their aims and objects undermining and prejudicially affecting the integrity and sovereignty of India, which certainly stand on a different footing when compared to the activities carried out by the forces like the appellant."

95. In paragraph 61 of the aforesaid decision the Hon'ble Supreme Court stated as below :-

"The offence of terrorist act under Section 15 and the offence of Unlawful activity under Section 2(1)(o) of the UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons etc., Section 2 (1)(o) takes in its compass even a written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. The said offences are related to the Defence of India and are covered by Entry 1 of the Union List."



96. A reading of the aforesaid decision therefore would show that both "unlawful association" and "terrorist organization" challenge or pose threat to the sovereignty, security, integrity and unity of India. SIMI being a terrorist organization as well as an unlawful association, therefore, can be stated as an organization offering challenge or causing threat to the sovereignty, integrity, security and unity of India.

97. The various studies about SIMI, as already stated by me in the article copied from the web site, would show that the SIMI indulges in ideology of cession of Kashmir. Section 2(1)(b) of the UAP Act defines 'cession' as below :-

"Cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;"

98. In the article mentioned above, it is stated that SIMI is advocating that Jammu Kashmir is a part of Pakistan, a foreign country which is always on enimical terms with India. It is the knowledge of anybody and everybody in India that all the problems linked with terrorism now in India are originated in Pakistan and propagated by terrorist organizations having roots in Pakistan or organizations like SIMI having links with terrorist organizations having links in Pakistan.

99. Facts, circumstances and evidence in this case have to be evaluated on the basis of the above aspects about the unlawful association and terrorist organization especially with respect to the activities of SIMI. My attempt therefore would be to evaluate the evidence and to verify whether SIMI has any role in the

meeting alleged to have conducted on 15.08.2006 at Happy auditorium, Panayikkulam.

100. However, before proceeding I may touch upon certain serious legal issues canvassed by the learned counsel for the accused which according to them would be sufficient to throw away the prosecution case without entering into the merits of the case. It is contended by the learned counsel for the accused as follows :-

- 1) The FIR in this case, namely Exhibit P1(a) is a document which has no legal sanctity at all and the case developed on such a document having no sanctity at all cannot at all be looked into by the Court to fasten guilt on the accused.
- 2) The sanction for prosecution in this particular case is vitiated by illegalities as it has not obtained within the time frame mentioned in the statute and therefore the case as such has to fail.

101. Let me evaluate these contentions one after another. The first contention of the learned counsel for the accused is that the FIR herein is not a document having any legal sanctity. The Criminal Procedure Code does not use the term "First Information Report" or "FIR". It speaks about the information relating to the commission of a cognizable offence enabling the police officer in charge of the Police Station to register a case.

102. For the sake of convenience I may reproduce Section 154(1)Cr.PC as below :-

"154. Information in cognizable cases

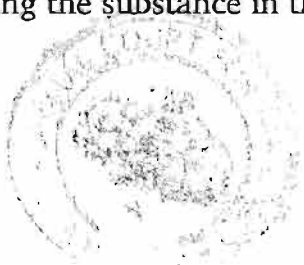
(1) Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

103. Thus what can be deduced from the above is that the information must not be any information, but must be one enabling the Police to take cognizance.

104. On a reading of the aforesaid provision of law I find that the above provision of law envisages 3 stages. Those stages are :

- (a) Reducing the information given by the informant in writing, if given orally or accepting information given in writing.
- (b) Taking cognizance by registering a case on the basis of the said information.
- (c) Entering the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

105. Therefore, registering the case on the basis of the information and recording the substance in the book kept in such form are different procedures.



106. In this case, according to the prosecution, the information about this particular case was given first in point of time by PW1. In other words, FIR was given by PW1 at about 8.15 p.m. from Binanipuram Police Station on 15.08.2006. This information which in legal parlance is usually known as first information statement or FIS is proved by PW1 and given marking as Exhibit P1. Exhibit P1 is having title as first information. The first information report contained on the other side of this document is in the form prescribed in the State of Kerala. The same is marked as Exhibit P1(a) through PW37.

107. Immediately after recording Exhibit P1 FIS given by PW1, PW37 registered Crime No. 159/2006 under section 120B, 124A of IPC and under sections 10 and 13 of the Unlawful Activities (Prevention) Act.

108. Thus, the first two stages I have stated above are done promptly. The third stage is the recording of the substance in the book in such form as the State Government may prescribe. In this context I may refer to the Kerala Police Manual 1970 Vol.II which gives the duties of a Police officer. Chapter 7 in the said Police Manual speaks about the first information to the police. In Rule 304(2) coming under the said chapter it is stated as below :-

“(2) When information of cognizable offences is laid directly at the Police Station, the officer in charge of the Station should reduce such information to writing, read it over to the person and obtain his signature or, if he is an illiterate, his thumb impression. When the informant's statement is complete, a note that it has been “read over and admitted to be correct” should be added.



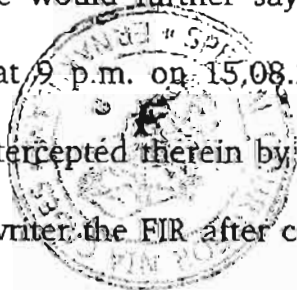
This should be done on the First Information Report Book in KPF No. 25 which is the book prescribed by Section 154, Criminal Procedure Code. In the case of written complaint regarding the commission of cognizable offence, an exact copy of it will be made in the First Information Report Book and the original sent to Court with the FIR."

109. Section 154 Cr.PC. 1973 is identical with Section 154 Cr.PC of 1898. Hence Rule 304(2) when speaks about Section 154 Cr.PC., the same applies the present Cr.PC also.

110. The whole confusion regarding the FIR in this case was because of the testimony of PW37. In examination in chief he said that he has registered the FIR, thereafter proceeded to arrest the accused and then proceeded to seize the books etc. found out from the accused. In cross examination PW37 clarified this aspect by narrating the sequences as below :-

- 1) Receiving the Exhibit P1 from PW1
- 2) Registering the case
- 3) Completing the FIR
- 4) Arrest of the Accused
- 5) Seizure of the books etc.

111. He would further say that the FIR and FIS were entrusted to the station writer at 9 p.m. on 15.08.2006 for transmitting to Court and thereafter nothing was intercepted therein by way of writing. He would say that he had so entrusted the writer the FIR after completing the entire writings in Column No.12 therein.



112. Now on the basis of the above answers, Exhibit P1(a) and contemporary documents have to be verified. In Column No. 12 of Exhibit P1(a) which is meant for recording the contents of the FIR it is stated that the accused were arrested at 9.p.m. and the pamphlets and books were seized by preparing a mahazar. When a question was asked to PW37 as to whether the "mahazar" mentioned in 'FIR which was entrusted to the writer for transmitting to the Court at 9 p.m.' is not Exhibit P63 mahazar itself to which PW37 answered in the negative. When he was again posed a question as to which is the mahazar then mentioned in Exhibit P1(a) to which he answered that at the time of completing the writing in Exhibit P1(a), a mahazar was not prepared and mentioning about a mahazar in Exhibit P1(a) is a mistake. Again PW37 was posed a question as to what are the leaflets and the books mentioned in Exhibit P1(a) to which he answered that those were the items seized subsequently by describing in a mahazar. He answered in the negative when a question was posed to him that he prepared a mahazar incorporating details of some acts which were anticipated to be done in his mind.

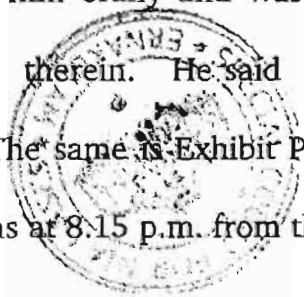
113. Thus, the prosecution was legally bound to give an explanation in the light of aforesaid answers given by PW37 how mention about the arrest and seizure of books has been made in column 12 of Exhibit P1(a) when PW37 asserted that the acts of arrest and seizure were subsequent to the completion of said column even subsequent to the entrustment of the said document to the writer for transmitting to the Court. An attempt was made in re-examination to clarify this aspect but that has become more worse when PW37 stated that he recorded about

the arrest and seizure of articles and the mahazar in column 12 of Exhibit P1(a), what he actually meant was Exhibit P63 itself which was about to be prepared by him after the completion of FIR.

114. Whatever may be the version of PW37, the circumstances under which Exhibit P1(a) and the contemporary documents were prepared have to be verified. If as wanted by the learned counsel for the accused reliance will be given only to the version of PW37, the Exhibit P1(a) FIR would lost its sanctity and when its sanctity is lost, the prosecution case completely will be lost. That is the reason why I am searching for the circumstances in this case.

115. For understanding the sequences or events, it is better to peruse the Exhibit P1(a) FIR, the Exhibits P100, P102, P104, P106 and P 108 arrest memos, Exhibit P101, P103, P105, P107 and P109 inspection memos and the Exhibit P63 seizure mahazar. These are the contemporary documents prepared on the day of the incident immediately after the registration of the case.

116. As already stated, it is basing on the information supplied by PW1 only the case was registered. Hence the sequence spoken to by PW1 also has some relevance in the case. He said that he gave complaint to the police as to what transpired on that particular day at Happy auditorium, Panayikulam which was given by him orally and was reduced to writing by the police and obtained his signature therein. He said that the said information was given by him at about 8 p.m. The same is Exhibit P1. A reading of Exhibit P1 shows that the time of giving was at 8.15 p.m. from the Binanipuram Police Station. Then regarding time



of giving Exhibit P1, there is no significant variance. Thus, the version of PW1 gives support to time, date and place recorded in Exhibit P1. He would say that after the giving of information, the police had seized certain books which were hidden inside the dress by the accused 1 to 5. He identified some of those books as Exhibit P2 to P6.

117. The sequence spoken to by PW1 could not be shattered despite the very vehement cross examination. Thus, PW1 very assertively stated that after the information given by him which was reduced in writing the police had seized books etc. from the body of the accused. As already stated while appreciating the circumstances of the case this version of PW1 has got great relevance.

118. I have already stated that the second stage after the recording of the information is taking cognizance by registering the case. The case was registered as Crime No. 159/2006. The arrest memo and inspection memos and the seizure mahazar referred by me in the aforementioned paragraph show that this particular crime number along with section of offence in Exhibit P1(a) are very clearly mentioned in those documents. Hence the acts of arrest and the seizure were after the registration of the case. When column No. 12 in Exhibit P1(a) speaks about this arrest and seizure what can be gathered from the circumstances of the case is that the completion of column No. 12 was only after the arrest and seizure.

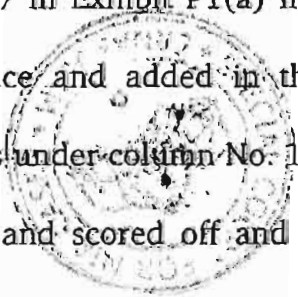
119. If this is the circumstances that could be gathered by me, the versions of PW37 regarding the sequence of events and completion of FIR prior to arrest and seizure which I have dealt with earlier have to be ignored. I ignored the same

on the principle that "the witness may lie but the circumstances will not".

120. It appears that PW37 either was bit confused or noting the mistake committed by him in Exhibit P1(a), which will be discussed by me hereafter, wanted to add something to suit those mistakes.

121. The arresting of the accused 1 to 5 was at 9 p.m. The starting of the recording of the seizure mahazar or seizure of the articles was at 9.30 p.m. Hence at the earliest only after 9.30 p.m. that is after the seizure, the FIR could have been completed by PW37 and entrusted to the writer. Hence, the recording of the time of entrustment for despatching to the court as 9 p.m. in Exhibit P1(a) can only be a mistake committed by either PW37 or by the writer who was entrusted with the duty of sending the same to Court.

122. I may say that I notice a lot of other mistakes in the FIR. In Column 3(b) for noting the date of information received in the police station it is written as "15.08.2005" when the incident itself was committed one year thereafter to be precisely on 15.08.2006. There was omission to mention the general diary reference entry number in column 3(c). PW37 in the first page of Exhibit P1(a) FIR styled himself as Sub Inspector of Police "Aluva", when he was the Sub Inspector of Police, Binanipuram Police Station. In the recording of the information gathered by PW37 in Exhibit P1(a) he initially wrote some other place but seen rubbed of that place and added in that place "Binanipuram". In the sheet wherein the contents under column No. 12 is continued initially for the word "Aluva", "Alu" was written and scored off and thereafter "Binanipuram" is added. In Column No.



15(4) for noting the date and despatch to the Court it is written as "16.08.2006 - 9 p.m.". In fact the FIR reached the Magistrate at 8.30 p.m. on 16.08.2006. Hence the time as 9 p.m. on the said day can only be a mistake. It is then possible that the entrustment of FIR would be at about 9.a.m on 16.08.2006. But PW37 concentrated on the date as 16.08.2006 and stated that the same is a mistake and date and time of despatch was "15.08.2006 - 9.p.m." When this was actually in his mind, his attempt was to make some versions to suit the said date and time. That appears to be the reason why he committed mistake as already stated by me.

123. In this regard I may refer to the decision in Bhoginbhai Hirjibhai v. State of Gujarat (1983 Cri.L.J.1096 (SC)). In the said decision the Hon'ble Supreme Court held that much importance cannot be attached to minor discrepancies and given reasons for the same. Reason 6 and 7 stated therein are important which can be quoted by me as below :-

"(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of



looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

124. The learned counsel for the accused would contend that PW37 being an Inspector of Police should not have become confused even if there was stringent and searching cross-examination with respect to the sequence of events and therefore the sequence of events stated by him will have to be taken as correct.

125. It is true PW37 being a Police Officer should have been very careful while giving testimony in Court with respect to the registering of the case and preparation of the contemporary records and about the sequence of events. When PW37 said that the mahazar and books mentioned by him in Col.12 of Exhibit P1(a) are not Exhibit P63 Mahazar and the documents mentioned therein, much explanation ought have come from his side. He should know that when he states about the events that transpired after the registration of the crime, in the most serious document like FIR, his version should be prompt and proper. Such sort of conduct though anticipated by the Court has not come from PW37.

126. I may say that these sort of conduct on the part of PW37 amounts to his “contaminated conduct”. The Hon'ble Supreme Court of India in Ram Bihari Yadav. v. State of Bihar (AIR 1998 SC 1850) held as below :-

“In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was

deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

127. I may say that with respect to the contaminated conduct of PW37 narrated by me above, the above principle of law enunciated by Hon'ble Supreme Court of India would squarely apply.

128. I may say that the Special Public Prosecutor should have been a bit more careful while covering the aspects of Exhibits P1, P1(a), the arrest memos, inspection memos and Exhibit P63 to see that writing in Column No. 12 in Exhibit P1(a) is consistent with the circumstances of the case. The Court had to analysis the case regarding the registration of FIR closely to bring the same within the actual circumstances that could be unfolded.

129. Moreover, yet another aspect also has to be verified. The FIR now before the Court which was registered in 2006 when send over to this Court from JFCM Court, North Paravur has lost some portions at its fold because of the poor quality of the paper. Hence for understanding the real writing of the same at the time of the advancing of argument I obtained a photocopy of the same from the prosecutor and perused the same. I noticed that in the said photocopy the date and time of despatch of the FIR as "16.08.2006, 9 p.m." are not there. That means when the FIR was completed by PW37 he had not inserted the said date and time and therefore his version that after the completion of the writings in Column No. 12

there was no further writings inserted therein also is not correct. This aspect also would show that the 'writer' after he received the FIR would have intended the time to be put as "16.08.2006 - 9 a.m." but instead put the date and time as "16.08.2006 - 9 p.m.". I may say that I am not relying on the photocopy of this FIR as an item of evidence but only to unfold the circumstances.

130. Thus, what could be made out is that PW37 and some of his colleagues in Police Station even though can claim to have detected a very serious offence, in the matter of preparing vital documents leading to the investigation of such offence were very much careless.

131. Since in Exhibit P1(a) PW37 had styled himself as "Sub Inspector of Police, Aluva", it has been vehemently argued that the recording of the FIS and writings of the contents of the FIR would have done from Aluva only. For drawing such inference the counsel for accused has drawn my attention to some versions of PW1. There is no dispute for the prosecution that PW1 and the other 17 persons taken from the auditorium in the afternoon were taken to the Dy.SP office, Aluva in the night on the said date. PW1 said that from Aluva his version was recorded by PW37 whereupon he subscribed his signature. It is on the basis of this version along with the styling of him as Sub Inspector of Police, Aluva by PW37 in Exhibit P1(a) that the learned counsel for the accused argued that the circumstances would indicate that Exhibit P1 was recorded from Aluva only. But in Exhibit P1 it is very clearly stated that the same was recorded from Binanipuram Police station. PW1 stated that the same was recorded at 8 p.m. and in Exhibit P1 the time is mentioned

as 8.15 p.m. In re-examination PW1 stated that except Exhibit P1 he has not given any other complaint to the Police. He would further say that he was taken to the Dy.SP office, Aluva after 10 p.m. only. In that view of the matter the version of PW1 that he gave a version to PW37 from Aluva also cannot be accepted as correct and he was giving such a version on getting confused about the sequence of events. The principle of law given in Bhoginbhai Hirjibhai v. State of Gujarat 1983 Cri.L.J.1096 (SC) by Hon'ble Supreme Court of India quoted by me in one of the aforementioned paragraph is applicable with respect to the appreciation of evidence of PW1 on this aspect.

132. If so, I cannot accept the version of learned counsel for the accused that the FIR was given by PW1 from Aluva and crime also was registered from Aluva only.

133. It is contended by the learned counsel for the accused that the FIR in this case, that is Exhibit P1(a) cannot at all be treated as the FIR as there are circumstances to show that there would have been another FIR which could be the real FIR registered by PW37. It is contended that PW37 had already received enough information with respect to the offences alleged in this case and hence in all practicability he would have registered the FIR under section 157 Cr.PC.

134. The learned counsel had drawn my attention to the Constitution Bench decision of the Hon'ble Supreme Court of India in Lalita Kumari v. Government of U.P and others (AIR 2014 SC 187). Interpreting the various provisions of the Cr.PC., the Police Act and by referring to the various decisions it is

held by the Hon'ble Supreme Court as below :-

"36) It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code."

135. No doubt, under section 154 Cr.PC which I have already quoted in this judgment earlier and under section 157 Cr.PC. whenever an information is received by the Police with respect to the commission of a cognizable offence, it is duty of the police officer to register the case. In other words, there is no provision in the statute enabling the police to delay the registration of the case. Hence it is contended that in all normal situation PW37 would have registered a case before proceeding to arrest the accused and need not have waited for somebody to give some other information. It is also contended that in that view of the matter, Exhibit P1 given by PW1 is hit by Section 162 Cr.PC.

136. In Lalita Kumari's case it is also held by the Hon'ble Supreme Court of India that after gathering information, conducting a preliminary enquiry or verification is not warranted by law. In view of the same it is contended by the



learned counsel for the accused that after receiving information by PW37 if he had not registered the FIR but proceeded to conduct some enquiry before registering the FIR the said act is illegal and in that context also the present FIR is vitiated by illegality.

137. On this aspect I may refer to the evidence of PW37. It is stated by him that while doing patrolling duty he received an information in his mobile phone about the convening of some meeting by a banned organisation at Happy auditorium, Panayikulam. It is his version that on getting such information he contacted the Circle Inspector of Police who directed him to go to the Police station, collect certain police officials and to proceed to the venue. The information so received by PW37 as spoken to by him in court if analysed would show that the same is not a proper and adequate information disclosing commission of cognizable offence as to register the case. Hence on the basis of such an information PW37 could not have registered a case. The person who received the information at the police station on the basis of such an information also could not have registered the case.

138. The question then arises in this context is as to why PW37 did not straight away go to the Happy auditorium to book the culprits prior to the conclusion of the meeting if at all such meeting was there. For this also PW37 has given convincing explanation. He said he was asked by his superior officer to proceed to police station to arrange a team of police officers then the team together go to the hall. He was only obliging the directions of his superior officer and then

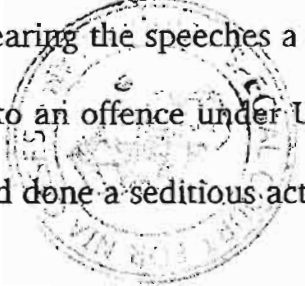
he cannot be faulted with for not proceeding to the hall immediately on gathering the information.

139. During cross-examination PW37 said that SHO would be in a position to register the case only if a believable version of cognizable offence is disclosed. Hence PW37 really had a duty to verify by going to the hall and to obtain the first hand knowledge as to what was transpiring therein prior to registering the case.

140. The question then posed by the defence is as to why PW37 did not register a case immediately after taking the accused persons and PW1 to the police station especially when at that time he had gathered sufficient information about the nature of the offence committed by these persons. This aspect has got some importance. Hence this has to be properly scrutinized by me.

141. In examination-in-chief, PW37 said about what he heard as the speech and he further said that he was convinced that whatever was delivering from the dais were seditious speeches. It was because of the same he along with his team went inside the hall and captured the persons on the dais.

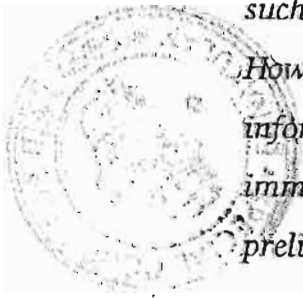
142. It is argued that when PW37 got an information that the speeches were seditious he ought have registered a case immediately on reaching the police station and should not have waited for more than 5 hours to obtain some information from PW1. To appreciate this aspect the cross-examination of PW37 could be perused. He said that on hearing the speeches a doubt arose in his mind as to the acts of the speaker amounts to an offence under UAP Act. He further said that on convincing that somebody had done a seditious act he can take cognizance and proceeded with



the case. He further said that if an offence was committed in the presence of the police officer he can suo moto register the FIR and proceeded with the case, but for that he has to be convinced that an offence was really committed. PW37 was posed by question as to why he has not registered the case then and there by hearing the speeches. He answered that in Panayikulam there were terrorist gangs and he had to convince by questing all those as to whether the meeting was that of any terrorist gangs and he also said that he got knowledge that the meeting was that of a terrorist organization only after questioning PW1 and after PW1 had given the FI statement.

143. If these are the answers of PW37 I cannot find any fault on him for not registering the case immediately on reaching the police station from the hall. I may also say that the conduct of PW37 does not offend the dictum given in Lalita Kumari's case. In the aforesaid decision in paragraph 110 the Hon'ble Supreme Court held as below :-

"110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable



offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given *ex facie* discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

144. Thereafter, the Hon'ble Supreme Court in the said decision gave the following conclusions /directions.

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

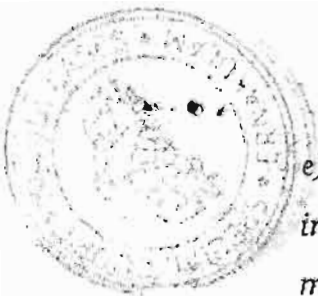
iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.



The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

145. I may say that a reading of the aforesaid directions would show that there is no total prohibition on the police officers to conduct any verification or preliminary enquiry. This is a case wherein the information initially was the convening of meeting by some banned organization. Even though PW37 had got evidence about the seditious speeches he was not sure whether the said meeting was that of any terrorist / unlawful organization. For that purpose definitely PW37 had to undergo the process of verification and preliminary enquiry by questioning all those persons assembled at the meeting. Moreover, PW37 had only a doubt that the act would attract the offence under Unlawful Activities (Prevention) Act. Doubt and belief cannot be equated. If it was belief PW37 should have registered

the case. If it was only doubt PW37 cannot be faulted for conducting a verification. Moreover, at the verification all the superior officers also were present which also indicate the seriousness of the verification process. It was only at the fag end of the verification one of the person who was brought to the police station, that is PW1, who alone had the complete knowledge from the starting of the meeting had come forward for giving the information.

146. In view of all these things I can not find that PW37 should have registered a FIR immediately after reaching the police station from the hall. He had undergone the process of verification and preliminary enquiry, which does not offend any statutory provision, for gathering the complete information as to take cognizance and then only he registered the FIR. If so, the only FIR in this case is Exhibit P1(a) and there will not be any other FIR as wanted to be canvassed by the accused.

147. It is argued by the learned Counsel for the accused 1 and 3 that there was no proper enquiry as to whether the information was recorded in the General Diary as to who actually received the information and any details regarding the information. Of course in Sadhu Singh v. State of U.P (AIR 1978 SC 1506) the Hon'ble Supreme Court held that the entries in General Diary are relevant. It is in the evidence of PW37 he had not perused the General Diary as to whether any information received in the police station was recorded therein. As already stated, the FIR also does not contain the General Diary reference entry number in column 3(c) of the same. However, in the light of the discussion already made by me there

is very clear evidence as to how the FIS got recorded and how the FIR got registered. If so, the non perusal of any entry in the general diary by PW37 did not affect the validity of this FIR.

148. In the light of the discussion made by me above I give complete legality to Exhibit P1(a) FIR in this case under which the criminal law was set in motion and which is the most important document as far as this case is concerned. If such a view is taken, the contention of the learned counsel for the accused that the FIR is not a document having any legal sanctity at all and foundation for this case will be collapsed because of such a document will not at all be accepted by me.

149. The next contention raised by the learned counsel for the accused is that the sanction is not in accordance with the statutory provisions. Section 45 of the Unlawful Activities (Prevention) Act reads as below :-

“45. Cognizance of offences. - (1) No Court shall take cognizance of any offence -

(I) Under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(II) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the

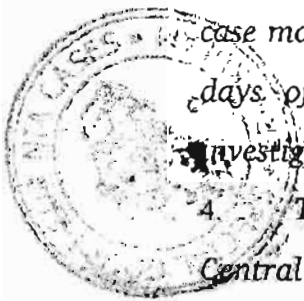
Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

150. A reading of the above provision would show that the sanction under Unlawful Activities (Prevention) Act is a two tire process. Initially, on getting report of the Investigating officer an independent review of the evidence gathered in the course of investigation has to be made by a recommending authority which if recommends for sanction the Central Government has to consider the same and accord sanction.

151. In this context I may refer to Rules 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008.

"3. Time limit for making a recommendation by the Authority. - *The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or, as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.*

4. Time limit for sanction of prosecution. - *The Central Government or, as the case may be, the State Government shall, under sub-section(2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the*



recommendations of the Authority.

152. Thus, within 7 working days of the receipt of the evidence gathered by the investigating officer, the recommending authority shall make its report containing the recommendations to the Central Government and the Central Government within 7 working days after the receipt of the recommendations shall take a decision regarding sanction for prosecution.

153. In this case, the sanction which is proved by PW42 is Exhibit P147. The same is dated 16.12.2010. I have gone through the same. It is not stated in Exhibit P147 as to when exactly the recommending authority gave recommendations or when exactly the recommending authority actually received the report of the investigating officer. In view of the same it is contended by the learned counsel for the accused that it is not possible to make out from Exhibit P147 as to whether the time stipulated under the above provisions of law have been complied with and therefore the sanction is not legal.

154. PW42 also was posed a question with respect to the date of receipt of the recommendations, the period taken for considering the same and to grant sanction etc. He only said that all these things were done within the period stipulated under the statute.

155. I perused the calender for 2010. Here itself I may say that Saturdays and Sundays are not working days for Central Government. In this case PW1 was made an approver as per the order of this Court on 23.11.2010. The application for sanction would be given only along with the evidence collected and draft final

report. The final report shows that the same was prepared after PW1 was tendered pardon by this Court. Hence the draft of the same would have prepared only after 23.11.2010 and at the earliest on 24.11.2010. The application for sanction would have given thereafter only. That means it would have given at the earliest on 25.11.2010 and would have reached the recommending authority by 29.11.2010 since 27.11.2010 and 28.11.2010 were not working days being Saturday and Sunday. Clear seven working days would have taken by the recommending authority. Considering the Calender of the year 2010, I find that recommending authority could have kept the file upto 08.12.2010. Hence the recommendation would have passed on 08.12.2010. Clear seven working days thereafter ended only on 17.12.2010. The final sanction by the Government of India was on 16.12.2010.

156. In view of the dates that could be gathered from the circumstances of the case as mentioned by me above, the only inference the Court can draw lawfully is that the Exhibit P147 sanction is strictly in accordance with the law found in Section 45(2) of Unlawful Activities (Prevention) Act and Rules 3 and 4 of the Sanction rules. Hence the contention of the learned counsel that the sanction in this particular case is not legal and correct and the prosecution is vitiated thereby, also will not be accepted by me.

157. Next to be considered is as to whether there was a meeting at Happy auditorium, Panayikulam on 15.08.2006 as alleged by the prosecution and if so whether it was a meeting of SIMI.

158. To prove this aspect, the prosecution is relying heavily on the evidence given by PW1, PW2, PW15, PW31, PW32 and PW37. The prosecution also relies on Exhibit P1 FIS given by PW1 and also the version of PW37 recorded as annexure to Column No. 12 in Exhibit P1(a) and on a diary marked as Exhibit P10 and some entries therein.

159. PW1 in Exhibit P1 FIS stated that Nizamudeen(A4) told him that on 15.08.2006 at the Happy Auditorium there will be a study class on the subject "The role of Muslims in Indian freedom struggle". Accordingly, on the said date he went to the said auditorium. He also said in Exhibit P1 that the persons who took leadership for conducting such study class were Shaduly, Rasik, Ansar and Shammas (A1 to A3 and A5) apart from A4. Almost identical versions have been given by PW1 in Court. Thus, it is spoken to by PW1 in Court and given versions in Exhibit P1 that it was A4 who informed him about the convening of a class at Happy auditorium, Panayikulam on 15.08.2006. In Court as well as in Exhibit P1, PW1 has a case that when he went to the auditorium he found only very few people, that is only 18 persons including himself and when he asked A4 about the same it was informed to him that only a very selected persons were invited for attending the study class.

160. Before proceeding further to the evidence of PW1 on this aspect it would be advantageous to refer to the evidence of PW2. At the time of the incident alleged in this case, Happy auditorium was owned by Ali(CW1). Razia Ali who testified as PW2 is the wife of the said Ali. It is deposed by PW2 that Nizamudeen

(A4) whom she identified in court, two days prior to the independence day in 2006 came over to her house and asked for providing the auditorium for conducting a "Quran class" on the said date. She would further say that her husband Ali was not in the house at that time as he was in the hospital. Then she contacted her husband over phone. He agreed to let out the hall to A4. She would say that on 15.08.2006 at about 9 a.m. A4 came and collected key of the hall. Thereafter she also found A4 ascending the steps to the hall and at that time A4 was alone. She would further say that at about 1 p.m. she found police had come there and taken some persons to the police station including A4.

161. Despite the very vehement cross-examination the above versions with respect to A4 approaching PW2 for getting the hall for the purpose of conducting Quran class on 15.08.2006, his collecting key on the said date, his climbing up the stairs of the hall etc. could not be shattered.

162. When PW37 questioned aforesaid Ali it was disclosed to him that Ali was not maintaining any "registers" in respect of the said auditorium. However, after PW48 took over the investigation, he again verified with Ali as to whether there are any records evidencing the details regarding the letting out of this auditorium, the said Ali entrusted a diary of the year 2004. This diary is proved by PW2 as Exhibit P10 stating that all the details with respect to giving of this auditorium are recorded therein by her only.

163. It has been very vehemently contended that when CW1 did not have a case about keeping of any 'registers', the subsequent collecting of Exhibit P10

diary can only be treated as an attempt made by the investigating agency to create some evidence falsely and in a concocted manner so as to suit the case of the prosecution that this hall was let out to A4. In fact PW2 proved an entry in Exhibit P10. The page containing the said entry is marked as Exhibit P10(a). This entry shows the giving of this hall to Nizamudeen (A4) for conducting Quran class and not collecting any advance from him. The said entry precisely is "August 15, Nizamudeen, പറമ്പ്, Advance - Nil."

164. At a first blush the argument of the counsel for accused is interesting but when we consider the version regarding "register" it may appear that CW1 was actually questioned by previous investigating officer about the "registers" to be maintained by him under statute and when he was not maintaining any such register he said so. Supposing he was asked as to whether he was maintaining any type of records with respect to the letting out of this auditorium probably he would have produced Exhibit 10 at that point of time itself.

165. In this context, I may refer to Section 4B(1) of the Tax on Luxuries Act, 1976 (Kerala), as below.

"4B. Registration of hotels. - (1) Every proprietor of a hotel having not less than five rooms to be rented for accommodation for residence or otherwise and of every house boat, hall, auditorium, kalyanamandapam and place of the like nature shall get his hotel, house boat, hall, auditorium, kalyanamandapam or place of the like nature registered under the Act and the registration renewed annually."

166. Thus, under the above provision of law the proprietor of an auditorium is obliged to get his auditorium registered under the said Act and the said registration must be renewed annually.

167. Rule 5(1) of the Tax on Luxuries Act, 1976(Kerala) reads as below :-

"5. Maintenance and preservation of accounts. - (i)

Every proprietor registered under the Act, every proprietor liable to get himself registered under the Act and every other proprietor who is so required by an assessing authority, shall keep and maintain the books of accounts disclosing true and complete accounts of his daily transactions including daily account of occupancy, in the case of hotels, convention centre, halls, kalyanamandapam, and collection of tax in together with the vouchers and bills."

168. As per the above provision of law every proprietor registered under Kerala Tax on Luxuries Act is liable to maintain the books of accounts disclosing the daily transactions including the daily account of occupants with vouchers and bills.

169. It would then appear that CW1 had not registered this auditorium under the Tax on Luxuries Act and therefore he would not have maintained any books of accounts under the Rules thereunder. It would have been in the said circumstances CW1 had disclosed to PW37 about the non-maintenance of any "registers". When such circumstances could be made out I will have to say that the attempt of the learned counsel for the accused to attack Exhibit P10 will not succeed.

170. In this context it is relevant to refer to the testimony of PW2 with respect to Exhibit P10. It is stated by her that the name of the persons who booked the hall would be written in the diary but their address would not be written. She would also say that for what purpose the hall is booked is written therein. She would further say that for the purpose of this hall this book is used and in this particular book herself and her husband had made entries. These are all very cogent versions given by PW2 for attaching sanctity to Exhibit P10.

171. Further, PW2 was asked a question as to why the details about the booking of August 15 was not written in the page inscribed as 'August 15' in Exhibit P10. To this she gave a very cogent explanation that when booking are written in a single page all those booking could be seen together. She would further say that the details of booking would be written in Exhibit P10(a) in the order in which it is booked and not in the order of the date of booking. She would further say that that is the reason why the details of booking of August 17, August 20, September 10 etc. are written prior to the booking of August 15. She denied a suggestion that the handwriting "August 15, Nizamudeen" and "പാതാതിക്കളം" in Exhibit P10(a) are by different persons but she would say that those are in her handwriting only. She would also deny that when the 2nd investigating officer had questioned her he suggested to have some documents with respect to the giving of this hall on rent, that because of the same she searched out an old diary from her house and she was asked to write so many entries therein fraudulently as a matter of fabrication. She would further deny that the entry as 'August 2015, Nizamudeen' in Exhibit P10(a)

was written in a place left therein as instructed by the investigating officer.

172. It is true in Exhibit P10 there is no address of either PW2 or CW1. When that aspect was questioned PW2 explained that since the handwritings there in are that of herself and her husband she can very clearly identify that this diary is that of hers.

173. PW2 denied a suggestion that the 4th accused had not come over to her nor he had collected the key of the auditorium on 15.08.2006. She would further deny that A4 had not booked for auditorium and her version to the investigating officer that A4 had booked the auditorium are utter false.

174. Thus, on a close scrutiny of the evidence of PW2 the only inference that could be gathered is that she was speaking true and correct versions before the Court and the Exhibit P10 was a diary or book kept by her with respect to the making of entries for her business as well as for the booking of the hall and from the evidence of PW2 it is also made out that A4 had actually booked the hall for the purpose of convening function on 15.08.2006 and he had collected the key from PW2 in the morning on that particular date.

175. Thus, from the evidence of PW2 it is established fairly that it was the 4th accused, Nizamudeen who actually booked the hall stating the purpose as 'conducting Quran class' on 15.08.2006.

176. However, PW1 said that the 4th accused actually told him about the conducting of a study class on the subject "The role of Muslims in the Indian freedom struggle". I do not find the inconsistency in the versions of PW1 and PW2

with respect to the purpose for which the meeting was arranged by A4 has affected the prosecution case. PW2 conveyed to the Court the information she gathered from A4 which is recorded in Exhibit P10(a) and PW1 similarly conveyed information he gathered from A4. It would then appear that A4 had misrepresented to PW2 that the hall was required for conducting a Quran class and misrepresented to PW1 that the meeting in the said hall was actually a class with respect to "The role of Muslims in the Indian freedom struggle".

177. It is contended by the accused that there was no possibility of PW1 having any sort of acquaintance with A4 at all and hence A4 inviting him for a meeting to be held on 15.08.2006 is only to be ruled out. For advancing this argument it is contended that PW1 belongs to Salafi or Mujahid sect of Muslims whereas A4 belongs to Sunni sect. PW1 has not denied this aspect. PW1 also said that A4 was not a member of the Panayikulam Salafi Masjid. It was suggested to PW1 that in Panayikulam there are various mosques run by various sects of Muslims like Sunni, Mujahid and Jama-ath Islami which he admitted but he denied that one sect would go to the mosque belonging to that sect only and not to the mosque of any other sect. He added that mosques are being used for prayers by all sects. If so, the version of PW1 that A4 used to come to Salafi Masjid, Panayikulam by which he acquainted with him need not be disbelieved. The version of PW1 in examination-in-chief that A4 used to take books and CDs from the library of Salafi Masjid was not seriously challenged. The admission of PW1 that A4 was not a member of Salafi Masjid is not sufficient to show that A4 could not attend the mosque of Salafi

Masjid..

178. Thus, the acquaintance with the A4 by PW1 has clearly come out in evidence. It is because of the said acquaintance A4 invited PW1 for the meeting to be held on 15.08.2006 at Happy Auditorium, Panayikulam. PW1 also said that the said meeting or conference was only for a selected few persons.

179. It is the version of PW1 that he had gone to the Happy auditorium, Panayikulam at 10 a.m. and when he reached there he found A4 and Hashim (A14) standing in the ground of the building. PW1 very clearly said about the convening of the meeting. He said that by about 11 a.m. some more persons had come and the meeting started at 11.a.m. at which time on the dais 5 persons including A4 sat. He identified the other 4 among the 5 persons as A1 to A3 and A5.

180. PW1 said that initially A4 introduced the persons who were on the dais to the persons assembled and thereafter A3 rendered Quran discourses for about half an hour. He would say that subsequently Razik (A2) delivered a speech for about 45 minutes, that after the conclusion of the speech by Razik, Ansar (A3) delivered the speech for about 45 minutes.

181. In Exhibit P8 which is the confessional statement given under section 164 Cr.PC. before the Magistrate by PW1, when he was in the array of accused for some period, also he gave almost identical version. Exhibit P8 is relied on to show PW1 had attended such a meeting.

182. Thus, from the versions of PW1 what could be made out is that he had actually gone to Happy auditorium, Panayikulam on the invitation of A4. But

contrary to the same, in Exhibit P1(a) in column No. 12, PW37 recorded that “മേപ്പടി പഠന ക്ലാസ്സിൽ യാദൃശ്ചികമായി എത്തിച്ചേരാൻ ഇടയായ റഷീദ് മൗലവി” (Rasheed Maulavi who happened to reach in the study class by chance). It was suggested to PW1 that it is seen recorded in some official documents that he happened to reach there by “യാദൃശ്ചികം”. He answered that if it is so recorded he would have stated so. But I may say that such version was only for PW37 in Exhibit P1(a) and not for PW1 in Exhibit P1. If so, such a suggestion as if PW1 spoke so to officials is not correct. Even if it is done, the explanation by PW1 has clarified this aspect. In fact in Exhibit P1 in the beginning itself PW1 stated that he had gone there on the invitation of A4 only.

183. PW1 very clearly spoke as to what was the particular portion in Quran discourses by A3.

184. PW1 identified, as already stated, A1 to A3 and A5 whom he was seeing for the first time from the said hall. He also could identify A14 and A9 specifically by naming them who were sitting along with him in the audience. He identified the other accused generally but without naming them.

185. It is said by PW1 that the name and the place of residence of A1 to A3 and A5 were disclosed by A4 in the beginning itself as part of introducing them. Hence the identification of A1 to A3 and A5 by PW1 as persons who were on the dais is clearly logical and acceptable.

186. PW1 deposed as to why he went to the Happy auditorium. He said that since the subject wherein the study class or discussion would be held on

15.08.2006 namely "The role of Muslims in the Indian freedom struggle" was a subject having interest for him, he went to the said meeting. Definitely, such a subject will generate interest in anybody whether he is a Muslim or non Muslim. Hence the attending of such a meeting or study class by PW1 on getting attracted to such a subject cannot at all be questioned or doubted.

187. PW1 very vehemently denied the various suggestions to the effect that he had not gone to the said hall on that particular date nor he had attended any such meeting on that date.

188. PW1 deposed that he had seen a black flex board hanging on the wall of the auditorium wherein there was inscription as "സ്വാതന്ത്ര്യദിന ചിന്തകൾ, August 2015, Panayikulam Islamic Students Centre". He has not stated in Exhibit P1 nor in his subsequent statement about his noticing such a board. Whether such a board was in existence or not at the hall on that particular date, the versions of PW1 which I have referred earlier about his getting invitation from A4, his going to the hall and sitting in the hall wherein he found delivering of introductory speech by A4, delivering of Quranic discourses by A3 and addressing a gathering including himself by A2 and A3 could not be discredited. In fact, from the versions of PW1 it is fairly established that a meeting was actually conducted in the Happy auditorium on 15.08.2006 in the morning time.

189. PW31 and PW32 had accompanied PW37 to the Happy auditorium. It is said by PW31 and PW32 that when they reached Happy auditorium from the ground level, on paying attention closely feeble sounds were heard as emanating

from the hall. These police officers climbed up the steps to the hall which is in the up stair portion, concealing themselves from the view of the persons sitting in the hall and paid attention. They found 5 persons on the dais and some other persons as audience and they also found 3rd accused delivering a speech addressing the audience.

190. What exactly were the versions of speakers are subject matter of dispute and I am not touching that aspect at this juncture. For the purpose of deciding as to whether a meeting was actually convened I rely on the versions of PW31, PW32 and PW37 about their concealing from the view of the persons sitting in the hall and seeing and hearing what was transpiring in the hall. On relying on the same, I would say that these versions also gave support to the version of PW1 about the convening of meeting in the said hall on that particular date.

191. The common meaning of 'meeting' is only gathering of more persons than one. Legal meaning of the term 'meeting' is given in Mitra's Legal and Commercial Dictionary at Page 525 as below :-

"Meeting. An assembly of a number of people for entertainment, discussion or the like. Shorter Oxford Dictionary. For a meeting there must be at least two persons, because a man cannot meet himself. The word "meeting" prima facie connotes coming together of persons for a certain purpose. In substance it is gathering of persons with a specific object in view. Awadhoot v. State AIR 1978 Bom 28,40-41."



192. As explanation to Section 21 in the Prevention of Terrorism Act, 2002 (POTA) which is repealed now, the meaning of expression "meeting" is given. I quote the same as below :-

"Explanation. - For the purposes of this section, the expression "meeting" means a meeting of three or more persons whether or not the public are admitted."

193. In this particular case, from the versions of PW1, PW31, PW32 and PW37 it is clear that there were 5 persons on the dais and 13 persons as audience. Four persons on the dais addressed the audience. A speaker would be addressing the audience to convey his idea to the persons listening him. Hence in every sense of the matter what was done in Happy auditorium on 15.08.2006 was "a meeting only."

194. I have already referred about Exhibit P10. I find that the said document is admissible in evidence and I also do not find any reasons to doubt the contents of the same. The said document was taken in custody by preparing a seizure mahazar which is marked as Exhibit P32. PW16 is an attester to the same. PW16 said that he had seen CW1 entrusting a diary. He identified Exhibit P10 also.

195. PW34 was a member of the Special Investigation team under PW48 in the investigation of this case. He was present when CW1 was questioned by PW48 on 04.10.2006. PW34 also found the entrustment of Exhibit P10 diary by CW1 and the seizing of the same by preparing Exhibit P32 by PW48. PW34 said that he had seen the writing in Exhibit P10 with respect to the allotment of Happy auditorium. The versions of PW16 and PW34 with respect to seizure of Exhibit P10

as entrusted by Ali could not discredited.

196. I have also stated that the prosecution relies on PW15 also. The version of PW15 is that he had only heard some voices from the hall but he had not stated anything further as to whether he had seen anybody in the hall. Hence from the versions of PW15 it is not made out whether he had seen more persons than one so as to constitute a gathering of people to come within the meaning of meeting.

197. Another aspect has been brought to my attention by the learned counsel for the accused to doubt the versions regarding the taking of the hall by A4. It is said by PW2 that two days prior to 15.08.2006 A4 had approached her and asked for giving the hall for conducting some function on 15.08.2006. If that version of PW2 is acceptable, the decision to convene meeting in that particular hall would have taken by A4 only on 13.08.2006. But PW1 said that one week prior to 15.08.2006 A4 approached him and told him that a meeting would be convened in Happy auditorium on 15.08.2006. It is contended that when the decision to take hall itself was only two days prior to 15.08.2006 how A4 could have invited PW1 for such a meeting one week prior to the same.

198. I may say that at the first blush this is very impressive. But on close analysis with the entire situation especially when I covered testimony of PW1 and PW2 at length, I may say that this argument would not stand. PW1 was speaking about an incident which took place about 9 years ago. Hence there was possibility of him not recollecting the exact dates etc. PW2 was speaking with reference to

what is written in Exhibit P10. Hence that version may be more acceptable. If so, PW1 would have been intimated by A4 about the convening of meeting only after his taking the hall from PW2. This is more so when in Exhibit P1 PW1 does not have a case that one week prior to the meeting he was intimated by A4 about the same and invited him.

199. In this context I may once again refer to Bhoginbhai Hirjibhai v. State of Gujarat (1983 Cri.L.J.1096 (SC)). In para 5(1) and 5(5) it is held as below :-

5(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

5(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person."


200. With respect to the aforesaid inconsistency the above dictum can be made use by this Court and if so I cannot throw away the version of PW1 as doubtful and the prosecution case as wanted to be highlighted by the counsel for the accused.

201. Thus, I repeat that it is established by prosecution that on 15.08.2006 at Happy auditorium there was actually a meeting, that the meeting

was organized by A4 as he took the said hall from PW2 and that in the said meeting A1 to A5 sat on the dais and PW1, A9 and A14 along with other persons sat as audience.

202. Thus it is concluded that there was a meeting at Happy auditorium, Panayikulam on 15.08.2006 on the basis of the booking of the said auditorium by A4 under the guise of Quran class and under the guise of information supplied to PW1 that subject to be discussed in the class would be "The role of Muslims in Indian freedom struggle". It is also proved that A1 to A5 took leadership in the said meeting by sitting on the dais and A6 to A17 and PW1 sat as the audience.

203. Then to be considered is whether it was a meeting of SIMI or a meeting conducted for spreading the ideology of SIMI. On this aspect I may initially refer to Exhibit P1. In Exhibit P1 PW1 has stated that all the persons who took leadership in convening the meeting were members of SIMI, a banned organization, that when A4 asked him about the convening of the meeting he had very specifically questioned him as to whether it has any connection with SIMI and he attended the meeting only because of the fact that he was assured by A4 that the meeting has absolutely no connection with SIMI. In Exhibit P1 he further stated that on seeing the various leaflets and books on the dais, he was convinced that the meeting was convened by the persons having alliance to SIMI and for advocating the ideologies of SIMI. Towards the last in Exhibit P1 it is stated that the conveners of the meeting were actually attempting to spread the ideologies of SIMI by convening such a meeting.



204. However, in Exhibit P1 what exactly were the gist of the speeches of the various speakers at the meeting were not clearly made out. It is only stated that Razik (A2) spoke about Kashmir and throughout his speech it is stated that in India the interest of the Muslims are not protected and various versions in the said speech were against our country and contained seditious elements.

205. I have already referred about the ideologies of the SIMI from the literatures I have referred in the earlier part of this judgment. In this context I may refer to Exhibit P212 which is the notification dated 11.08.2006 of the Ministry of Home Affairs confirming the declaration of SIMI as an unlawful association vide notification dated 08.02.2006. The said notification contains the order of the Unlawful Activities (Prevention) Tribunal, New Delhi dated 07.03.2006. Paragraphs 8 to 11 and 72 in the said order of the Tribunal can be quoted by me as below as the same would be useful to know in a better manner the ideologies of SIMI and to understand whether the speeches in the meeting reproduced by the witnesses in the Court were actually propagating the ideologies and advocating the interest of SIMI.

"8. Facts emanating from background note unfold that the Students Islamic Movement of India (SIMI) came into existence on 25th of April, 1977 as a front organisation of youth and students having faith in Jamait-e-Islamic-Hind (JEIH). In 1993, however, the respondent-organisation disassociated from Jamait-e-Islamic-Hind (JEIH) and declared itself as an independent organisation. At world level, the respondent-organisation is stated to be affiliated to 'World Association of Muslim Youth (WAMY)'.

9. The stated objectives of the respondent-organisation are :

1. Governing of human life on the basis of Quran;
2. Propagation of Islam;
3. "Jehaad" (religious war) for the cause of Islam;
4. Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

10. The respondent-organisation, states the background note, aims to utilize students/youth in propagation of Islam religion and obtain support for Jehaad (for Islam). It emphasises on the formation of "Shariat" based Islamic Rule through "Islamic Inqalab". The note adds that respondent-organisation does not believe in the Nation State. It also does not believe in the Constitution or the secular order. Idol worship is regarded as a sin by it and it seeks to end such idol worship as part of its holy duty. The respondent-association, claims the background note, enjoys a sound financial position generated through donation, membership fee and financial assistance received from time to time from its supporters in Gulf Countries. The respondent-organisation, according to Note, is having contacts with Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Being a group of students and youth, states the Note, the respondent organisation is easily influenced by hard-core Muslim terrorist organisation operating from Jammu & Kashmir and, thus, Hizb-ul-Mujahideen and Lashkar-re-Toiba have successfully penetrated into the SIMI Cadres to achieve their goals.

11. The background note discloses that the respondent-organisation has its stronghold in the States of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Kerala, West Bengal, Jharkhand, Assam, Bihar and National Capital Territory of Delhi. It further discloses that the respondent-organisation is known to have launched a country-wide campaign since November, 1996 to mobilise support for the Muslims and for the 'Caliphate' (Rule of Islam). It is stated to be against Indian Nationalism and is working to replace it with the International Islamic Order. Detailing the activities of the respondent-organisation till September, 2001, the background note mentions that the respondent-organisation advocated self-determination in Kashmir and was in close touch with Kashmir militant outfits, including pro-Pak Hizb-ul-Mujahideen (HUM) and Jammu & Kashmir Liberation Front and also extended full support to Punjab extremists and Jammu & Kashmir insurgents. The respondent-organisation was, in terms of Note, involved in various militant and disruptive activities details of which find mention in para 7(b) thereof.

72. Viewed in the light of material available before this Tribunal as discussed herein above, it is concluded that the respondent-organisation is indulging in activities which are detrimental and prejudicial to national-interest and have the potential of posing a threat to the integrity and sovereignty of the nation and also to communal harmony. I, therefore, find that there is sufficient cause for declaring the respondent-organisation

as unlawful association and, thus, confirm the ban on it as imposed by the Central Government by notification dated 08.02.2006 read with corrigendum dated 13.02.2006. The reference stands answered accordingly.

206. Thus, we have got a very clear picture about the ideologies of SIMI from the literature I have already referred as well from the above order of the Tribunal. In the light of the same it has to be verified as to whether any of the speeches in the meeting would attract the above ideologies of SIMI. Here itself I may say that I am not relying on those speeches now for concluding as to whether those speeches are against our nation as to attract an offence of sedition and relying only on the speeches to see whether those speeches are having the effect of spreading the ideologies of SIMI to conclude as to whether the meeting was actually that of SIMI members or persons having allegiance with SIMI.

207. PW1 gave the gist of the versions of Razik (A2) as below :-

"The Indian Military Force is gunning down Muslims indulging in Jihad against the Military force in Kashmir, that in India the Muslims are subjected to harassment on the basis of black laws like TADA, NSA and that against those we have to fight under the leadership of SIMI."

(കാശ്മീരിൽ ഇന്ത്യൻ പട്ടാളത്തോട് ജിഹാദ് ചെയ്യുന്ന മുസ്ലീങ്ങളെ, ഇന്ത്യൻ പട്ടാളം വെടിവെച്ചു കൊല്ലുകയാണ്, ഇന്ത്യയിലെ മറ്റു മുസ്ലീങ്ങളെ ടാഡാ, , NSA എന്നിങ്ങനെയുള്ള കരിനിയമങ്ങൾ കൊണ്ട് പീഡിപ്പിക്കുകയാണ്, അതിനെതിരെ സിമിയുടെ നേതൃത്വത്തിൽ നാം പോരാടണം.)



208. PW1 gave the gist of the lecture or speech of Ansar (A3) as below :-

"The present India was formed by the British, that India has to be taken to the old India ruled by Naizams and Mugals for which purpose we have to fight through SIMI, that nobody can extinct SIMI." (ഇപ്പോഴുള്ള ഇന്ത്യ ബ്രിട്ടീഷുകാർ സ്ഥാപിച്ചതാണ് എന്നും, നൈസാമുമാരും മുഗളന്മാരും ഭരിച്ച ആ പഴയ ഇന്ത്യയിലേക്കു തന്നെ ഇന്ത്യയെ തിരിച്ചു കൊണ്ടുപോകണം എന്നും, ഇതിനായി സിമിയിലൂടെ നാം പോരാടണം എന്നും ആരു വിചാരിച്ചാലും സിമിയെ ഇല്ലായ്മ ചെയ്യാൻ സാധിക്കില്ല എന്നും, അൻസാർ പറഞ്ഞു.)

209. Now I may refer to the versions of PW31 as to what was heard by him. He said that he heard "India was formed by British, that prior to that India consisted of independent, small nations ruled by Mugals and Naizams etc., that the present Government does not protect the interest of Muslims, that as against Muslims black laws are existing in India , that they are harassed by implicating them in NSA and TADA, that Indian Military Force is gunning down persons conducting Jihad for the freedom of Kashmir, that we are attempting to protect the interest of Indian Muslims by fighting through SIMI, that nobody can prevent SIMI and by fighting through SIMI we have to take India to its old position. (ഇന്ത്യ എന്ന രാജ്യം സൃഷ്ടിച്ചത് ബ്രിട്ടീഷുകാരാണ്, അതിന് മുമ്പ് മുഗളന്മാരും നൈസാമുമാരും ഭരിച്ച നാട്ടുരാജ്യങ്ങളായിരുന്നു, നിലവിലുള്ള ഗവൺമെന്റ് ഇന്ത്യയിൽ മുസ്ലീങ്ങളുടെ താത്പര്യം സംരക്ഷിക്കുന്നില്ല, മുസ്ലീങ്ങൾക്കെതിരെ കഠിനീയമങ്ങളാണ് ഇന്ത്യയിൽ ഉള്ളത്, അവരെ NSA യിലും TADA യിലും ഉൾപ്പെടുത്തി പിഡിപിക്കുകയാണ്, ഇന്ത്യൻ സൈനികർ, കാശ്മീരിന്റെ

മോചനത്തിനായി ജിഹാദ് നടത്തുന്നവരെ കൊന്നൊടുക്കുകയാണ്, സിമിയിലൂടെ പോരാടി ഇന്ത്യൻ മുസ്ലീങ്ങളുടെ താത്പര്യം സംരക്ഷിക്കാനാണ് നമ്മൾ ശ്രമിക്കുന്നത്, ആത്മ എങ്ങനെ എതിർത്താലും സിമിയുടെ പ്രവർത്തനത്തെ തടയുവാനും മറ്റും സാധിക്കയില്ല, സിമിയിലൂടെ പോരാടി ഇന്ത്യയെ പഴയ നിലയിലേക്കു കൊണ്ടുപോകണം.)

210. PW32 even though stated that he heard one person speaking addressing the audience and speeches were against India, he did not say what exactly were the words of the speaker.

211. PW37, the detecting officer spoke the very same versions as given by PW31 with respect to the speech he heard. Hence I am not reproducing the same.

212. Thus, on an analysis of the versions of PW1, PW31 and PW37, what could be made out is that the speakers on the dais were actually advocating to fight through SIMI and in a way to spread the ideology of SIMI.

213. In this context I may refer to the serious argument canvassed by the learned counsel for the accused. It is stated by the learned counsel that in Exhibit P1, PW1 did not give the various versions of the speakers and PW31 did not give a version to PW37 for the first time while being interrogated about what was heard by him and hence the present versions of PW1 and PW31 can only be treated as versions subsequently incorporated for the purpose of giving strength to the case and for the purpose of making a case that the meeting was actually that of SIMI.

214. Though, the argument appear to be interesting at the first blush, on a deeper analysis of the same I have to say that I cannot endorse the same. The law is perfectly settled that the FIR is not a complete encyclopedia. In this regard I

may also state that there was failure on the part of PW37 to gather what exactly were the versions of the speakers from PW1 especially when he also heard a portion of the speech. In this context I may say that PW37 failed in his duties to follow Rule 305 of the Police Manual which I have already referred. Rule 305(1) reads as below :-

"305. (1) While recording the complaint, the complainant or informant has to be carefully questioned and a detailed and full account of the incident should be recorded, lest the want of essential particulars in the complaint should affect the case adversely at a later stage. It is of the utmost importance to secure all particulars regarding the occurrence in the first instance and to record them in detail. Care should also be taken to see if the complainant is trying to exaggerate an actual occurrence or trying to give the colour of a cognizable case to an incident of a non-cognizable nature."

215. In this aspect I may refer to certain link evidence. It is stated in Exhibit P1 by PW1 that on seeing the police party, the persons sitting on the dais, namely A1 to A5, concealed leaflets and books etc. inside their wearing apparels. Such a version has been reproduced by him in Court also. PW1 said that the Police officials seized the concealed leaflets, books etc. from the police station and he can identify those books, leaflets etc.

216. PW1 deposed that from A1 a leaflet by name "അധിനിവേശവും ചെറുത്തു നില്പും" was recovered and he identified the same as Exhibit P2. It is the version of PW1 that from the possession of A2 a book by name "Mass Resistance in Kashmir"

was recovered and he identified the same as Exhibit P3. PW1 said that from the possession of A3 a leaflet by name "ലാഭകരമായ കച്ചവടം" was seized which is Exhibit P4 and from A4 a leaflet by name "വർണ്ണ വ്യവസ്ഥക്കെതിരെ പോരാടുക" was seized and he identified the same as Exhibit P5. It is the further version of PW1 that from the possession of A5 a book by name "അതിരുകൾ അറിയാത്ത പക്ഷി" was seized and he identified the same as Exhibit P6.

217. Here itself I may say that the learned counsel for the accused opposed the marking of these leaflets, books etc. as exhibits stating that those are to be marked as material objects. However, the learned counsel could not convince the Court at the time of the argument of this case that the marking given in the Exhibit P series to the leaflets, books etc. is legally incorrect, even though the marking was done by me like that by giving an opportunity to the counsel for the accused to support the aspect raised by him. Hence I conclude that there is no illegality in giving marking to these leaflets, books etc. and further leaflets, books etc. in the later point of time in "Exhibit P" series.

218. I have perused Exhibits P2 to P6. Exhibit P2 leaflet contains an inprint as "സിമി" (SIMI) on the second page of the same. Moreover, in the last page in Exhibit P2 the last paragraph begins with the sentence "പാരമ്പര്യത്തിന്റെ തേജോമയമായ ചരിത്രം ഏറ്റു പറഞ്ഞ് സിമി കടന്നുവരുന്നു". (SIMI is forthcoming by proclaiming the enlightened history of its hereditary aspects.) Exhibit P3, namely the book titled as "Mass Resistance in Kashmir" does not have any inscription upon it either as SIMI or the name of 2nd accused. This book and its contents could be

relied on in detail when discussion on the aspect of sedition will be made.

219. Exhibit P4 which is seized from A3 is a publication of the Students Islamic Movement of India (SIMI), കോഴിക്കോട് ജില്ലാ സമിതി, 9/1005 , ചെറുട്ടി റോഡ്, കോഴിക്കോട് - 673 001.

220. Exhibit P5 which is seized from A4 is also the publication of SIMI, Kerala Zone. The first paragraph of the said publication shows that SIMI is functioning for the purpose of Islamic revolution.

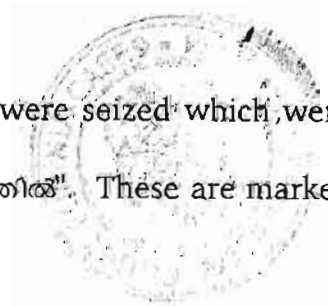
221. Exhibit P6 book seized from A5 is not a publication of SIMI. It appears to be a book issued from Solidarity Library, Vivekam House, Erattupetta. But on the first inner cover of this book there is a seal as "Secretary, Students Islamic Movement of India, Kottayam District Committee". That page is marked as Exhibit P6(b). In the last inner cover there is a seal on this book as "SIMI Unit Office, Islamic Solidarity Group, Nadakkal.P.O., 680 124". In page 31, 63, 96 and 98 of this book, there are seals as "Secretary, Students Islamic Movement of India, Kottayam District Committee". In page 49 of this book there is a seal of as "SIMI Unit Office, Islamic Solidarity Group, Nadakkal.P.O., 680 124". From the above seals in Exhibit P6 it is clear that this book even though its contents may not be in any way seditious, was being used in the SIMI Unit Office, Nadakkal or at Kottayam District Committee.

222. Thus, the fact that Exhibits P2, P4 to P6 have got some connection with SIMI also is a link evidence to show that when the accused brought these books to the hall at the time of the meeting their idea was to propagate on SIMI. In

that view it can be stated that this was actually a meeting to spread the ideology of SIMI. In this context it is to be noted that PW1 never said that Exhibits P2 to P6 were the only books seized from the accused. He would say that "ഇങ്ങനെ കുറെ ലഘുലേഖകളും മറ്റും" (Leaflets like this etc.). That means even according to PW1 so many other items were recovered from the accused at the time of conducting their body search from the police station. In cross exam examination PW1 denied that he had seen Exhibit P2 to P6 for the last time from the dais only but added that he had seen the same from the police station also. In the cross-examination PW1 further said that he had read the headings and cover page of the books either from the police station or from the hall. These versions give further strength to the case of the prosecution that these books are seized from the accused only which were actually concealed by them on seeing the police.

223. Next to be considered is what were the items recovered from the accused from the police station which have got some connection with the SIMI. PW37 deposed that by preparing Exhibit P63 seizure mahazar, the books, leaflets concealed in the wearing apparels of the accused were seized. He further said that he can identify the books, leaflets etc. so seized from the accused. Of course, he identified Exhibit P2 to P6 as recovered from A1 to A5 respectively. He also stated in detail as to the other publications recovered from these five accused. I will be discussing about the same in detail hereafter.

224. PW37 said that from A1 two other leaflets were seized which were titled as "ഇഖ്‌വാൻ കോൺഫറൻസ്" and "മതേതര മഹാഭാരതത്തിൽ". These are marked



as Exhibits P55 and P64. Exhibit P55 is the publication of SIMI, Kerala Zone. On the last page of Exhibit P55 there is an advertisement of 'Vivekam'. Address of the said magazine is "Vivekam, 9/1005, Cherootty Road, Kozhikode -1. I have already stated that one of the earlier leaflets contains the address of SIMI as "9/1005, Cherootty Road, Kozhikode -1". It would then appear that 'Vivekam' is published from the very same building wherein SIMI is housed. In this context I may again refer to the literature on SIMI of 'Institute for Conflict Management'. I have already referred that it is stated in that the publication of SIMI in Malayalam is known as "Vivekam". Exhibit P55 therefore has got much relevance to show that the same is a publication of SIMI only.

225. Exhibit P64 does not show that the same is a publication of SIMI. The contents therein would be dealt by me when the case of sedition is considered.

226. From A2, apart from Exhibit P3 a printed chart as Exhibit P58 was recovered. The same will not show that the same is a publication of SIMI. However, I would attach one importance to the same in the second page of this programme chart. It is stated as "ആഗസ്റ്റ് 15 ഏകദിന ഇഖ്‌വാൻ സംഗമം (ഇന്ത്യൻ ഹിസ്റ്ററി, പാനായിക്കുളം)". This particular programme if considered with the programme on 15.08.2006 at the Happy auditorium, Panayikulam representing to PW1 as " The Role of Muslims in Indian freedom struggle", a probability is that ഇഖ്‌വാൻ സംഗമം mentioned to be held at Panayikulam on 15.08.2006 can only be the meeting referred to in this particular case. From A3, apart from Exhibit P4, a publication titled as "കാമ്പസ് പ്രക്ഷുബ്ധമാകണം" was seized. This is marked as

Exhibit P59. The same is the publication of "SIMI Campus Sect". The same actually welcomes all to SIMI.

227. Apart from Exhibit P5, from A4 leaflets titled as "ഓഡ തടവുകാരെ സഹായിക്കുക " and "ഭരണകൂട ഭീകരത വസ്തുതാ റിപ്പോർട്ടുകൾ " were also recovered. These are marked as Exhibits P61 and P62. Exhibit P61 is a notice inviting help to TADA victims stating that a fund by name "SIMI TADA Victims Relief fund" has been formulated and the donations may be forwarded to the "Secretary, SIMI, Kerala Zone, 9/1005, Cherootty Road, Kozhikode - 1". Exhibit P62 is a compilation of various reports from various magazine including 'Vivekam' and said compilation is made by "SIMI, Kerala Zone". In Exhibit P62 also there is an advertisement of Vivekam magazine.

228. From A5, apart from Exhibit P6 a small magazine as "തദ്ദേശം" was recovered. Paragraph (1) of the editorial in page (1) of the said magazine which is marked as Exhibit P56 deals about SIMI and stated that the allegations against the SIMI are illegal and baseless. Exhibit P54 which is a book titled as "ഇസ്ലാമും ജനാധിപത്യവും" also was recovered from A5, according to PW37. It is not shown herein that this is a publication of SIMI or that this was issued from any of the offices of SIMI. This is shown as a publication by "സാക്ഷി". The prosecution could not collect any evidence to show that the "സാക്ഷി" has got any connection with SIMI.

229. Here itself I may refer to the fact that the recovery of books, leaflets etc. from A1 to A5 according to the prosecution was by preparing Exhibit P63

Exhibit P59. The same is the publication of "SIMI Campus Sect". The same actually welcomes all to SIMI.

227. Apart from Exhibit P5, from A4 leaflets titled as "ഓഡ തടവുകാരെ സഹായിക്കുക " and "ഭരണകൂട ഭീകരത വസ്തുതാ റിപ്പോർട്ടുകൾ " were also recovered. These are marked as Exhibits P61 and P62. Exhibit P61 is a notice inviting help to TADA victims stating that a fund by name "SIMI TADA Victims Relief fund" has been formulated and the donations may be forwarded to the "Secretary, SIMI, Kerala Zone, 9/1005, Cherootty Road, Kozhikode - 1". Exhibit P62 is a compilation of various reports from various magazine including 'Vivekam' and said compilation is made by "SIMI, Kerala Zone". In Exhibit P62 also there is an advertisement of Vivekam magazine.

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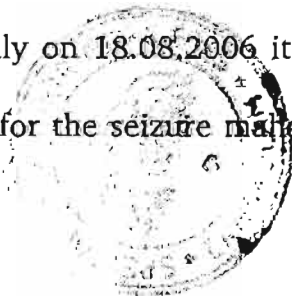
229. Here itself I may refer to the fact that the recovery of books, leaflets etc. from A1 to A5 according to the prosecution was by preparing Exhibit P63

seizure mahazar. I have already referred about this document in one of the earlier paragraphs while discussing about the validity of the FIR. All the books so seized from A1 to A5, as deposed by PW1 and PW37 before the Court are narrated in Exhibit P63. In the said document it is stated that the recovery was from 9.30 p.m on 15.08.2006. This document is dated 15.08.2006. PW32 is an attester to this document. Since this document was prepared from the police station quite naturally there won't be any witnesses other than the police officers. Hence I am not attaching any illegality in having attestors as police officers in this document.

230. Exhibit P63 as per the Court seal found therein had reached the Court on 18.08.2006 That means this had not reached the court along with FIR, remand report and the arrest memos. I have perused the remand report also which of course is not exhibited as an item of evidence but forms part of the court records. In the remand report there is clear mention that the documents seized would be send subsequently.

231. In none of the documents seized under Exhibit P63 there is endorsement in court that those documents reached in court either on 18.08.2006 or on any previous dates. Of course, those documents contain the seal of this court. These documents were transferred over to this court from JCFM Paravur and reached this Court on 13.12.2010.

232. In view of the fact that the seizure mahazar itself had reached the court only on 18.08.2006 it is contended by the learned counsel that there is no sanctity for the seizure mahazar as there is violation of Section 102(3) of Cr.PC in



not reporting about the seizure forthwith. For the sake of convenience I may quote the said provision of law as below :-

“102. Power of police officer to seize certain property

(1) x x x x x x x x x x x x x x

(2) x x x x x x x x x x x x x x

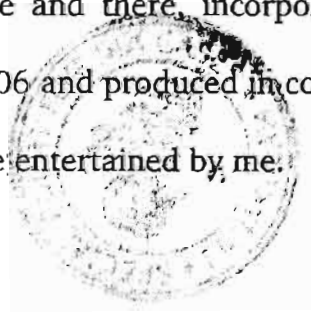
(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same.”

233. Of course, the legal mandate is the reporting of the seizure forthwith. The sending of the seizure mahazar dated 15.08.2006 only on 18.08.2006 before the Court cannot at all be treated as “reporting forthwith”. Hence this particular seizure mahazar, that is Exhibit P63 cannot be treated as the first report or report sent to the court forthwith as mandated under section 102(3) Cr.PC.

234. Then the question is whether there is any document indicating the reporting of seizure. I have already referred about Exhibit P1 FIS and Exhibit P1(a)

FIR. In Exhibit P1 there is very clear mention by PW1 about the seeing of leaflets on the dais and recovery of the same by the police from the accused. In Exhibit P1(a) as the last version in Column No.12 it is mentioned about the seizure of books from the accused. In the remand report also there is mention about seizure of leaflets and books etc. from the accused. Exhibit P1, P1(a) and remand report reached the court on 16.08.2006. Hence the reporting about the seizure was made in a practicable manner without much delay before the Court along with the reporting about the FIR. Hence there is substantial compliance of Section 102(3) Cr.PC by the detecting officer.

235. Moreover, every delay in reporting certain report before the court would not be fatal to the prosecution. In evidence PW1 had very clearly stated about the recovery of Exhibit P2 to P6 which could not be discredited. Those items find a place in Exhibit P63 also. When such evidence of PW1 is there, the seizure of books from the accused on 15.08.2006 need not be doubted. Similarly, version of PW37 about the seizure of various books from A1 to A5 also need not be doubted. In that view even though Exhibit P63 seizure mahazar reached the court only on 18.08.2006, the sanctity of the said document and the documents seized thereunder will not be lost. If so, version of the learned counsel for the accused that after the registration of the case the books mentioned in Exhibit P63 were collected from here and there, incorporated in a seizure mahazar antedated the same as 15.08.2006 and produced in court on 18.08.2006 just to fasten guilt on the accused cannot be entertained by me.



236. Of course, like any other criminal case this case is also without any inconsistencies, contradictions etc. from the side of prosecution. Even though the counsel for the accused has attempted to bring out a lot of inconsistencies to cast doubt on prosecution case, I may say that those are very minor which ought to occur due to passage of time and hence those would not be reckoned by me to throw away the prosecution case.

237. PW1 stated that he had seen books, literatures etc. in the hands of persons who had attended as the audience also. There is no case for the prosecution that anybody who was sitting as the audience was holding the literatures of SIMI or any other literature containing the anti-Indian elements. Hence this version of PW1 can only be treated as a slight exaggeration but this exaggeration has not affected the core of the prosecution case. Hence I can simply ignore the same.

238. PW1 also did not state in Exhibits P1, P8 and to the investigating officers that a pamphlet by name “ലാഭകരമായ കച്ചവടം” was recovered from A3. This aspect also has been explained away by PW1 to the affect that he was not questioned by the officers about the same and hence there was omission on his part to disclose so.

239. Of course, in the statements of PW1 there is no version that Rasik had lifted certain books and shown to the audience and there is no version in Exhibit P1 that Rasik had advocated to fight through SIMI. PW1 stated that if there are omissions like that he would not have been asked about the same by the

officers.

240. In short, these omissions in the versions of PW1 highlighted by accused to treat them as material contradictions would not at all be treated as so serious as to throw away the prosecution case.

241. PW31 and PW32 also did not state to PW48 as to what were all the books they have seen as hidden in the body of accused 1 to 5 even though they have stated about very many such books in court. I may say that these omissions of PW31 and PW32 also did not materially affect the prosecution case because of the clear evidence given by PW1 and PW37 as also about Exhibit P63 seizure mahazar.

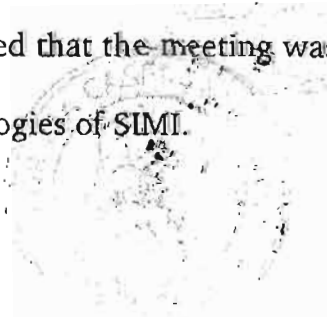
242. PW31 admitted that to PW37 he gave a version that from one person on the dais the Sub Inspector had collected the pamphlets and verified and he was convinced that those pamphlets were of SIMI. However, he would say further that he did not disclose to PW37 or any other investigating officer that from other accused persons pamphlets or literatures were not collected. In that view of the matter it cannot be held that PW31 was stating to PW37 that pamphlets were found only in the possession of one person. Of course, PW31 admitted that he did not disclose to the investigating officers in this case that pamphlets, literatures etc. were found out from all the five persons on the dais. He denied that he did not disclose so because there was no incident of recovery of pamphlets from all the persons on the dais.

243. I have already stated that in Exhibit P1, PW1 did not state that initially Rasik delivered a speech, that subsequently Ansar delivered the speech and

during that course only the police had come over to the hall. He would say that it was an omission in his part to state so. Such omissions ought to occur because of the mental condition on that day of PW1 as he was also apprehended by the police for having attended the meeting of a terrorist organisation. But it is to be noted that in the annexure to col.12 of Exhibit P1(a) there is clear version of PW37 that Rasik spoke initially, that thereafter Ansar spoke and at that time police party entered the hall. Hence the above omission by PW1 has not at all affected the merits of the prosecution case.

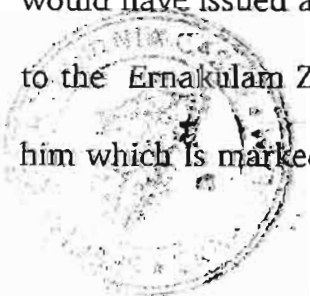
244. PW1 stated that in the hall there was a black plastic sheet inscribed with "Independence day thoughts, August 2015, Panayikulam Islamic Centre". PW1 did not state so in Exhibit P1, in Exhibit P8 and his statements to the investigating officers. This omission also is projected by the accused stating that this is a very serious contradiction. I may say that I do not think so. It is not the exhibition of such a board that would fasten guilt on the accused but the speeches delivered therein along with other circumstances. Hence this omission which is explained away by PW1 that this omission occurred because of the fact that the officers did not ask him about the same also has not affected the veracity of his testimony.

245. If so, in the light of oral testimony of PW1 and PW37 as also in the light of Exhibits P2 to P6, P52, P54, P55, P56, P58, P59, P61, P62 and P64 about which I have already discussed, it is to be concluded that the meeting was convened by A1 to A5 for the purpose of spreading the ideologies of SIMI.



246. I may also refer to the other link evidence to verify whether A1 to A5 have any allegiance to SIMI at any point of time.

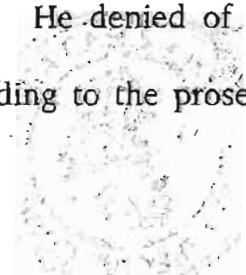
247. Initially, I may refer about the alliance, if any, of A1 namely Shaduly with SIMI. The prosecution has brought in PW3, a former member of SIMI. He admitted that he was a member of SIMI and at the time of banning the same he was a member of Ernakulam District Committee of the same and was an active worker of SIMI. He further said that he had worked in SIMI till 27.09.2001 and did not work thereafter because of the banning of the SIMI. He was posed a question as to whether while he was working in SIMI he had any acquaintance with the workers of SIMI hailing from Erattupetta in Kottayam District to which he answered in the negative. He of course had gathered knowledge about the case herein and the police had questioned him about the case involved herein over phone. He very categorically asserted before the court that he is not aware whether Shaduly (A1) and Razik (A2) are hailing from Erattupetta. According to the prosecution, PW3 had given version to the investigating officer that he has acquaintance with Razik and Shaduly in connection with the working in SIMI. He denied of having given any such version. Hence that version has been given marking as Exhibit P11 case diary contradiction which contradiction was proved by the Investigating officer subsequently. PW3 said that the SBCID Communal Cell, Thiruvananthapuram would have issued a "List of SIMI leaders, members and workers, SIMI Kerala Zone" to the Ernakulam Zonal Committee. An attested copy of such a list was shown to him which is marked as Exhibit P12. He said that under the heading "Ernakulam"



in the said list "Sl.No. 1 – VK.Muhammed Ashraf, Vadavanakkuzhy House, Hidayath Nagar, Ponjassery" is himself. He would further say that on the 8th sheet of Exhibit P12, under Kottayam Sl.No. 2 shown is "Shaduli.P.A., Peedikakkal House, Vadakkamchery Engineering College, Erattupetta". In the cross-examination he would say that he does not know who prepared Exhibit P12 and genuineness of the same. However, PW3 did not say any word before the Court that Exhibit P12 is a fabricated document created by incorporating his name falsely therein. When he says that such a document would have reached the Zonal Committee in a way he is admitting the preparation of such a list by the SBCID, Communal Cell. In that view there is sanctity for Exhibit P12.

248. According to prosecution, PW9 was a worker of SIMI who had acquaintance with A1 and A2 as co-workers. Even though PW9 would admit that he knows A2, he denied of having any sort of acquaintance with A1. He also denied of having any sort of connection with SIMI. He would state that he never worked in SIMI. According to the prosecution, PW9 gave version to the investigating officer that he was a worker in SIMI about 22 years ago and he had knowledge that A1 and A2 herein were workers of SIMI. Those versions are therefore given marking on the side of the prosecution as Exhibits P19 and P19(a) case diary contradictions. Thus, this witness turned hostile and did not support the prosecution.

249. PW11 is the uncle of Shammas (A5). He knew that A5 was arrested in 2006 as read by him in the newspapers. He denied of having any sort of acquaintance with A1 and A2 herein. According to the prosecution, PW11 gave



version to the investigating officer that A1, A2 and A5 used to move together. However, PW11 on becoming hostile has denied of having given any such version. Hence that version is given marking as Exhibit P21 case diary contradiction. Much support is therefore not obtained from the version of PW11 by prosecution.

250. PW13 identified A1 and A2 in Court. A1 is the brother of Shibily who is the husband of the sister of PW13. A2 is the husband of the sister of A1. It is in that manner PW13 knows A1 and A2. He does not know whether A1 and A2 had worked in any sort of association. However, he would say that Shibily and A1 were in Ahmadabad jail on an allegation that they have worked in SIMI. He does not know whether prior to the ban A1, A2 and said Shibily were working together in SIMI. He would admit that in connection with this case he was summoned to the police station and questioned. He said that he had never worked in SIMI at any point of time much less in 1996. However, according to the prosecution PW13 gave version to the investigating officer about his allegiance with SIMI and he was an executive committee member of SIMI. According to the prosecution, PW13 also gave version to the investigating officer that A1 and A2 were also office bearers of SIMI. But PW13 denied of having given any such version to the police. Hence those versions are given marking as Exhibit P27, P27(a) to (d) case diary contradictions after this witness has turned hostile to the prosecution. Hence from the version of PW13 also no much aid has been obtained to the prosecution.

251. According to the prosecution, PW19 has got acquaintance with the A1 and A2. Even though PW19 admitted in court of having acquaintance with A2,

he denied of having any sort of acquaintance with A1. He also denied of having any sort of allegiance with SIMI at any point of time. However, according to the prosecution PW19 stated to the investigating officer that he had worked in SIMI during 1996-97, that A1 was a SIMI worker and he was introduced to SIMI by A2 etc. When PW19 denied of having given any such statements on his turning hostile to the prosecution, those were given marking as Exhibit P37, P37(a) and P37(b) case diary contradictions.

252. During questioning by prosecutor by invoking Section 145 and 154 of the Evidence Act, Exhibit P12 list was shown to PW19. He would admit that under the head "Erattupetta" the second person styled as Shoora and named as Shabeer, Manackaparambil, Nadakkal is himself. Hence that page is given a separate marking as Exhibit P12(a). However, during cross-examination of A1 and A2, PW19 said that he was seeing Exhibit P12 for the first time in Court and he never had gathered knowledge of preparation of any such list.

253. I have already referred about Exhibit P12. The same according to me is a properly prepared document by a serious wing of Government. Hence no doubt can be cast on such a document. When such document shows the name of PW19 as an Executive Committee Member of SIMI in Erattupetta, it can be presumed by the Court that PW19 also was a worker of SIMI and his idea in court by turning hostile to the prosecution was only to save the accused.

254. PW22 was the Village Officer, Erattupetta, in 2009 September. He gave Exhibit P40 report showing the residence of A1, A2, A5 and A13. As per the



same A1 and A2 are residing in Nadakkal in Erattupetta village and A5 is residing in Vadakkekara desom in Erattupetta village. This version of PW22 is not denied. Exhibit P40 is also not denied. During questioning under section 313 Cr.PC A1 admitted that his residence is as shown in Exhibit P40. In Exhibit P12, under the heading Kottayam there is a sub-heading as Erattupetta and entry No. 4 Campus shows the name of A1 herein. In Exhibit P12(d) page under the heading Kottayam the second person is Shaduli.PA, Peedikakkal House, Vadakkamchery Engineering College, Erattupetta. I have already referred about this in one of the earlier paragraphs. This address tally with the address of A1.

255. Hence, the only impression one could get is the person named as second man under the heading Kottayam in Exhibit P12(d) is A1 himself. This is a very strong evidence to support the plea of prosecution that A1 has got allegiance with SIMI.

256. Exhibit P12 series is proved by PW36. He was the Dy.SP, Communal Cell in the SBCID Head Quarters at Thiruvananthapuram during 2009. As per the request of the investigating officer herein the files relating to the SIMI workers were entrusted for perusal by PW36. The relevant pages of the same on getting attested by PW36 were seized by the investigating officer (PW48) under Exhibit P97 seizure mahazar which is also attested by PW39. PW36 proved Exhibit P12 which is the list of SIMI leaders and workers. I have already referred about the same. Pages 71, 107 of the file mentioned as Item No. 1 in Exhibit P97 Seizure Mahazar are Exhibit P98 and P99. In Exhibit P98 which is a letter from the Deputy Superintendent of Police,

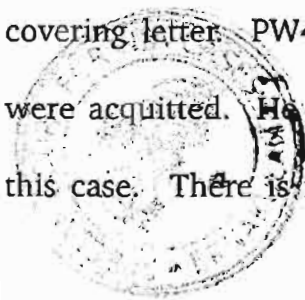
Special Branch CID, Kottayam to the Special Branch CID, Thiruvananthapuram narrating the current activities of office bearers of SIMI in Kottayam District A1 is shown as the District Committee member. In Exhibit P98 various activities of the SIMI activists also are narrated. PW36 also proved the various entries in Exhibit P12 series including the entry regarding A1. Despite the very vehement cross-examination the veracity of Exhibits P12, P98 and P99 could not be discredited.

257. The genuineness of Exhibit P12 is not disputed by the accused is evident from the suggestions given to PW37 during cross-examination. A suggestion was given to PW37 that the police could not apprehend the persons who convened a meeting on 15.08.2006 and thereafter managed to obtain Exhibit P12 and apprehended some persons mentioned therein as SIMI workers and foisted a false case against the accused. PW37 denied the said suggestion. But said suggestion would indicate that the accused are admitting that Exhibit P12 contains some of their names as SIMI workers.

258. On 16.08.2006 PW37 conducted a search in the place which was resided by the first accused on rent. The said room is at Muttom in Aluva. The search memorandum with respect to the said search sent over to the Court is Exhibit P110. The search list prepared after such a search is Exhibit P111. During the said search the book by name "ബാബറി മസ്ജിദ് ഫത്വകൾ" which is marked as Exhibit P112, a notice of Edappally Mahal Muslim Jama-ath Committee which is marked as Exhibit P113 on the reverse of which there are certain writings under the head IB-Combact which is separately marked as Exhibit P113(a), a summons issued to Sahib

Aseem, S/o. Basheer Ahammed by the 7th Metropolitan Court, Chennai which is marked as Exhibit P114, Electoral Identity Card of Shakir Aseem, S/o. Basheer Ahammed which is marked as Exhibit P115 and a white Nokia mobile phone which is marked as MO9 were seized. Exhibit P112 is a publication by Islamic Law Academy, Kozhikode. There is no indication in Exhibit P112 that the said concern has got any connection with SIMI. Of course, Exhibit P113(a) writings may indicate that that is in reference to the Intelligence Bureau, enquiry by intelligence Bureau at various places and the encounters by the Chennai IB etc. Exhibit P114 summons is seen issued to answer a charge under section 10 of the Unlawful Activities (Prevention) Act.

259. PW43, who was the Crime Branch Detective officer in Kozhikode in 2008, as per the direction of the Superintendent of Police conducted an enquiry about Shakkeer Azeem mentioned in Exhibit P115 by going to Chennai. At that time Exhibit P114 and Exhibit P115 were entrusted to him. PW43 said that Sahib Azeem mentioned in Exhibit P114 is Shakkeer Azeem himself whose name is shown in Exhibit P115. He would say that the case mentioned in Exhibit P114 was taken against Shakkeer Azeem for having worked in favour of SIMI which is declared unlawful. Exhibit P149 is the report given by PW43 after the said enquiry which was sent to the Investigating Officer herein by the SP along with Exhibit P148 covering letter. PW43 does not know whether in Exhibit P114 case the accused were acquitted. He denied that Exhibit P115 was manipulated for the purpose of this case. There is no evidence to show that PW43 had gone over to Chennai



Court and verified the documents therein. His knowledge that Shakkeer Azeem and Sahib Azeem are one and the same person is only on enquiry with local residents. He has not verified the official documents like voters list etc. to get adequate knowledge about the identity of the person mentioned in Exhibits P114 and P115. The evidence of PW43 is not at all useful for the prosecution to cast any guilt on any accused herein much less upon A2.

260. Even though a search in the house of the A1 was conducted, no articles incriminating the accused nor any articles having any connection with SIMI were recovered.

261. Regarding the link evidence as to whether A2 has got any allegiance with SIMI, I will be discussing after sometime.

262. PW37 frankly conceded before the Court that a house search in the house occupied by A3 was conducted but nothing incriminating were recovered. Exhibits P124 and P125 are the search memorandum and search list in respect of the said house search. Exhibits P12, P98 and P99 would not disclose the name of A3 as a member of SIMI. Hence no other link evidence to show any allegiance for A3 to SIMI could be collected by the prosecution.

263. Now I may come with the case of A4. As already stated he had arranged the meeting at Happy auditorium in Panayikulam on taking the auditorium on rent from PW2. It was A4 who invited PW1 to the said meeting. It was A4 who introduced the other persons sitting on the dais at the initial portion of the meeting.



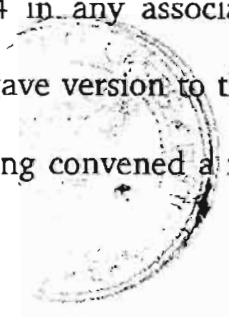
264. Exhibits P12, P98 and P99 do not contain the name of A4 either as a SIMI member or as its Executive Committee Member.

265. Then to be considered is as to whether there is any other link evidence to show the allegiance of A4 with SIMI.

266. PW8 was an office bearer of Islamic Youth Movement (IYM). He said that himself and A4 together were in IYM, that since there was a lot of difference of opinion for him with A4, he had disassociated with the A4. He knows the convening of meeting on 15.08.2006 at Panayikulam and arresting of some persons including A4. He identified A4. According to him, at the time of the said arrest himself and A4 were not workers in any association. He said that his opinion is that SIMI would not go in consonance with the ideologies of Islam. According to the prosecution, PW8 had disassociated with A4 on ideological differences. When such a question was posed to A8 he did not deny having given any such version to the investigating officer.

267. The version of PW8 at best would show that there was ideological differences for him with A4 and SIMI does not follow the real ideologies of Islam. Except in that limited manner the versions of PW8 have not at all helped the prosecution.

268. PW10 has got acquaintance with A4. However, he had never worked with A4 in any associations, organizations etc. According to the prosecution, PW10 gave version to the investigating officer about the knowledge of arrest of A4 for having convened a meeting at Happy auditorium, Panayikulam on 15.08.2006.



He denied of having given any such version. Hence on turning hostile that portion is given marking as Exhibit P20 case diary contradiction. The version of PW10 has also not aided the prosecution.

269. The house of A4 was searched on sending Exhibit P116 search memo. As per Exhibit P117 search list a book titled as "ബാബറി മസ്ജിദ് ഫത് വകുൾ" which is marked as Exhibit P118 and another book titled as "ഇസ്ലാമും ജനാധിപത്യവും" which is marked as Exhibit P119 were seized. Out of this, Exhibit P118 is another copy of Exhibit P112 and Exhibit P119 is another copy of Exhibit P54. I have already discussed about Exhibits P112 and P54.

270. PW18 worked with A4 in IYM. He does not know whether A4 was an activist of SIMI. His knowledge is that he came to know about the arrest of A4 subsequently. The evidence of PW18 will not be of much use to the prosecution.

271. I may now come with the case of A5, Shammas. PW11 is the uncle of A5. He does not know in which organization or association A5 is working or had worked. He came to know from the newspaper only that during 2006 the police had arrested A5. He also does not know A1 and A2. He denied of having given a version that A5 used to move with A1 and A2. I have already referred about this version while discussing about A1.

272. A search was conducted by PW38 on 16.08.2006 in the house of A5. Exhibit P129 is the search memorandum issued to the Court prior to the said search. On conducting the said search some books were recovered as per Exhibit P130 search list. The books so recovered are titled as "ചെമ്മുഖൻ", "കത്തുന്ന കാശ്ശീർ",

“മുസ്ലീമിന്റെ ശത്രു ഇന്ത്യയുടെ ശത്രു”. These are given marking as Exhibits P131 to P133. These books are not the publications of SIMI nor issued from any library run by SIMI.

273. Exhibits P12 and P98 list of SIMI activists and members do not contain the name of A5 in any of the units mentioned therein.

274. Now I may come to the case regarding the A2 which I have already deferred a bit earlier. The name of A2 as per the final report is Abdul Rasik, S/o. Abdul Rahman.

275. On 16.08.2008 a search was conducted by PW39 in the house of A2 but no incriminating materials were recovered.

276. The prosecution case is that A2 by disguising himself as Atheek Rahman occupied a house at Triveni Quarters in Kozhikode owned by PW4, that he either run a book stall by name “Nanma Books” or was an employee therein or was doing operation of SIMI activities under the said cover.

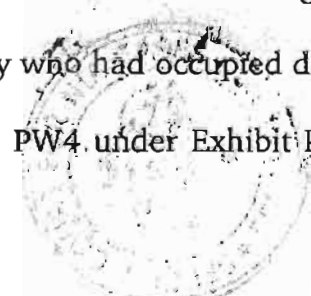
277. PW4, the said owner of Triveni quarters while testifying in court was asked to identify any of the accused who is known to him. He closely verified the accused by going near to the dock and initially pointed out A4 and A2 stating that he can identify them. However, immediately he said that he could identify properly only A2 stating that A2 was occupying Door No.17/160 belonging to him. He further said that A2 had occupied the said building under the name Atheek Rahman and in that name only the rent agreement was executed by him. The rent agreement is given marking as Exhibit P13. Actually, this is a license agreement.

278. PW4 said that after A2 had vacated somewhere in the month of July police had conducted a raid in the said house that two days thereafter the police had summoned him to the police club from where he had seen A2 and at that time only he came to know the real name of him was not Atheek Rahman but Rasik.

279. Despite very vehement cross-examination, the identification of A2 by PW4, his version that A2 had occupied a house of him under the name Atheek Rahman could not be discredited.

280. PW5 is the son of PW4. He also supported the very same version of PW4. He also identified A2 in court and stated that his name as disclosed to them at the time of his occupying the quarters was Atheek Rahman and only when he was brought by the police and when police told him that he came to know the real name of A2 was Rasik.

281. In this context it is to be noted that the examination of PW4 and PW5 were continuously, that PW5 was called immediately after PW4's examination was over and by the time PW5 had stepped into the witness box without getting the permission of the court, A2 had changed his position in the accused box. Despite the said fact PW5 could properly identify A2. In fact, the idea of A2 in changing position in that manner before PW5 had come to the court hall, itself would show that he was attempting to play some hide and seek game and he was sure that there was possibility of PW5 identifying him. This conduct of A2 in court would also give strength to the version of PW4 and PW5 that it was A2 only who had occupied door No. 17/160 of Triveni quarters in Kozhikode belonging to PW4 under Exhibit P13



license agreement for about two years under the name Atheek Rahman.

282. The recovery of Exhibit P13 from PW4 and PW5 was by preparing Exhibit P14 seizure mahazar in which also PW5 is an attester.

283. PW12 was the occupant of this particular house of PW4 after A2 had vacated. The said house was searched by PW45 on 18.08.2006. The search memorandum in respect of the same is Exhibit P150. After the said search so many items were recovered from the said house as per Exhibit P22 search list. PW12 is an attester to the same. Out of the recoveries so done the most important items are Exhibit P22(a) which is a memorandum criticizing the banning of SIMI signed by so many well known persons including literary persons and Exhibit P22(c) which is a telephone bill of Reliance Hello for the period from 08.07.2006 to 07.08.2006 in the name of Rasik.PA., Nanma Books. Exhibit P22(b) which is a visiting card of Nanma Books stall was also recovered under Exhibit P22. A book by name "Crescent International" which is styled as the news magazine of Islamic Movement was also recovered in the said search. Moreover, so many articles belonging to PW12 also were recovered.

284. In this context it is relevant to note the evidence of PW12. He does not remember whether the building occupied by him at the time of search by the Police was containing the articles of previous occupant. But he would say that he was given possession of that building without cleaning the same. He identified his cheque books, pass book and identity card which are Exhibits P23 series, P24 and P25, which were also recovered under Exhibit P22. He does not remember whether

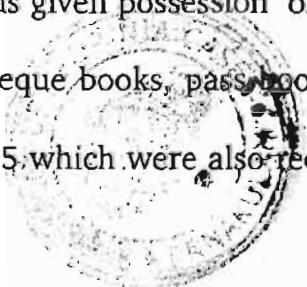


Exhibit P22(a), P22(b) and P22(c) were recovered from his room under Exhibit P22. According to the prosecution, PW12 had given version to the investigating officer that at the time of search by the police in his room the books and the other items of Nanma Books were there. He denied of having given any such versions. Hence those versions are marked as Exhibit P26 abd P26(a) case diary contradictions. During the cross-examination of PW12, the recovery of Exhibit P22(a) to P22(c) was not challenged. PW45, while conducting search also recovered a flux sheet in-printed with 'Nanma Books' which he identified in court as MO10.

285. During the cross-examination of PW4 and PW5 also recovery of the telephone bill issued in the name of Rasik.PA. has not been challenged.

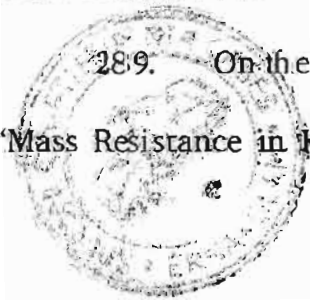
286. A telephone bill in the name of Rasik.PA of Nanma Books if was found out from door No. 17/160 under Exhibit P22 search list and when that telephone bill does not relate to the then occupier PW12, the only inference the court could draw is that the telephone bill was in respect of previous occupant of the same. PW4 and PW5 assertively said before the court that the previous occupant was A2 only. Hence the said telephone bill definitely is in respect of A2. It will also prove that A2 at that point of time was running either Nanma Books or an employee of the Nanma Books. In this context a suggestion given to the PW4 from the side of the cross-examiner also can be verified. It was suggested to PW4 that the owner of Nanma Books was "Atheek Rahman, S/o. Abdul residing at Muringathodi, Near Old Post Office, Thrikkarodu Amsom, Thirurangadi Taluk,

Chemhattu" which was not denied by PW4. Yet another suggestion was given to PW4 that the said Atheek Rahman signed upon Exhibit P13 for his employee by name Rasik to which PW4 answered that he cannot say anything about it. The said suggestion would then show that one Rasik must have been the occupant of that house.

287. Knowledge about the connection of A2 with Nanma Book Stall was well disclosed to the police and therefore a search in the Nanma Books stall was conducted. Of course, this knowledge was not gathered for the first time while conducting search in the house of PW4, but it appears that such a knowledge was gathered even on the date of incident otherwise it was not possible for the police to conduct a search in Nanma Book prior to conduct of search in the house of PW4.

288. PW35 conducted the search in Nanma Books stall after sending the Exhibit P74 search memorandum. On conducting search he recovered very many items as per Exhibit P73 search list. The items so recovered were produced in court by incorporating the same in form No. 15 which is Exhibit P75. Exhibit P76 to P88(d) are the various items recovered on such search. Many such items are related to the articles expressing anguish on the harassment upon the Muslims even though none of this articles relate to SIMI. While considering the aspect of sedition I may be referring to the some of the articles in some of the books so recovered under Exhibit P73.

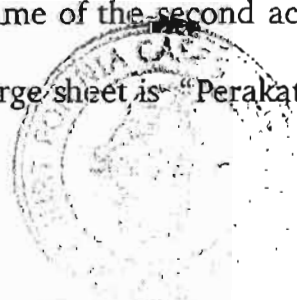
289. On the day of the incident itself Exhibit P3 which is the book titled as "Mass Resistance in Kashmir" was recovered from A2. I have already referred



about the same. In Exhibit P3 there is a seal of Hira Library, Hira Centre, Mavoor road, Kozhikode-4. The book No. 3261 also is written in red ink in the said round seal which is found on the front and back of this particular book. It is therefore clear that this particular book was issued from Hira library. Hence the investigating officer thought it fit to conduct a search in Hira library to collect some link evidence with respect to the role of A2. As wanted by the investigating officer, the City Police Commissioner, Kozhikode had given instruction to the Sub Inspector of Police, Nadakkavu, Kozhikode to conduct a search in Hira library. Accordingly PW33, the then Sub Inspector conducted a search by reaching the said library at 11.15 a.m. On 16.08.2006. On such search the library register was found out and when PW33 verified the same he found that page 175 of the said register relates to the issuance of book to Rasik. The search list in respect of said search is proved by PW33 as Exhibit P65.

290. The issue register of library is proved by PW33 as Exhibit P66. The first three pages of Exhibit P66 together are index describing the name of the member, the membership number and page in the register allotted to that member. The said index is marked as Exhibit P66(a). The same shows that member No. 268 is Razik.A.Rahim and Page number allotted to him is "175". The said page is marked as Exhibit P66(b). The address shown in Exhibit P66(b) is "Razik.A.Raheem, Parayil, Nadackal Post, Erattupetta, 686 124, 04822276377".

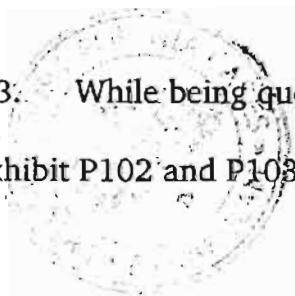
291. I have initially stated that the name of the second accused is Abdul Rasik, S/o. Abdul Rahim and address in the charge sheet is "Perakathusseri House,



Nadakkal, Erattupetta". In Exhibit P12(c) the 7th person under the heading "Ernakulam" is "Rasik.A.Rahim, Room No. 10, Islamic Centre, Pulleppady road, Cochin". In Exhibit P12(d) the first person under the heading "City" is also the same person. In Exhibit P98 the Zilla President of Kottayam District is "Rasik.A.Rahim, Parayil House, Nadakkal, Erattupetta". In Exhibit P99 also it is recorded. The question then to be considered is whether 'Rasik.A.Rahim' mentioned in Exhibits P98 and P99 and 'Razik.A.Raheem' in Exhibit P66(b) is Abdul Rasik, the 2nd accused himself. When PW4 and PW5 very assertively stated that A2 was in residential occupation of their building and when A2 immediately after vacating that building was found in possession of Exhibit P3 book which was actually of Hira library what could be made out is that the said book must have issued to A2 only as otherwise there should be some evidence to show that the said Razik.A.Rahim actually passed over this particular book to A2.

292. For resolving this aspect I may also refer to the oral testimony of PW37 and some other aspects. In chief-examination PW37 said that Exhibit P102 and P103 are the arrest memo and inspection memo prepared at the time of arresting of A2, that the information about the arrest was given to the father of A2, namely Abdul Rahiman through phone No. "04822276377". Exhibit P102 also discloses about the conveying of information about the arrest through this phone number.

293. While being questioned under section 313 Cr.PC, question was posed about Exhibit P102 and P103 at which time A2 answered that at the time of arrest



signatures were obtained on so many papers but he does not know the contents of the same. That means he is not denying Exhibit P102 and P103. If so, the entry in Exhibit P103 regarding the aforementioned telephone number as that of his father is not disputed by him which shows that the said telephone number is in his house only.

294. In this context the evidence of PW33 along with the entries in Exhibit P66 can be perused. It is stated by PW33 that in Exhibit P66(b) page the addressee shown is "Rasik.A.Rahim, Parayil, Nadakkal Post, Erattupetta 686124, 04822276377". As question number 213 the 2nd accused was posed about this entry to which he answered in the positive. I may quote Question No. 213 and answer given by A2 for the sake of proper understanding as below :-

"Q.213. Exhibit P66 175-)0 പേജിൽ പൂർണ്ണ വിലാസമായി "റാസിക്.എ.റഹിം, പാരയിൽ, നടക്കൽ പോസ്റ്റ്, ഈരാറ്റുപേട്ട, 686124, 04822276377" എന്നും ഈ മേൽവിലാസത്തിന്റെ നേരെ ഇടതുവശത്ത് "268" എന്നും മേൽവിലാസത്തിന് മുകളിലായി "SIMI" എന്നും കാണിച്ചിട്ടുണ്ട് എന്ന് PW33 പറയുന്നു അപ്രകാരം ഈ രജിസ്റ്ററിൽ കാണുകയും ചെയ്യുന്നു. വല്ലതും പറയുവാനുണ്ടോ ? (PW33 states that the complete address shown in Page 175 of Exhibit P66 is "Rasik.A.Rahim, Parayil, Nadakkal Post, Erattupetta 686124, 04822276377", that on the left side of this address it is written as "268", that on the top of this address it is written as "SIMI" and this register shows all these entries as stated by PW33. Have you got to say anything ?)

A. ഈ വിലാസം എന്റേതാണ്. പക്ഷെ ഈ library-യിൽ എനിക്ക് മെമ്പർഷിപ്പില്ല. (*This address is that of mine. But I do not have a membership in this library.*)

295. Thus, the admission of the 2nd accused that the address shown in Exhibit P66(b) is that of himself and when Exhibits P12, P98 and P99 shows the very same address A2 is admitting before the court that he has got a name as Rasik.A.Rahim of Parayil house with telephone number 048422276377. Hence the only inference the court can draw is that the entry as Rasik.A.Rahiman in Exhibits P12, P98 and P99 is in respect of the 2nd accused only.

296. Next to be considered is whether the answers given during examination under section 313 Cr.PC could be utilized against the accused. It is true under section 313 (3) Cr.PC. the accused shall not render himself liable to punishment by refusing to answer. However, Section 313(4) Cr.PC. would come in aid to solve this situation. The said provision can be quoted by me as above :-

“(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, or any other offence which such answers may tend to show he has committed.”

297. A reading of the above provision therefore would show that the answers given by the accused can be taken into consideration in the trial.

298. In Ramnaresh & Others v. State of Chhattisgarh (AIR 2012 SC 1357) while discussing on the legal aspects of Section 313 Cr.PC., the Hon'ble Apex Court held as below :-

“22. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 Cr.PC. is upon the Court. One of the main objects of recording of a statement under this provision of the Cr.PC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 Cr.PC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.” (Underlines supplied by me)

299. I have already said that the answers of the 2nd accused which I mentioned already are actually supporting the case of the prosecution. Hence those answers can be used against the accused in the light of the above dictum.

300. With respect to the evidentiary value of a statement given under section 313 Cr.PC. some other decisions of Hon'ble Supreme Court of India can also be referred to. In Jagroop Singh v. State of Panjab (AIR 2012 SC 2600) it is held as below :-

“30. Another aspect is to be taken note of. Though the incriminating circumstances which point to the guilt of the accused had been put to the accused, yet he could not give any explanation under Section 313 of the Code of Criminal Procedure except choosing the mode of denial. In State of Maharashtra v. Suresh, it has been held that when the

attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision only to highlight that the accused has not given any explanation whatsoever as regards the circumstances put to him under Section 313 of the Code of Criminal Procedure .”

301. In Bable alias Gurdeep Singh v. State of Chhattisgarh (AIR 2012 SC 2621) it is held that answers given by the accused during examination under 313 Cr.PC. binds on him.

302. In fact in Exhibit P66(b) the last entry is Book No. 3261 “Mass Resistance in Kashmir” issued on 03.08.2006. I have already stated that the membership number is 268. That membership number is written on the slip of Hira library affixed on Exhibit P3 book which is given a separate marking as Exhibit P3(b). This shows that the book was to be returned on 15.08.2006. Exhibit P66(b) shows that this book was not returned to the Hira library. It also would show that this book was previously issued to the very same person and he had returned the same also.

303. The above evidence would clearly link A2 with the membership in Hira library under the name Razik.A.Rahiman and his taking of Exhibit P3 book which was brought by him to Happy auditorium, Panayikulam on the day of the incident. Moreover, in Exhibit P66(b) there is an inscription as “SIMP” indicating

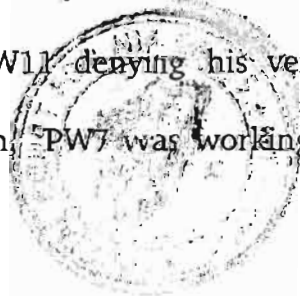
that the said member would be identified by the library as a person having connection with SIMI. In fact in various pages in Exhibit P66 the members would be identified in similar manner as "Vachanam staff", "majilis", "Darul Huda", "Al-jami", "Al-Islamia, SIO Zonal Secretary and Jama-ath District Committee. This is very clearly spoken to by PW33. Hence the recording of SIMI on the top of Exhibit P66(b) page does not appear to be artificiality made by the prosecution to create some evidence.

304. In fact, from Exhibit P66 a paper containing the name and address of this Razik also was recovered which was given a separate marking as Exhibit P70. Exhibits P67, P68, P69 and P70 are also items recovered under Exhibit P65 search list.

305. Despite very vehement cross-examination of PW35 the search in Hira library, recovery of these items and entries in Exhibit P66(b) could not be discredited.

306. When Exhibit P66(b) entries relate to A2 as already discussed by me, what could be made out is that he himself took Exhibit P3 book from the said library so as to convey the contents of the same in his speeches in the said auditorium.

307. I have referred about the evidence of PW11 already while considering the link evidence against A5. I have already referred about Exhibit P21 case diary contradictions in the statement of PW11 denying his version about knowledge about Rasik. According to prosecution, PW7 was working in Nanma



Books Kozhikode, that he had acquaintance with A2 herein but he denied of the same. Exhibit P17 is the visiting card of PW7 while he was working in Nanma Books. He denied of having given versions to the police about his acquaintance with A2. Hence those were given marking as Exhibits P18 and P18(a) case diary contradictions. The versions of PW7 did not at all help the prosecution.

308. I have referred about PW3 while considering the role of A1. PW3 had denied of having any sort of acquaintance with A2 also. In fact it was through PW3 Exhibit P12 and some entries there in were marked.

309. PW9 knows A2. But PW9 does not know whether A2 has any sort of connection with SIMI. I will refer about PW9 while considering about the role of A1.

310. I have already referred about PW13. He identified A2. I have also stated about the evidence of PW13 describing the relationship between A1 and A2. However, PW13 does not know whether A2 was a member of SIMI. I have referred about the case diary contradictions in the statement of PW13.

311. PW19 knows A2 pretty well. But he does not know whether A2 was associated with any sort of association. He denied of having given a version to the police that he was a member of SIMI and A2 had introduced him to SSIMI. That portion is given marking as Exhibit P37(b) case diary contradiction.

312. An over all appreciation of the above evidence collected directly from A1 to A5 from police station, from the various searches in the places of their occupation, as also about the presence of A1 to A5 in the dais of the meeting and speeches of A2 and A3 at the venue all would very strongly show

that the meeting held at Happy auditorium at Panayikulam on 15.08.2006 convened by A4 and under the leadership of A1 to A5 was actually for showing allegiance or solidarity to SIMI and it can be held that the said meeting was actually a meeting to spread ideology of SIMI and thereby a meeting of an unlawful association and a terrorist organisation.

313. Then to be considered is whether there was any unlawful activity committed by the accused 1 to 5. For this purpose I may initially refer to certain legal aspects. "Unlawful activity" is defined in Section 2(o) of the Unlawful Activities (Prevention) Act as below :-

"(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise) -

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India ; or

(iii) which causes or is intended to cause disaffection against India.



314. "Unlawful association" is defined under section 2(p) UA(P) Act as below :-

"(p)"unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

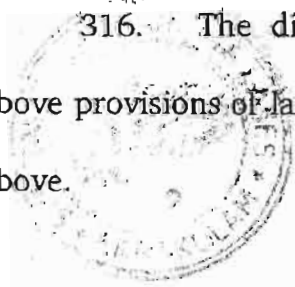
Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir."

315. "Cession" and "Secession" are defined under sections 2(b) and 2(i) of Unlawful Activities (Prevention) Act as below :-

"2(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part."

"2(i) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India."

316. The discussion on this aspect requires the understanding of the above provisions of law and that is the reason why I quoted these various terms as above.

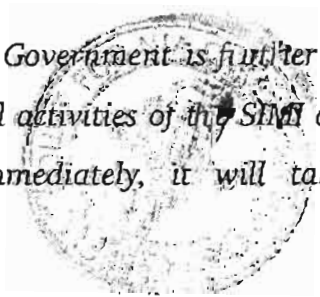


317. There is no dispute that as on the date of commission of offence the SIMI was a declared unlawful association. At that time and even now SIMI is a terrorist organization also. In the opening part of the judgment I have referred about (AIR 2010 SC 2633) and stated that the basic ideologies of the terrorist organisation and unlawful association are the same.

318. I have also referred about the basic ideologies of SIMI while I made a discussion in the opening part of this judgment. I stated that the various studies about SIMI in the articles copied from the web site show that SIMI indulges in the ideologies of cession of Kashmir by advocating that Jammu & Kashmir is a part of Pakistan.

319. When it is found that the meeting is that of SIMI or to spread the ideology of SIMI inference can be drawn that the idea was to indulge in an unlawful activity as the object and idea of SIMI is unlawful activity only. The latest notification banning SIMI which is marked as Exhibit P213 which is dated 07.02.2008 stated that SIMI continues to indulge in activities for which it was banned earlier and the activists of SIMI are still indulging in communal and anti-national activities and the activities of SIMI are detrimental to peace, integrity and maintenance of secular fabric of Indian society. In the said notification it is also stated as below :-

"And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to -



- i. *continue its subversive activities and re-organize its activities who are still absconding;*
- ii. *disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;*
- iii. *propagate anti-national sentiments ; and*
- iv. *escalate secessionism by supporting militancy;*

320. In the light of the above aspects, the speeches of various speakers at the venue and the various literatures seized from the persons on the dais and the contents of those literatures have to be perused as they may throw light on the aspects as to whether an actual unlawful activity was done by A1 to A5 on 15.08.2006. My attempt next is to resolve this aspect.

321. I have already quoted the gist of the speeches of A2 and A3 as given by PW1. The speech of A2 was that the Muslims are indulging in Jihad against the Indian Military Force in Kashmir, that Indian Military Force are gunning down those Jihadists and as against the same a fight through SIMI is to be made.

322. Thus, this particular speech is actually calling upon the listeners to make a counter attack against the Indian Military Force operating in Jammu & Kashmir stating that those military persons are actually gunning down the Jihadists.

323. Military Force is posted in Jammu & Kashmir for the purpose of protecting the boundaries of India against the invasion and intrusion by outside illegal forces and terrorist groups operating in Pakistan. Therefore, it is to protect the sovereignty and integrity of India, the Indian Military Forces are struggling and operating. When it is said by A2 that Muslims in Kashmir are indulging in Jihad

against Indian Military Force, what could be gathered is that some sect of Muslims in Kashmir are indulging in war against Military Force and consequently the war is directed against our nation itself. For this purpose meaning of the term "Jihad" as given in Britannica Ready Reference Encyclopedia, Page No. 185 of Volume 5 can be quoted as below :-.

"Jihad In ISLAM, the central doctrine that calls on believers to combat the enemies of their religion. According to the QURAN and the HADITH, jihad is a duty that may be fulfilled in four ways: by the heart, the tongue, the hand, or the sword. The first way (known in SUFISM as the "greater jihad") involves struggling against evil desires. The ways of the tongue and hand call for verbal defense and right actions. The jihad of the sword involves waging war against enemies of Islam. Believers contend that those who die in combat become martyrs and are guaranteed a place in paradise. In the 20th and 21st centuries the concept of jihad has sometimes been used as an ideological weapon in the effort to combat Western influences and secular government and to establish an ideal Islamic society."

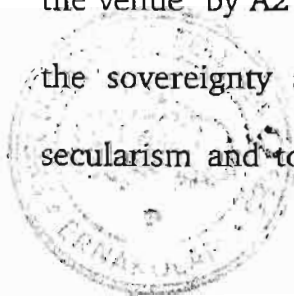
324. From the above description what could be made out is that "jihad" may sometimes be used as a weapon in an effort to combat secular government also.

325. It is in the above background the speeches of A2 and A3 at the venue are to be visualized. I have already stated that the speeches relate to counter attack to Indian Military Force. The jihadists even according to A2 and A3 in their speech

are fighting against Indian Military Force. The said fight is therefore against the secular government of India.

326. Hence, the ideology of SIMI as already noticed by me in the literature referred in the earlier part as well as in order of the UAP Tribunal is actually spoken by A2 and A3 at the venue. The same amounts to advocating, abetting or inciting the commission of unlawful activities which squarely come within the fold of Section 13(1)(b) of UAP Act.


327. I have already stated that SIMI propagates Islamic rule. The versions of A3 as spoken to by PW1, PW31 and PW37 would show that he was canvassing for an Islamic rule in India as he wanted to bring India back to the period of Muslim rulers like Naizam, Mugals etc. If India is imposed with Islamic rule or to make India an Islamic state that will be totally against the secular fabric of this country. As per the preamble of the Constitution of India, "the people of India have resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all citizens, among other things, Liberty of thought, expression, belief, faith and worship". Secularism is part of the basic structure of constitution. When the speech of A3 as disclosed from PW1, PW31 and PW37 is to propagate Islamic rule and when A2 and A3 stated to join hands with the jihadists fighting against Indian Military Force through SIMI, the incitement or advocating at the venue by A2 and A3 was for fighting war against nation as such and to disrupt the sovereignty and integrity of India and to adversely affect the concept of secularism and to disrupt the liberty granted by the Constitution to its people of



thought, expression, belief, faith and worship. Hence I repeat that the speeches rendered by A2 and A3 at the venue definitely amount to commission of unlawful activity.

328. PW31 and PW32, the two police officers who accompanied PW37 to the hall, during the interrogation by PW37 did not at all give the versions of A3 as they heard and as they stated in Court. To this they gave a cogent explanation that since PW37 also heard, they did not reproduce what they heard to PW37. It is the version of PW37 that he had only recorded gist of the statement of PW31 and PW32. It is true, under the Police Manual, it is the duty of the investigating officer to pose question to witnesses and extract all the information they knew. The failure of PW37 to follow the directions in the Police Manual as above would only show that there was failure on his part to discharge his duty as a prompt investigating officer. But this failure would not affect the credibility of the versions of PW31 and PW32.

329. It appears that PW31 and PW32 when questioned by PW48 gave very detailed version stating that they were asked by an investigating officer of such details for the first time by PW48. In this context it appears that PW48 noticed the defect committed by PW37 and subsequent investigating officer, that is PW47 and had attempted to cure that defect. I do not find then any omissions by PW31 and PW32 to state elaborately to PW37 would adversely affect the versions of the prosecution. It appears PW32 has given a statement to PW48 that when they reached the hall there was a speech by somebody, that on culmination of the said

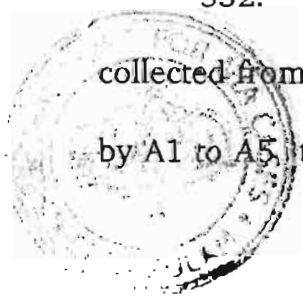


speech another person has started a speech. PW32 said that he did not give such a version to PW48 and if such a version is seen recorded, the same is not correct. That portion is given marking as Exhibit D4 case diary contradiction. PW48 even though appears to have stated that such a statement is seen recorded by him he would say that the same was really a mistake.

330. It is to be noticed that the definite case of prosecution as brought out from PW1 and PW37 is that when A3 was concluding a speech only the police entered into the Hall and police did not have an opportunity to hear the speeches of anybody on a close watch by hiding. Hence the possibility of PW32 hearing the speeches of two persons is only to be ruled out. If so what could be made out is that Exhibit D4 was recorded by PW48 mistakenly.

331. PW31 admitted that he did not disclose to PW37 about the portions of the speech he heard from the dais. It was suggested to PW31 that at the time when PW48 interrogated him he was taught about some such versions. He denied such suggestion. I have already stated that PW37 deposed in court that he recorded only a gist of statement of PW31 and PW32 and in the statement of PW31 and PW32 so recorded there is version that what they have heard were seditious speeches and therefore the version given to PW48 cannot be treated as exaggerated version but can only be treated as amplified version which is permitted in law.

332. To support or to bring link evidence to this aspect are the materials collected from A1 to A5 on the day of the incident. These materials were brought by A1 to A5 to the venue and many such materials were placed on the dais itself.



In fact, PW1 had occasion to glance through some of these materials prior to the commencing of the function immediately on entering into the hall. These materials according to the consistent versions of PW1, PW31 and PW37 were hidden inside their wearing apparels by A1 to A5 on seeing the police force.

333. Now I may refer to each and every such materials recovered from A1 to A5 and I will also refer to some of the contents therein to decide whether any such contents are against the fundamental concept of nation against the sovereignty and integrity of India and against its secular fabric.

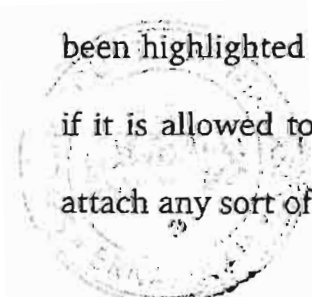
334. I have already stated Exhibit P2, P55 and P64 were the literatures recovered from A1. Exhibit P2 is a publication by SIMI by name "അധിനിവേശവും ചെറുത്തു നില്ക്കും" as already stated by me. The contents of this article when gone through closely refer about praising some freedom fighters and contents do not call upon anybody to establish any Islamic rule. The contents only would show that nation has again became a slave of World Bank, IMF etc. because of taking of loan from those institutions. There is no whisper in the contents in Exhibit P2 against the sovereignty and integrity of our nation.

335. Exhibit P55 is a book of SIMI circulated at ഇഖ്‌വാൻ കോൺഫറൻസ് by name "അജ്ഞാതവിന്റെ കക്ഷി തന്നെയാണ് അതിജീവിക്കുന്നവർ". A reading of entire contents in this particular literature would show that it is only propagating the principles of Islam. However, in page 14 there is some statement to the effect that all Muslims in the world should unite together and there shall be only one country without dividing the boundaries in between them inhabited by Muslims only. This

actually is against the sovereignty and integrity of this country as well as the sovereignty and integrity of other countries in the world. The importance of Exhibit P55 to link with the offence of unlawful activities raised against A1 to A5 is only that much.

336. Exhibit P64 which also was recovered from A1 is against the rules of the nation as such. It is stated that Muslims in India are still being treated as slaves. There are so many allegations against the Indian National Congress stating that it has taken the leadership for the partition of India and this particular literature calls upon to bring back Khilafath or Caliphate. I have already quoted an article on SIMI by the Institute for Conflict Management, South Asia Terrorism Portal. I have referred about the concept of SIMI as rejection of secularism, democracy, nationalism and restoration of Khilafath. If so, Exhibit P64 clearly can be treated as containing the propaganda of ideology of SIMI.

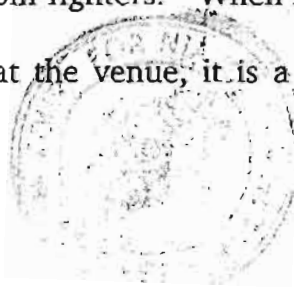
337. Exhibit P3 is the book titled as "Mass Resistance in Kashmir" seized from A2. It is a publication by Institute of Policy Studies, Islamabad, Pakistan and the Islamic Foundation, Leicester, U.K. The author of this books is Tahir Amin. A reading of the foreword and acknowledgment in the beginning of this book would show that Sri. Tahir Amin is a Pakistan National. A complete reading of Exhibit P3 would show that this is totally against India and false and fabricated stories have been highlighted in this book about Kashmir issue. It contains actually venom and if it is allowed to spread that will spoil the secular fabric of our nation. I cannot attach any sort of creditworthiness to this book as a preparation by a scholar.



338. Exhibit P3(a) is the map of Jammu & Kashmir annexed in Exhibit P3. This map is prepared in such a manner to show that Jammu & Kashmir is part of Pakistan. It is shown that the capital of Jammu & Kashmir is actually Lahore and capital of country wherein Jammu & Kashmir is located is Islamabad and capital of the province is Lahore. Islamabad is the capital of Pakistan and Lahore is an important place in Pakistan. Thus, this particular map gives incorrect, false, anti-national picture to the effect that the Jammu & Kashmir which is a part and parcel of India is part of Pakistan.

339. PW1 said that while A2 was delivering his speech he was raising this book and showing this to the audience. That conduct of A2 would show that he is relying on this book. In this book praises showered upon some organizations by name The Hizbul Mujahideen, the Jammu & Kashmir Liberation Front, Tehreek-i-Hurriyat-i-Kashmir. These are organizations declared as terrorist organizations under the First Schedule to the UAP Act. These organizations are having roots in Pakistan and operate from Pakistan to indulge terrorism in various parts of India especially in Jammu & Kashmir. Page 157 of this particular book deals about a subject stating that Indian Military Force is indulging in killing Kashmiries fighting for liberation of Kashmir.

340. Thus, Exhibit P3 book as such is a book against the sovereignty and integrity of India. It is a book containing praises to terrorist organizations incorporated in the UAP Act, as real freedom fighters. When A2 is relying on this particular book as his conduct exhibited at the venue, it is a very important link



evidence to show that he was advocating or inciting unlawful activities affecting the sovereignty and integrity of the nation.

341. In this context I may also say that this book was taken by A2 from Hira library twice as evident from Exhibit P66(b) which I have already referred. That means the relying on this particular book by A2 was to advocate an unlawful activity.

342. Exhibit P58 which is also seized from A2 is a programme notice. I have already referred about the same and concluded that the only striking feature about the same is noting “ഏകദിന ഇഖ്‌ലാസ് സംഗമം (ഇന്ത്യൻ ഹിസ്റ്ററി, പാതായിക്കളം ആഗസ്റ്റ് 15) which may appear to be this particular meeting.

343. One diary also was seized from A2 on the day of the incident. The same is Exhibit P53. This is the diary of the year 2006. In the pages for the dates 02.01.2006 to 05.01.2006 some writings appeared to have been collected from the religious or holy books of Islam are reproduced. The writings in the pages 01.07.2006 to 04.07.2006 deal about the location of Kashmir, the population therein, its earlier history, the Muslim rulers in Kashmir as well as in India, the UN referendum etc. A comparison of these writings with contents of Exhibit P3 would show that these notes in Exhibit P53 are taken from the various chapters in Exhibit P3. It would then appear that these writings in Exhibit P53 are prepared by A2 for the purpose of including those in his speeches and it is possible that he has included the same also, though PW1 could give only gist of speech which he could recollect. But some notes prepared by looking into Exhibit P3 itself is an indication to show

that A2 had relied on a publication like Exhibit P3 which contains only anti Indian articles and for the purpose of showing that Kashmir is not part of India and therefore the act and attitude of A2 can be treated as against the sovereignty and integrity of India.

344. I may also note yet another striking feature with respect to Exhibit P53. The page for writing the name and address of the owner of this diary, the first page containing the date January 1 and page for writing the monthly planner for August are seen torn away from this diary. This would have committed by A2 only. This attitude of A2 would then show that there must have been writings therein indicating his role with SIMI and he had managed to tear them away.

345. From A3, Exhibit P4 which is a literature by name "ലാഭകരമായ കച്ചവടം" was seized. Even though this is a publication of SIMI a reading of the same (available portions of the same as many portions are seen eaten by some sort of flies etc.) would show that the said literature contains only enlightenment of Islamic principles. Even though in the last portion the word 'jihad' is seen printed, because the adjacent portions are eaten by creatures and not possible to read it is not possible to make out what is exactly meant by 'jihad' in that context. I am not placing much reliance on Exhibit P4.

346. Exhibit P59 which is an article by name "കാമ്പസ് പ്രക്ഷുബ്ധമാകണം" which also is a publication of SIMI also contains some sort of anti-national materials. It is everybody's knowledge that fighting inside Kashmir and Punjab is done by terrorist groups. However those terrorist groups are given praise in this

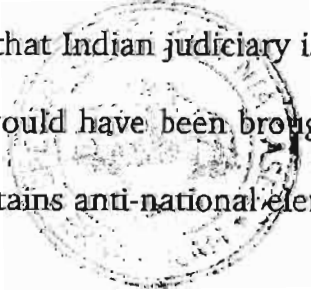
article stating that their fighting is not against the country, but a fight for the downtrodden against the upper classes.

347. Exhibit P5 is a literature seized from A4 which also is a publication of SIMI. A complete going through of this article would show that it is not propagating any sort of anti-national elements.

348. Exhibit P61 is another publication of SIMI calling upon persons to contribute generally to the SIMI TADA Victims Fund. In this literature it is stated that Indian Government is showing religious intolerance towards Muslims. This version is actually against the fundamental concept of secularism enshrined in the Constitution of India. If so, this literature contains anti-national elements.

349. Exhibit P62 is yet another publication of SIMI. I have already stated that this contains compilation of various articles from various magazines including "vivekam" which is a publication of SIMI. Many articles herein project anti-national elements to the effect that Muslims in India are subjected to various harassments and they were actually scape goats in the hands of the ruling government by tarnishing them as terrorists. Hence I may say that this publication also projects anti-national elements.

350. Exhibit P52 which is seized from A4 is a written note. This note relates to attack on Muslims at various parts of the country. This will also show a writing that Indian judiciary is actually against Muslims. Hence in a way this note which would have been brought by A4 to rely for delivering a speech at the venue also contains anti-national elements.



351. From A5, Exhibit P56 which is a literature known as "തദ്കിറ" was seized. In the order of the Unlawful Activities (Prevention) Tribunal, which I have already referred, there is an observation in paragraph 16 that "in Kerala SIMI activists are said to have circulated a booklet titled "Thadkira" (reminder) showing similarities between Israel and India". The above observation would show that "തദ്കിറ" is a circulation by SIMI only. In fact in the first page under the heading editorial on this literature it is very clearly stated that SIMI has never indulged in any terrorist activities. It is further stated that SIMI has always been taking attitude for restoring the Islamic rule and for changing non-Islamic rule which has always caused trouble to the rulers. Thus, the ideology of SIMI is highly projected in Exhibit P56. The said ideology as already stated is against the secular fabric of our country.

352. Exhibit P54 which is a book titled as "ഇസ്ലാമും ജനാധിപത്യവും" was also recovered from A5. The publisher of the same is "സാക്ഷി". It is not clear as to whether സാക്ഷി is a publisher having allegiance to SIMI. A complete reading of this particular book would show that Islam does not recognize democracy and Islam does not recognize election of representative of the people. It is stated in paragraph 44 of this particular book which is marked as Exhibit P54(a) that "നിയമ നിർമ്മാണ സഭയിലെ അംഗത്വം ഹറാമാണ്" (membership in Legislative Assembly is opposed to Islam). A democracy will survive only if people are given authority to elect their representative to govern them. This is the fundamental concept enshrined in our Constitution. When it is stated that membership in Legislative

Assembly is opposed, the same is opposing the Constitution. Hence this book also contains anti-Constitutional elements.

353. In the light of my above discussion it has come out very clearly that A1 to A5 were the organizers of the meeting at Happy auditorium, Panayikulam on 15.08.2006 for propagating the ideology of SIMI and spreading anti-Constitutional, anti-national feelings as to disturb the sovereignty and integrity of the country. If so, without any doubt it can be concluded that A1 to A5 had incited the commission of unlawful activity.

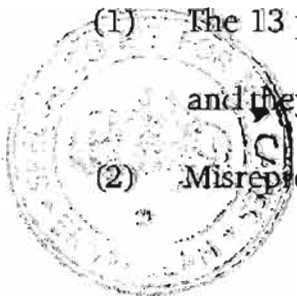
354. Then to be considered is the role of A6 to A12 and A14 to A17. In Exhibit P1(a), that is column No. 12 of FIR, the names of these persons are very clearly mentioned stating that they also had participated in the meeting. Of course, from the police station these persons were let go by PW37 with a direction upon them to report as and when necessary. That is the reason why at that point of time A6 to A17 were not arrayed in the list of the accused.

355. It is only after PW48 had taken over the investigation, that on perusal of papers, he had come to a conclusion that A6 to A17 and PW1 also ought have been made accused. For drawing such conclusion he has relied on a lot of aspects which will be narrated by me hereafter.

356. The aspects so relied on by PW48 are stated by him as below :-

(1) The 13 persons who had come to the place belong to different areas and they had all assembled at a remote area like Panayikulam.

(2) Misrepresenting that the auditorium is required for Quran class a



secret meeting of SIMI was convened.

- (3) It was not a public meeting nor any mike was used therein.
- (4) The Muslim inhabitants in the neighbourhood were not informed about this meeting.
- (5) While A2 and A3 conducted seditious speeches all the persons sat as audience encouraged them by clapping their hands.
- (6) If the persons who sat as audience had any objection to such speeches they should have vacated the hall immediately but they did not do so.

357. On the above reasons I will indulge in discussion a bit later. For the time being it has to be verified as to whether A6 to A12, A14 to A17 and PW1 actually attended this meeting.

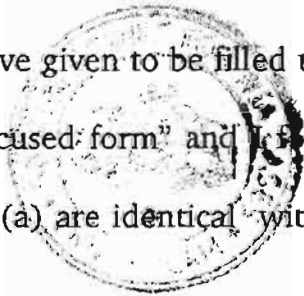
358. For this purpose I may initially refer to the annexure to Column No. 12 of Exhibit P1(a). In the same PW37 recorded the names and addresses of all those persons who were in the audience. They are :-

1. Nissar, S/o. Ibrahim, Vettuvilil Veetil, Kunjunni Kara, Kadungalloor village.
2. Nissar, S/o. Ummer, Kattilparambil Veetil, Veliyathunattukara,
Kurumaloor Village.
3. Mohiyudheenkutty @ Taha, S/o.Saidu Muhammed, Ulliyattu Veetil,
Adivadu Kara, Pothanikkad Village.
4. Hashim, S/o. Ahamed Ashraf, Madathil Veetil, Millupad, Bhagam
Panayikkulam Kara, Alangadu village.



5. Rasheed, S/o. Saithalavi, Varamangalath Veedu, Karinganattu Desom,
Valayar Village, Palakkad District.
6. Riyas, S/o. Aliyar, Chittethukudyil Veedu, Kothamangalam kara,
Thrikkariyoor village.
7. Shameer, S/o. Yousuf, Karukapadath Veedu, Azheekkodu kara,
Eriyadu Village, Thrissur Dist.
8. Ashkar, S/o. Muhammadali, Ilamthuruthil Veedu,
Azheekode Kara, Eriyadu Village.
9. Nissar, S/o. Abu, Ettuthenguparambil Veedu, Azheekode Kara, Eriyadu Village.
10. Sali @ Salih, S/o. Abdul Rassak, Puzhakkara Veedu,
Nadakkal Kara, Erattupetta Village.
11. Abdul Hakeem, S/o. Muhammed, Kadakathakathu Veedu,
Azheekode Village, Eriyadu .
12. Nizar, S/o. Muhammed, Mundikuni veedu, Alakumarikara,
Pooppara village, Idukki District.
13. Muhammed Naizam, S/o. Hamsa, Karimbukandam Veedu,
Mudikkal Kara, Marampilli village.

359. I have perused the charge sheet produced by the NIA and various other documents namely, the arrest memos of these persons and the address they have given to be filled up in the column for recording so in the "examination of the accused form" and I found that the address of the persons so recorded in Exhibit P1(a) are identical with the address of them in the charge sheet and in the other



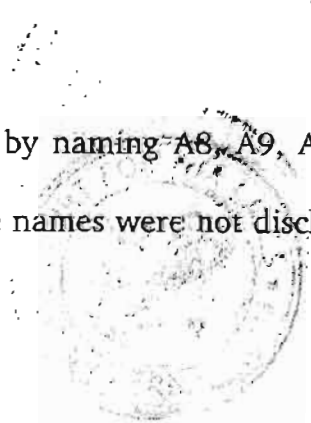
documents. The persons named serially in the annexure to column No. 12 of Exhibit P1(a) as mentioned in the aforementioned paragraph are therefore A17, A10, A9, A14, PW1, A15, A6, A11, A12, A13, A7, A8 and A16.

360. When Exhibit P1(a) which was recorded on the very same day of the incident narrating the complete details such as name of persons, residence name, place of residence etc. the only inference the court can draw is that accused 6 to 12 and 14 to 17 were also present in the said meeting as otherwise it would not have been possible for PW37 to collect the complete whereabouts of all these persons to record the same in the annexure to column No. 12 of Exhibit P1(a).

361. Supporting evidence is coming forth from PW1 with respect to the identification of these accused. He said that while he reached the hall he found A4 and A14 in front of the shop rooms in the ground floor. In evidence he also identified A9 by giving his name. He would also say by having a close look at the dock that all other persons were also present in the meeting. Despite very vehement cross examination identification of these accused by PW1 could not be discredited.

362. PW2 even though saw the police apprehending some persons from the hall and taking them to the police station she did not identify anybody except A4.

363. PW31 identified specifically by naming A8, A9, A11, A14 and A15 and also stated that all other persons whose names were not disclosed by him were also present at the meeting.



364. PW32 generally said that all the persons in the dock were present at the meeting.

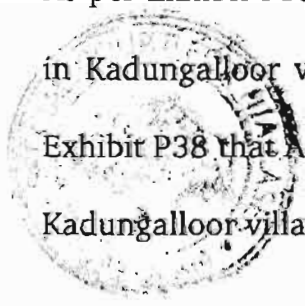
365. PW15, who according to the prosecution had gone behind the police and had a chance to hear the speeches coming out from the hall, did not identify any of the accused.

366. PW37 specifically identified A6, A7, A10, A12, A16 and A17 by naming them and also stated that all the accused in the dock were present and they were apprehended by him from the hall.

367. Thus, there is sufficient evidence forthcoming from the witnesses also regarding the identification of A6 to A12 and A14 to A17 as the persons who attended the meeting by sitting in the audience.

368. There is no dispute that the address of A6 to A12 and A14 to A17 given in the charge sheet is correct. In fact when the village officers or other revenue officers who proved the residence certificates of these accused, there was no serious cross examination on that aspect. I will be referring to those residential certificates hereafter.

369. PW20 was the Village officer of Kadungallur village during 2009-2010. She gave Exhibit P38 report showing the place of residence of A3 and A17. As per Exhibit P38, the house of A3 is known as Perunthelil Veedu at Kunjini Kara in Kadungalloor village and A3 is the Son of Abdul Rasak. She would report in Exhibit P38 that A17 Nissar is the son of Ibrahim of Vettuvelil Veettil, Kunjini Kara, Kadungalloor village.



370. PW21 was the Village Officer of Alangad Village during 2009. He gave residence certificate which is marked as Exhibit 39 with respect to the place of residence of A4 and A14. As per the same A4 is the son of Muhammed of Jasmin Manzil, Panayikkulam Kara, Alangadu village and A14 is the son of Ahamed Ashraf, Madathil House, Panayikkulam Kara, Alangadu village.

371. PW22 was the Village officer of Erattupetta village during September 2009. He gave residential certificate in respect of A1, A2, A5, and A13 which is marked as Exhibit P40. As per Exhibit P40, A1 is the son of Abdul Karim, Peediyakkal Veedu, Nadakkal, Erattupetta Village, A2 is the son of Abdul Rahim, Perakathusseri House, Nadakkal, Erattupetta and A5 is the son of Jamal, Ambazhathingal Veedu, Vadakkekara, Erattupetta Village.

372. PW23 was the Village Officer of Azheekode village in Thrissur District during 2009. He gave residential certificate in respect of A7, A11 and A12 which is marked as Exhibit P41. As per the said document A7 is the son of Muhammed Iqbal, Kadakathakathu Veedu, Azheekodu Village, A11 is the son of Muhammed Ali, Ilamthuruthi House, Azheekode village, Eriyadu and A12 is the son of Abu, Ettuthenguparambil House, Azheekode village, Eriyadu.

373. PW24 was the Village Officer of the Ariyad village in Kodungallur Taluk during 2009. She gave Exhibit P42 permanent residential certificate in respect of A6. As per the same A6 is son of Yousuf, Karukapadath Veedu, Eriyadu Village.



374. PW25 was the Village Officer of Pooppara village in Udumban Chola Taluk in 2009. He gave Exhibit P43 certificate showing A8 is the son of Muhammed, Mundikunnel Veedu, Murikkumthotty Kara, Pooppara village.

375. PW26 was the Village Officer of the Pothanikkara village in Ernakulam District during 2009. She gave Exhibit P44 residence certificate showing that A9 is the son of Saidu Muhammed, Ulliyattu House, Pallarimangalam Kara, Pothanikkad Village.

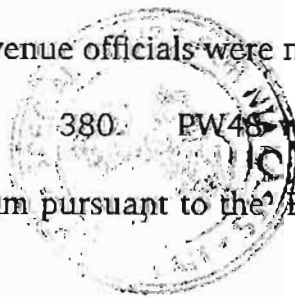
376. PW27 was the Village Officer of Karumallur village in Paravur Taluk. He gave Exhibit P45 certificate showing that A10 is the son of Ummer and is a resident of Kattilparambil Veedu, Veliyathukara, Karumaloor Village.

377. PW28 was the Village Officer of Thrikkariyoor village of Kothamangalam taluk. He gave Exhibit P46 certificate stating that A15 is the son of Aliyar and he is a resident of Chittethukudyil Veedu, Thrikkariyoor village.

378. PW29 was the Village Assistant of Marambilly village in Ernakulam District holding the charge of village officer in October 2009. He gave Exhibit P47 permanent residence certificate in respect of A16 stating that he is the son of Hamsa Moulavi, Kollamkudiyil Veedu, Mudikkal Bhagam, Marampilli village.

379. As already stated these accused persons do not deny address of them shown in these residential certificates issued by the revenue officials and these revenue officials were not subjected to cross-examination.

380. PW48 was appointed as the investigator of a special investigating team pursuant to the Exhibit P172 order. On taking over the investigation, PW48



gave Exhibit P173 report to the court about his proceeding with the further investigation. I have already stated the reasons which according to PW48 for arraying all the persons attended the said meeting as accused.

381. PW48 took A6 and A7 in custody on 06.10.2008. He thereafter filed Exhibit P175 report to the court to add A6 and A7 as accused. By preparing Exhibits P176 and P178 arrest memos he arrested A6 and A7. The inspection memos at the time of arresting accused are Exhibits P177 and P179.

382. On 14.10.2008 PW48 arrested A8 by preparing Exhibit P180 arrest memo and Exhibit P181 inspection report. On 21.10.2008 he took A9 to A12 in custody. He gave Exhibit P182 report to add A9 to A12 as accused. By preparing Exhibits P183, P185, P187 and P189 he arrested A9 to A12. Exhibits P184, P186, P188 and P190 are the respective inspection memos.

383. On 31.12.2008, PW48 gave Exhibit P194 report to add A14, A15 and PW1 in the array of the accused. By preparing Exhibits P195, P197 and P7 arrest memos PW48 arrested A14, A15 and PW1. PW196, P198 and P199 are the respective inspection memos of these persons.

384. On 08.06.2009 PW48 filed Exhibit P203 report to add A16 in the array of the accused. He arrested A16 by preparing Exhibit P204 arrest memo and Exhibit P205 inspection memo.

385. Thereafter, he filed Exhibit P207 report to add A17 in the array of the accused. But A17 could not be arrested by PW48. PW46 who is the Dy.SP, NIA, Kochi unit had actually arrested A17 after the NIA had taken over the investigation.

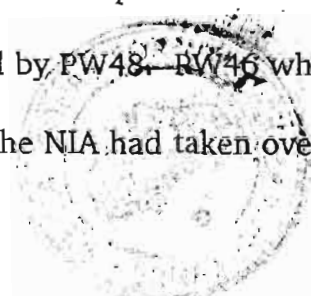


Exhibit P128 is the re-registered FIR by the NIA. PW46 deposed before the court that on the basis of a look out circular issued against A17, on 20.03.2011 the Immigration Department of Kochi International Airport detained A17 when he alighted there and informed the NIA. On the basis of the same A17 was brought to the NIA office and his arrest was recorded. It is by Exhibit P153 letter by Immigration Inspector A17 was handed over to the NIA. Exhibits P154 and P155 are the inventories prepared by the Immigration Inspector with respect to the articles found out on the body search and bag search of A17. Those articles were returned to A17 himself. Arrest memo cum personal search memo prepared by PW46 is Exhibit P156. PW46 has identified A17 from the court.

386. After arresting A8 to A12, A14 and A15, searches in their respective houses were conducted but no materials bringing out any incriminating aspects about these accused could be recovered.

387. PW40 who at present serves as Dy.SP in NIA was CI of Thirurangadi while the special investigation team headed by PW48 was constituted and he was a member in the said team. After arrest of A6 and A7, as directed by the investigating officer, PW40 conducted a search in the houses of A6 and A7 located at Eriyadu in Kodungallur Taluk. The search memorandum with respect to conducting of search in the house of A6 is Exhibit 136. On conducting the search in the house of A6, PW40 recovered two VCDs which were kept in a single cover. Those VCDs has inscription upon it as "എറുമുട്ടൽ കൊലപാതകങ്ങളും ഭരണകൂട ഭീകരതയും". PW40 identified those VCDs as MO1 and MO1(a), cover wherein those are kept as

MO1(b). On the cover of MO1(b) there is inscription as “പ്രഭാഷണം - സയ്യാദ് അബ്ദുൾ റഹ്മാൻ ഗിലാനി, കാശ്മീർ” (Speech – Sayyad Abdul Rahman Geelani, Kashmir) and photograph of that person. PW40 said that this Abdul Rahman Geelani was an accused in the Parliament attack case. There is no dispute on that aspect. On MO1 there is an inscription as “പ്രഭാഷണം - അമരീഷ് പട്ടേൽ, Prof. V.കോയ, ഗോപിനാഥൻ പിള്ള.” (Speech – Amarish Patel, Prof.V.Koya, Gopinathan Pillai)

388. PW40 also found out one booklet the name of which is written in Malayalam as “ സാമൂഹിക മാറ്റത്തിന് ഇസ്ലാമിന്റെ ശക്തി” and another inscription therein as “Islamic Students Association”. The search list in respect of these recoveries is Exhibit P137. This particular booklet is not seen produced in court.

389. The search memorandum sent by PW40 with respect to the search in the house of A7 is Exhibit P138. As per Exhibit P139 search list he took the Exhibit P140 book titled as “ഹിന്ദുത്വ വാദവും ഇന്ത്യൻ മുസ്ലീംകളും”. The report forwarding Exhibits P137 and P139 in court is Exhibit P141.

390. The contents of MO1 and Mo1(a) were verified by PW30 who was the Tahsildar, Paravur on the direction of the Judicial First Class Magistrate, Paravur. Exhibit P48 is the report on verification of the contents of MO1 and MO1(a) given by PW30. The covering letter accompanying Exhibit P48 is Exhibit P49. PW30 said that he initially examined MO1 having inscription as “ഏറ്റുമുട്ടൽ കൊലപാതകങ്ങളും ഭരണകൂട ഭീകരതയും, പ്രഭാഷണം - അമരീഷ് പട്ടേൽ”. Exhibit P48 would show that the same is actually the videograph of a conference with respect to the subject mentioned above held at 9.30 a.m on 07.06.2007 at VJT Hall,

Thiruvananthapuram. Exhibit P48 shows that contents of those CDs are actually apprehension expressed by the speakers about the threat to the secularistic ideology of India and imposing of laws projecting Hinduism even upon the minority communities. It is also recorded in Exhibit P48 that the Gujarat incident with respect to the Sabarmati Train fire case was actually an incident propagated by the Hinduist forces under Modi. The contents of MO1 CD as recorded in Exhibit P48 and spoken to by PW30 would not show that the same is against the sovereignty and integrity of India. However, the contents in the second CD which is titled as "Encounter Killing and State Terrorism National Seminar – 07.06.2011 VJT Hall, Thiruvananthapuram" wherein speaker was Sayyad Abdul Rahman Gilani, Kashmir, Professor, Delhi University. It is recorded in Exhibit P48 and spoken to by PW30 that this professor was speaking that he was fighting for the independence of Kashmir and he is eager to see that a democratic India is located as neighbour of such independent Kashmir. This speech can be stated as affecting the integrity of India. However, there is no evidence to show that this particular professor was booked for an offense of sedition for delivering any such speech in a prominent place in the Capital city of Kerala on that particular date.

391. I may say that just because of the fact that A6 was found in possession of these two CDs he cannot be fastened with the allegation of showing allegiance or sympathy to the independent Kashmir movement.

392. The recovery from the house of A7 was a book titled as "ഹിന്ദുത്വ വാദവും ഇസ്ലാം മുന്നേറ്റവും". It is a publication by Islamic Publication House, MP Road,

Kozhikode. Despite straining my eyes through the contents of this book, it will not show that any contents therein was against the sovereignty and integrity of India or to bring about a Muslim rule in India affecting the secular status of our country. The author of this book is a Hindu by birth and in this book he was only advocating a fact that Hindus are actually causing trouble to the minority Muslims in India. For keeping such a book in his possession, A7 cannot be fastened with any sort of allegation showing any sort of allegiance to a banned terrorist organization.

393. PW17 is residing near the Government Polytechnic, Nattakam in Kottayam District. He is the owner of six quarters nearby to his house. He said that A16 whose name he disclosed as Mohammed Naisam was in residential occupation of his residential quarters for seven days. The police had come for bringing A16 to this quarters, that with the spare key available with PW17 the room occupied by A16 was opened and police recovered some posters and notices from the said room and said posters are marked as Exhibit P33 series and the said notices are marked as Exhibits P34(a) and P34(b). The search list in respect of these recoveries is Exhibit P35. These posters and these notices are that of Islamic Students Association and those are published from Big Bazar, Kozhikode.

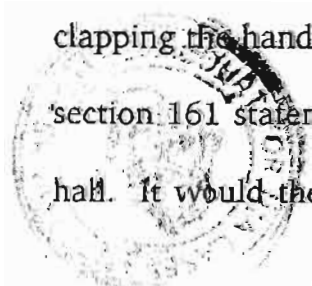
394. There is no iota of evidence for the prosecution to show that Islamic Students Association is an organization formed by erstwhile SIMI members on and after the banning of SIMI. The address where Exhibits P33 series and P34 series are published also is not the address of SIMI in Kozhikode which I have already referred. Hence, it is not at all possible to conclude that Exhibits P33 series and



P34 series were collected and kept by A16 in his room as part of his propagating ideology of SIMI.

395. I have already stated about the reasons supplied by PW48 to array the 13 persons sat in the audience at the time of the meeting. There cannot be any dispute that majority of those 13 persons do not belong to Panayikulam, there also cannot be any dispute that A4 booked the auditorium under the guise of conducting Quran class and thereafter a meeting of a small gathering was convened therein for spreading the ideology of SIMI. To array these 13 persons, the main reason for PW48 is that as and when they heard the speeches they encouraged the speakers supporting the contents of the same by clapping their hands. In fact these sort of encouragement or giving support to the speaker was not seen by PW37 when he entered into the hall. Had he seen so he definitely would have noticed the same in the annexure to column No. 12 of Exhibit P1(a). In Exhibit P1 or in the subsequent statements on 16.08.2006 PW1 did not disclose about his seeing any sort of encouragement or giving support to the speaker by anybody in the audience. PW31 and PW32 also did not have such version to PW37 when they gave the initial statement under Section 161 to him.

396. It is after two years that is after the taking over of the investigation by PW48 that he collected the aspect of giving encouragement to the speakers by clapping the hands by the persons sitting in the audience in the form of subsequent section 161 statement given by the police officers who accompanied PW37 to the hall. It would then appear to me that the serious aspect of encouragement which

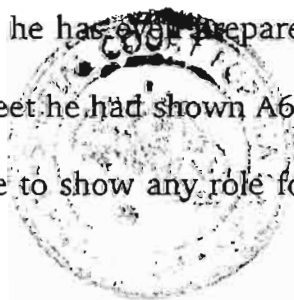


was not noticed by PW37, which does not find a place in Exhibit P1 and in the section 161 statements of any material witnesses who had witnessed the incident, was attempted to be created by PW48 just for the purpose of fastening guilt on some persons.

397. A mere attendance in a meeting of a banned organization will not be an offence. Some acts supporting the meeting or the speeches delivered at the meeting or some overtacts actively indulging in various activities of the meeting should have been there from the part of A6 to A12, A14 to A17. If not, it is not possible to fasten guilt on them. Possibly, keeping this aspect in mind only PW48 had decided to introduce a case of encouragement or giving support to the meeting, by the audience "by clapping their hands".

398. I may say that the case of clapping the hands also appear to be very unnatural. If it was a secret meeting and A6 to A12 and A14 to A17 participated therein fully aware of the fact that the meeting is intended to spread the ideology of SIMI, they would have been very cautious not to give any open support to the speakers by clapping the hands. There is no case for PW1 that he had clapped the hands. Hence in all probability the case of clapping hands does not appear to be reasonable.

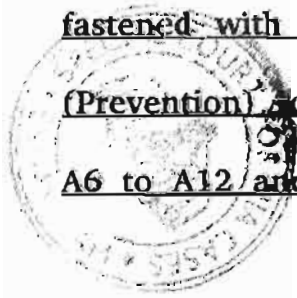
399. There is yet another aspect. The initial investigation was conducted by PW47. On completing his investigation he has ever prepared a final report. In Court PW47 said that in the said charge sheet he had shown A6 to A17 as witnesses and that he had not collected any evidence to show any role for A6 to A17 in the



guilt fastened on A1 to A5. This aspect also would show that the evidence now attempted to be brought against A6 to A12, A14 to A17 can only be artificial.

400. Moreover, in Exhibit P1(a) it is very clearly stated by PW37 that A6 to A17 and PW1 were actually brought to the hall by A4 by misrepresenting something to them. Supposing these persons had come to the hall on misrepresentation that a subject that would be discussed in the venue would be secular subject namely "Role of Muslims in Indian freedom struggle", they cannot be blamed for attending the meeting even if they reside at far away place. In this context I may also take note of one suggestion from the part of the accused to the material witnesses that on the date of the incident all these accused who were shown to have far away from Panayikulam, were actually working at Ernakulam. If that be so, on getting interested in the subject just like PW1, their attending in the meeting convened by A1 to A5 on the invitation of A4 and their hearing the seditious speeches rendered by A2 and A3 will not at all be sufficient to fasten them with the guilt of attending the meeting convened for spreading the ideology of SIMI, a banned organisation.

401. However, since the active leadership for the meeting of SIMI was taken by A1 to A5, which aspects have already been discussed by me elaborately, there was clear overtact on their part and hence they can be fastened with the guilt under section 10(a)(ii) of the Unlawful Activities (Prevention) Act for attending a meeting of SIMI. But the guilt fastened upon A6 to A12 and A14 to A17 under section 10(a)(ii) of Unlawful Activities



(Prevention) Act for having taken part in the meeting of SIMI will not meet with success.

402. The accused 1 to 5 are facing the charge under section 124A IPC also for having rendered anti-national speeches at the venue by bringing books, literatures etc. containing anti-national and seditious elements.

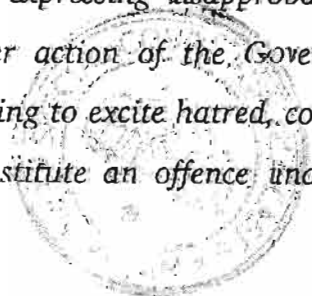
403. I may initially refer to the principle to attract the offence of sedition. Section 124A IPC reads as below :-

“124A. Sedition. - Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine maybe added or with fine.

Explanation 1. - The expression “disaffection” includes disloyalty and all feelings or enmity.

Explanation 2. - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

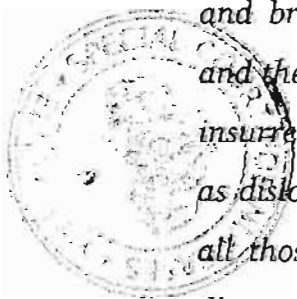
Explanation 3. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.”



404. Thus, bringing or attempting to bring hatred or contempt or exciting or attempting to excite disaffection towards the Government established by law in India by words either spoken or written or by signs or visible representation amounts to sedition. However, comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or the administrative or the other actions of the Government without exciting or attempting to excite hatred, contempt or disaffection will not constitute an offence of sedition.

405. In Nazir Khan v. State of Delhi (AIR 2003 SC 4427) at para 31 it is held as below :-

“Section 124A deals with 'Sedition'. Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt: and the very tendency of sedition is to incite the people to insurrection and rebellion. “Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance,



or to lead to civil war; to bring into hatred or contempt the Sovereign nor the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."

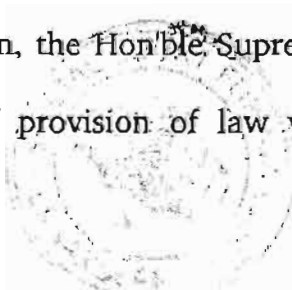
406. From the above it is clear that the object of sedition generally is to induce discontent and disaffection and to bring administration of justice into contempt and the very tendency of sedition is to incite the people to insurrection and rebellion.

407. In Bilal Ahmed Kaloo v. State of Andra Pradesh (1997 (7) SCC 431) it is held as below :-

"The decisive ingredient for establishing the offence of Sedition under section 124A IPC is the doing of certain acts which would bring the Government established by law in India into hatred or contempt etc."

408. Section 124 A IPC was sought to be declared as unconstitutional. However, the Constitution bench in Kedar Nath Singh v. State of Bihar (AIR 1962 SC 955) held that though the section imposes restrictions on the freedom of speech and expression, those restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right. Hon'ble Supreme Court ultimately held that Section 124A IPC is constitutionally valid.

409. In the above decision, the Hon'ble Supreme Court has recorded the history of this particular piece of provision of law with reference to the pre-



constitutional judgments and the section was interpreted on the touch stone of the fundamental right enshrined in the Constitution. The Hon'ble Supreme Court in the said decision held as below :-

"With reference to the constitutionality of S.124A or S.505 of the Indian Penal Code, as to how far they are consistent with the requirements of cl. (2) of Art.19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law" . Now the expression Government established by law has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in S.124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of S.124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government



established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."

410. It is further held in the said ruling as below :-

"What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of

Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoken would be outside the scope of the section."

411. It is also held in the said ruling as below :-

"A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder."

412. The Hon'ble Supreme Court further held in the above decision as below :-

"The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law

steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order."

413. In the light of the above Constitutional Bench decision of Hon'ble Supreme Court of India what exactly were transpired in the Panayikulam Happy auditorium and committed by A1 to A5 from the dais will have to be verified.

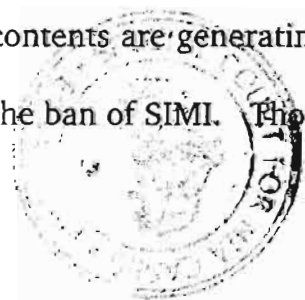
414. I have already referred about the speeches of A2 and A3 from the dais. I have quoted the same elaborately in one of the earlier paragraphs. Hence I am not reproducing the same. In those speeches A2 and A3 said that the Indian Military Force is gunning down or killing Kashmiri Jihadists and support has to be given to those Jihadees and the act of killing those Jihadists will have to be counter attacked through SIMI.

415. I have already stated that Indian Military Force is posted in Jammu & Kashmir to protect sovereignty and integrity of our country. I have already quoted the meaning of the term "Jihad". If the jihadists are fighting against the Indian Military that can only be a war with weapons. Such a war against the Indian Military is actually a war against nation. To help such a war against nation or to show solidarity to the persons indulged in war against nation definitely would attract attempting to bring hatred or contempt or attempting excite disaffection towards Government established by law in India. As already stated Government established by law is a visible symbol of State and the very existence of State will be in jeopardy if there is any attack on the Government established by law. The

calling upon the listeners by their speech by A2 and A3 is therefore to do acts against the Government of India only which is the Government established as per the Constitution. Hence the acts of A2 and A3 in rendering such a speech calling upon the listeners to indulge in war against the nation is actually attempting to bring into hatred or contempt or disaffection towards India. Those acts by A2 and A3 cannot at all be treated as comments expressing disapprobation to certain measures of Government or the administrative or other action of the Government without exciting hatred or contempt or disaffection. Hence I repeat that the speeches of A2 and A3 at the venue which I have elaborately quoted above would definitely attract to an offence of sedition as stated in Section 124A IPC.

416. Of course, the bringing of books may not attract to sedition because the books are not written by any of the accused. Many of those books brought to the dais were actually publication by SIMI and those were brought to a meeting organized for spreading ideology of SIMI. But since the words in those books were not written by the accused 1 to 5 mere bringing of these books would not fasten them with the criminal liability under section 124A IPC.

417. The prosecution has relied on Exhibit P50 report of PW30 on verification of contents of certain cassettes recovered from Nanma Books to fasten guilt on A2. Of course, the CDs and some contents are praising SIMI. Some contents are generating anti Indian thoughts and some contents are actually against the ban of SIMI. Those contents are marked as Exhibit P50(a) to P50(p).



418. As already stated PW35 conducted a search at Nanma Book Stall. The search commenced at 2.25 p.m. on 18.08.2006. I have already referred about Exhibit P73 search list. The search memorandum prior to conducting the search prepared and sent over to the JFCM-I, Kozhikode by PW35 is Exhibit P74. The items recovered under Exhibit P73 were forwarded to the JFCM-I, Kozhikode by preparing Exhibit P75 list of documents. PW35 proved various items recovered as per Exhibit P73 Search list. The book by name "താലിബാൻ നേർ ചിത്രങ്ങളുടെ ആൽബം" authored by one Asif and published by Surge Books, Chavakkad is Exhibit P76. This book has no direct connection with SIMI. However articles therein contain praises on Taliban which is a terrorist organization operating in Afghanistan. There is no evidence to show that this book praises the ideologies of SIMI. As per Exhibit P73, Exhibit P77 Telephone Index book also was recovered. Even though various addresses are therein those are having no connection with SIMI. Even though the prosecution wanted to show "Vachanam - 2722424" recorded in the index for writing words beginning with "V" has connection with SIMI, no evidence is forthcoming in that regard. Exhibit P78 recovered under Exhibit P73 is an index of Nanma Books showing the names of various persons. Exhibits P79 and P80 are inscriptions of names and address of various persons. Exhibit P81 appears to be a letter calling upon to show solidarity to the friends in Lebanon, Iraq, Palestine etc. Exhibit P82 is a news magazine by name "Crescent International" wherein at page 7 there is an advertisement as "Kashmir Solidarity Conference". This book of course projects the ideology of Islam but has no direct connection with SIMI.

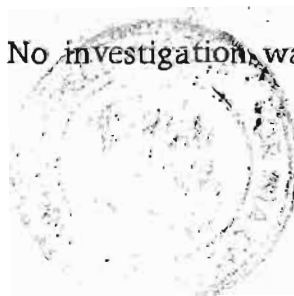


Exhibits P83 and P84 are two post cards and Exhibit P83 calls upon the addressee to read Quran. In Exhibits P82 and P84 address of Nanma Book is inprinted. Exhibit P85 is a letter pad model book containing writings beginning with the words "Our savior is Allah" (ഞങ്ങളുടെ രക്ഷിതാവ് അല്ലാഹു). Exhibit P86 is an income and expenditure register relating to issue of books but this will not show the issuance of any book to SIMI. Exhibit P87 is an account statement beginning with "Agency Sales Due Recovered". Exhibit P88(a) to P88(d) are four pieces of paper showing the addresses of various persons. Exhibit P89 is the photocopy of a letter beginning with "Dear brothers and sisters" (പ്രിയ സഹോദരങ്ങളേ). In Exhibit P89 the last sentence in the 1st paragraph refers about Nissar and Shibily. But there is no proof let in that the said Nissar is one of the accused herein and Shibily is having any connection with any of the accused herein. In the second paragraph of Exhibit P89 there is a mention about Habeeb Muhammed stating that he is an active worker of Erattupetta unit and Exhibit P90(a) to P90(c) Bio-data, Certificates etc. show Habeeb Muhammed as a person hailing from Nadakkal at Erattupetta. Just because of the fact that some documents in respect of a person belonging to Nadakkal are recovered under Exhibit P73 none of the accused herein who hail from said locality could be connected. Exhibits P91 and P92 are papers containing various writings. In Exhibit P92 there is writing in Malayalam, translation of which is - "as far as Muslims are concerned, the aim is to constitute an Islamic country following Sariyath laws". Exhibit P93 is an article wherein it is stated in Malayalam, translation of which is - "Islam could bring out revolutions in this soil". Exhibit P94

is a letter criticizing the Muslims of India for not protesting against the demolition of Babari Masjid and attacks on other mosques. Exhibit P95 is a visiting card of Fazil Fareed showing that the said person hails from Erattupetta. Exhibit P17 is the visiting card of Nanma Book which also contains the address of Nanma Books. MO2(a) to MO2(d) are the four CDs containing the inscription "Al Quran" MO3(a) to MO3(c) are three CDs containing inscription as "Life of Prophet", "Islamic Dictionary", "Alif Bata Yaseem" respectively. MO4(a) and MO4(b) are two CDs containing inscription as "Al Quran I" and "A is for Allah". MO5 is another CD recovered which has inscription as "Islam - Introduction". These are seized under Exhibit P73. MO6 (a) to MO6(m), MO7(a) to MO7(m), 26 CDs also are recovered under Exhibit P73. MO8 is a floppy disc recovered thereby.

419. I may say that there is absolutely no evidence collected by the prosecution to show that A2 is the owner or the person who run the Nanma Books. Even the landlord of the premises wherein A2 occupied did not say specifically that he was the owner of Nanma Books. Just because of the fact that some telephone bills addressing A2 in the name of Nanma Books would not be sufficient to fasten him with the ownership or any other authority upon Nanma Books. He can even be a worker therein. Moreover, in Exhibit P66(b) which is the relevant page in the register of Hira Library the address of A2 is not shown as owner of Nanma Books.

420. In fact it was very easy for the investigating agency to find out as to who the real owner of Nanma Book was. No investigation was taken in that direction.



421. Hence on the basis of certain material collected from Nanma Books and on the basis of some telephone bills and visiting cards from the Nanma Books in the premises occupied by A2 it is not possible to conclude that ownership or authority of Nanma Books was upon A2, that therefore all articles recovered from Nanma books will have to be treated as those belonging to A2. If so, A2 cannot be fastened with the criminal liability of sedition or any other criminal liability with respect to the contents of any article recovered from Nanma Books.

422. Moreover, hearing some seditious speech by playing a CD will not attract to an offence under section 124A IPC. Hence I repeat that none of the articles recovered from search at the Nanma Books could be utilized by the prosecution to fasten guilt of sedition on A2.

423. Even though accused 1 to 5 who were on the dais were asked to face charge of sedition what could be proved by the prosecution is that the seditious acts were actually committed by A2 and A3 only. In this case there is an allegation that A4 also addressed the audience by delivering seditious speeches. But what is obtained in the evidence through PW1 is that A4 only introduced the persons on the dais and he did not actually deliver any speeches either against India or propagating the ideology of SIMI. If so, A4 cannot be fastened with guilt under section 124A IPC. It may be a fact that A1, A4 and A5 supported the seditious speech especially when they also brought some books to the venue which contain anti Indian elements. But as already stated supporting the speech of sedition cannot fasten a person with the criminal liability of sedition. But that person can be booked in for

conspiracy for doing a criminal act of sedition. On that aspect I will be discussing presently.

424. Now I may come to the aspect of conspiracy leveled against A1 to A5. It is alleged by the prosecution that the accused 1 to 5 in or about August 2006 entered into a criminal conspiracy at Ernakulam and at other places to do illegal act of advocating, inciting and abetting the unlawful activities for cession of Kashmir from India and to bring hatred and contempt towards Government of India and in pursuance of the said conspiracy organised a secret meeting of SIMI at Happy auditorium, Panayikulam on 15.08.2006 wherein seditious and inflammatory speeches and writings were exhibited and therefore A1 to A5 were asked to face the charge of conspiracy.

425. Before dealing with the evidence and circumstances with respect to the conspiracy leveled against the accused it would be better to have a look at the legal aspects of the same. Section 120A IPC defines criminal conspiracy. I may reproduce the said section as below :-

*"120A. Definition of Criminal Conspiracy - When two or more persons agree to do, or cause to be done, -
(III) an illegal act, or
(IV) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :*

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

426. Thus, to constitute an offence of criminal conspiracy there must be an agreement to do an illegal act or to do an act which is not illegal, by illegal means. It is the settled law that the conspiracy ceases when the illegal act or the act by illegal means is executed.

427. In Central Bureau of Investigation Hyderabad v. K.Narayana Rao (2012 CRI.L.J. 4610) it is held that -

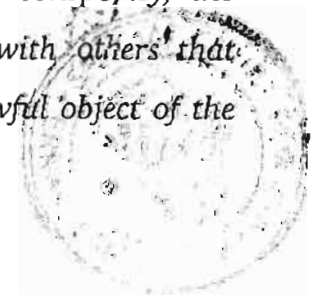
"The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused."

428. In Firozuddin Basheeruddin v. State of Kerala (2001 (3) KLT 189 (SC)) it is held as below :-

"23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve

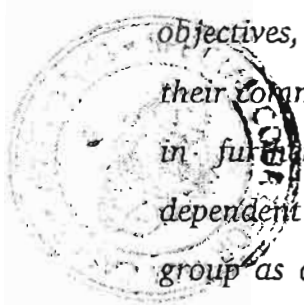


the unlawful objective of that agreement constitutes the required mental state. In the face of modern organized crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy, law had witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.



24. Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy - who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organization, there is but one objective: to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

25. Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a



causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecution. Explaining this rule, Judge Hand said :

"Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (*Van Ripper v. United States*, 13 F.2d 961, 967 (2d Cir.1926)."

27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their conferrers."

429. In Purushothaman v. State of Kerala (AIR 2006 SC 35) it is held as below :-

"The Existence of conspiracy and its objects are usually deducted from the circumstances of the case and the

conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is *sine qua non* for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."

430. In Shaji v. State of Kerala (2013 (1) KLT 493 (SC)) it is held as below :-

"A criminal conspiracy is generally hatched in secrecy, owing to which, direct evidence is difficult to obtain. The offence can therefore be proved, either by adducing circumstantial evidence, or by way of necessary implication. However, in the event that the circumstantial evidence is incomplete or vague, it becomes necessary for the prosecution to provide adequate proof regarding the meeting of minds, which is essential in order to hatch a



criminal conspiracy, by adducing substantive evidence in court. Furthermore, in order to constitute the offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action. In fact, mere knowledge of the main object/purpose of conspiracy, would warrant the attraction of relevant penal provisions. Thus, an agreement between two persons to do, or to cause an illegal act, is the basic requirement of the offence of conspiracy under the penal statute."

431. In Bal Kishan v. State of M.P. (2012 (4) KLT Suppl. 23 (SC)) Hon'ble Supreme Court held as below :-

*"14. The propositions of law which emanate from the above cases are, in no way, fundamentally different from what has been stated by us herein above. The offence of **criminal conspiracy** has its foundation in an agreement to commit an offence or to achieve a lawful object through unlawful means. Such a conspiracy would rarely be hatched in the open and, therefore, direct evidence to establish the same may not be always forthcoming. Proof or otherwise of such conspiracy is a matter of inference and the court in drawing such an inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been proved beyond all reasonable doubt, and thereafter, whether from such proved and established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn. Naturally in evaluating the proved circumstances for the purposes of drawing any inference adverse to the accused,*

the benefit of any doubt may creep in must go to the accused."

432. I have already referred the evidence of PW1, PW2 and PW37. PW2 said that it was A4 who booked this hall for the purpose of conducting Quran classes on 15.08.2006. Exhibit P10 diary and relevant page therein also prove the above aspect which I have discussed which show the booking of this hall by A4 for that particular date for the purpose of conducting Quran class. A4 invited PW1 to this venue by informing him that there will be a study class or symposium on the subject "Role of Muslims in Indian freedom struggle". It is perfectly well established from the deposition of PW1 and PW37 that A1 to A5 were on the dais at the time of the meeting in this hall on 15.08.2006. PW1's evidence shows the delivering of speeches propagating the ideology of SIMI and propagating anti-national elements by A2 and A3. The evidence of PW1 and PW37 proved the recovery of various pamphlets, books, writing etc. from A1 to A5 many of which were published by SIMI and containing the ideology of SIMI. Some such books even advocated or incited for cession of Kashmir from India. I have discussed about all these aspects in detail.

433. Thus, under the guise of booking the hall for conducting Quran class and under the guise of informing PW1 that the subject that would be discussed in the hall was "Role of Muslims in Indian freedom struggle" A4 had actually intended to convene the meeting of SIMI for advocating or inciting the cession of Kashmir from India on that particular date. For convening a meeting like that A4 was ably and actively aided and assisted by A1 to A3 and A5.

434. These very strong circumstances which have already established therefore would permit me to conclude that the conspiracy to have a secret meeting of SIMI or a meeting to spread ideology of SIMI wherein anti-national aspects would be propagated was hatched up in secrecy by A1 to A5 as alleged by the prosecution. Hence it is only to be stated that the guilt of criminal conspiracy leveled against A1 to A5 could be properly established by the prosecution, to fasten guilt on A1 to A5 under section 120A IPC.

435. Next to be considered is the guilt cast on A1, A2 and A6 under section 10(a)(i) of Unlawful Activities (Prevention) Act that is, their continuing to be the members of SIMI as on the date of the offence alleged in this case, that is on 15.08.2006. For the sake of convenience I may reproduce Section 10(a) of Unlawful Activities (Prevention) Act as below :-

“10. Penalty for being member of an unlawful association, etc. - Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,

(a) a person, who -

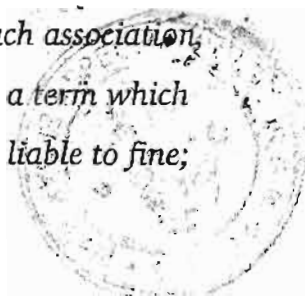
(i) is and continues to be a member of such association;

or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and”



436. In this case there is enough evidence let in by PW1 that A2 spoke at the venue spreading the ideology of SIMI. Exhibits P12 which is already proved through PW3 and PW36 which is the list of SIMI leaders, members and workers in Kerala shows under the heading 'Ernakulam' the name "Razik.A.Rahim, Room No. 10, Islamic Centre, Pullepadi road, Cochin" in two places which are on Exhibit P12(c) page and Exhibit P12(d) page. But it could not be established by the prosecution by collecting evidence that 2nd accused has ever occupied Room No. 10, Islamic Centre, Pullepadi road, Cochin. Hence Exhibit P12(c) and P12(d) pages in Exhibit P12 would not be sufficient to fasten A2 with the guilt of being a member of an unlawful association like SIMI.

437. However, Exhibits P98 and P99 which are also proved by PW36 show that as on 24.09.2001 Rasik.A.Rahim, Parayil House, Nadackal, Erattupetta was the Zilla president or District President of the Kottayam District of SIMI. Whether this Rasik.A.Rahim is the very same 2nd accused is the next aspect to be considered. I have already referred about Exhibit P66(b) page of Exhibit P66 register of Hira library wherein it is shown as Rasik.A.Rahim, Parayil House, Nadakkal post, Erattupetta 686124, 04822276377. The said book shows the issuance of the book titled as "Mass Resistance in Kashmir" to the said Rasik.A.Rahim. The very same book which is marked as Exhibit P3 was seized from A2 on the date of the incident. The very same book was shown by A2 at the time of his speech at the venue as proved by PW1. In Exhibit P102 arrest memo, in Exhibit P103 inspection memo and from the testimony of PW37 it is proved that information about the arrest of

A2 was given in the very same telephone number shown in Exhibit P66(b). Hence even though there is slight difference in the name of person mentioned in Exhibit P66(b) from A2 and house name etc. what could be made out is that the circumstances definitely prove the person named as Rasik.A.Rahim in Exhibit P66(b) is the 2nd accused himself. It is the very same address shown in Exhibit P66(b) in Exhibits P98 and P99 also. Hence it can be further established by the prosecution that the person named as the District President of SIMI in Exhibits P98 and P99 can only be the 2nd accused.

438. To support this case the entry as President "Asbdul" Razak, Parayil, Nadakkal, Erattupetta under the heading 'Kottayam' in Exhibit P12(e) page of Exhibit P12 list is relied on. The same can only be the Abdul Rasak. When the house name therein tally with the house name and address in Exhibit P98 and P99 as well as in Exhibit P66(b) of Rasik.A.Rahim what could be made out further is that the 2nd accused himself is shown as the President under the heading 'Kottayam' in Exhibit P12(e).

439. All these evidence therefore would show that the 2nd accused himself was the President of the Kottayam District of SIMI as on the date of preparation of Exhibits P98 and P99, that is in 2001.

440. The name and address of A1 is P.A.Shaduly @ Haris, S/o. Abdul Karim, Peediyakkal house, Nadakkal, Erattupetta village, Kottayam District, Kerala. As per Exhibit P98 the District Committee Member of Kottayam District is Shaduli.P.A., S/o. Abdul Karim, Peediyackal, Erattupetta. In Exhibit P99 the District

Committee Member is Shaduli.P.A., Peediyeckal, Erattupetta.

441. In Exhibit P12(d) under the heading 'Kottayam' the second name is Shaduli.P.A., Peedikakkal House, Vadakkamchery Engineering College, Earatupetta and again in Exhibit P12(e) page under the heading "Kottayam" as against Campus the name mentioned is Shaduli.P.A., Imthyaz Gardens, Medical Mission P.O., Pandalam.

442. It is doubtful whether the person named as Shaduli.P.A. as against Campus in Exhibit P12(e) is the very same first accused. However, Shaduli P.A. mentioned in Exhibits P98, P99 and P12(b) can only be the 1st accused herein even though there is slight difference in the spelling in the name of the person and in the house name. If so, what could be made out is that A1 also was a member off SIMI in 2001.

443. According to the prosecution, the name of A6 finds a place in Exhibit P12. A6 is Shameer, S/o. Yousuf, House No. House No.XII/408. Karukapadath Putthan Veettil, Eriyadu Village, Thrissur Dist., Kerala. Exhibit P12(b) page shows under the heading 'Thrissur' there is heading as 'Kodungallure Circle' and the 3rd person named under that sub heading is "Sameer.K.Y., Solidarity house, P.O. Eriyadu". There is absolutely no evidence to show that the person named as "Sameer.K.Y" and the 6th accused herein are one and the same. Absolutely no evidence is collected by the prosecution to prove the said aspect. Hence Exhibit P12(b) cannot at all be used by the prosecution to show that the 3rd person named under 'Kodungallur circle' therein is the 6th accused herein. If so, I may say that the

prosecution could not prove that A6 was a member of SIMI at any point of time.

444. Then to be considered is whether A1 and A2 continued to be the members of SIMI till the date of incident, that is on 15.08.2006. There is evidence of PW36 that the list would be renewed periodically. The prosecution of course has not brought in any list like Exhibits P12, P98 or P99 for the year 2006 to show that A1 and A2 continued to be the members of SIMI. But it is to be noted that immediately after the preparation of Exhibits P98 and P99 lists, SIMI was declared as unlawful by Government of India. Hence there won't be any open activities for SIMI so as to collect by the intelligence officials direct evidence or list showing the membership for SIMI. Whether A1 and A2 continued to be the members of SIMI as on the date of incident has to be deduced from the circumstances.

445. In this case A1 and A2 are proved to have attended the meeting of SIMI. A2 addressed the audience propagating the ideology of SIMI. A1 and A2 were having literatures of SIMI. Hence these circumstances are more than sufficient to show that A1 and A2 continued to be the members of SIMI as on the date of the incident. It is contended by the learned counsel for the accused that mere membership in an unlawful organization would not be sufficient to fasten guilt under section 10(a)(i) of the Unlawful Activities (Prevention) Act. He has drawn my attention to the decisions in Arup Bhuyan v. State of Assam (AIR 2011 SC 957) and State of Kerala v. Raneef (AIR 2011 SC 340). In both these decisions it is held by the Hon'ble Supreme Court of India that mere membership of a banned organization will not incriminate a person unless he resorts to

violence or incites people to violence or does an act intended to create disorder or disturbance to the public peace. In other words, a mere passive membership is not an offence, but to attract the offence the membership should be active.

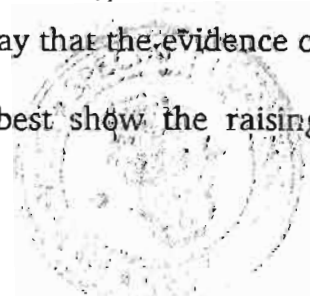
446. In Sri.Indra Das v. State of Assam (2011 CRI.L.J 1646) the Hon'ble Supreme Court by referring to various decisions including the decision in Arup Bhuyan v. State of Assam (AIR 2011 SC 957) and State of Kerala v. Raneef (AIR 2011 SC 340) and also various decision of US Supreme Court, it is held as below :-

"31. Similarly, we are of the opinion that the provisions in various statutes i.e. 3 (5) of TADA or Section 10 of the Unlawful Activities (Prevention) which on their plain language make mere membership of a banned organization criminal have to be read down and we have to depart from the literal rule of interpretation in such cases, otherwise these provisions will become unconstitutional as violative of Articles 19 and 21 of the Constitution. It is true that ordinarily we should follow the literal rule of interpretation while construing a statutory provision, but if the literal interpretation makes the provision unconstitutional we can depart from it so that the provision becomes constitutional.

43. Had there been no Constitution having Fundamental Rights in it then of course a plain and literal meaning could be given to Section 3(5) of TADA or Section 10 of the Unlawful Activities (Prevention) Act. But since there is a Constitution in our country providing for democracy and Fundamental Rights we cannot give these statutory provisions such a meaning as that would make them unconstitutional."

447. Thus, the Hon'ble Supreme Court applied the principle of doctrine of reading down and read into the statutory provisions contained in section 10 of the UAP Act that the persons should have resorted to acts of violence or incited the person to do violence as to make him punishable for the offence of being a member of unlawful association.

448. According to the prosecution, even after the incident in this case A1 and A3 indulged in activities of SIMI. PW41 was the Inspector of Police, Pithampur Police Station of Madhya Pradesh during 2008. In connection with Crime No. 120/08 in Pithampur Police Station he arrested A1 and A3 herein. He identified Exhibit P142 and P142(a) respectively as the certified copy of FIR and translation copy of the same in Crime No. 120/08. A1 and A3 herein are A6 and A9 in Exhibit P142 case. Exhibit P142 shows that the said case was registered under sections 122, 124A, 153A IPC, under sections 3, 10 and 13 of the Unlawful Activities (P) Act and under sections 25 and 27 of the Arms Act. The arrest memo and translation copy of the same in respect of A1 herein are Exhibit P143 and P143(a) respectively and the arrest memo and the translation copy of the same in respect of A3 herein are Exhibit P144 and P144(a) respectively. The properties recovered from A1 and A3 herein were as per property seizure memo and they are Exhibit P145 and P146 and the translation copies of the same are Exhibits P145(a) and P146(a). The properties so seized are not before the court. It is stated by PW41 that A1 and A3 herein participated in a SIMI Camp at Indore. I may say that the evidence of PW41 and the documents proved through him would at best show the raising of an

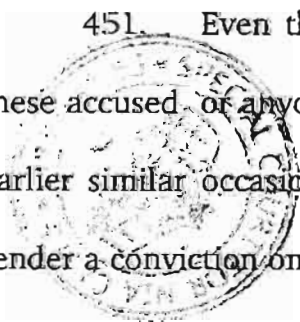


allegation against A1 and A3 herein with respect to a period subsequent to the incident herein. To prove A1 continued to be a member as on the date of incident herein the evidence of PW41 and the documents proved through him are not relevant. There is no allegation in this case that A3 continued to be a member of SIMI as on 15.08.2006. Hence the evidence against him let in through PW41 also appears to be irrelevant.

449. In this case the fact that A1 to A5 are proved to have committed an offence of conspiracy to convene the meeting of SIMI for the purpose of advocating or inciting sedition and cession of Kashmir, the fact that A1 and A2 were on the dais of the said meeting holding literatures of SIMI and A2 even rendered speech which is seditious in character and for spreading the ideology of SIMI. It is thus very well proved by the prosecution that the membership of A1 and A2 in SIMI continued till the date of incident, that is 15.08.2006, that it was not mere passive but was active and by using said membership they have incited the people to do violence or to create public disorder.

450. Hence without doubt it can be stated that A1 and A2 can be fastened with guilt under section 10(a)(i) of UAP Act even though the prosecution has failed to prove the guilt under the provision against A6.

451. Even though such an offence is proved against accused 1 and 2 if these accused or anyone of these accused was tried for a similar offence on an earlier similar occasion and acquitted, the mere proof would not be sufficient to render a conviction on them. This is basing on the principle of issue estoppel.



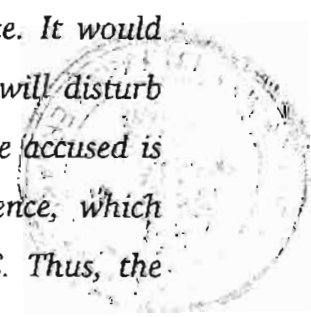
452. Section 300(1) Cr.PC. reads as below :-

“300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under subsection (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.”

453. In Ravinder Singh v. Sukhbir Singh and others (AIR 2013 SC 1048), the Hon'ble Supreme Court held as below :-

“The principle of issue-estoppel is also known as ‘cause of action estoppel’ and the same is different from the principle of double jeopardy or; autre fois acquit, as embodied in Section 403 Cr.PC. This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or res judicata against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might be permitted by Section 403(2) Cr.PC. Thus, the



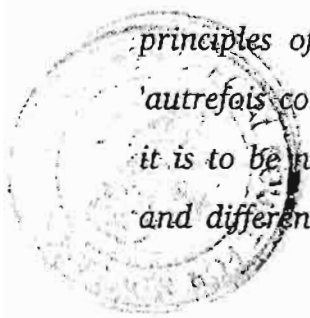
rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. If with respect to an offence, arising out of a transaction, a trial has taken place and the accused has been acquitted, another trial with respect to the offence alleged to arise out of the transaction, which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial, is prohibited by the rule of issue estoppel. In order to invoke the rule of issue estoppel, not only the parties in the two trials should be the same but also, the fact in issue, proved or not, as present in the earlier trial, must be identical to what is sought to be re-agitated in the subsequent trial."

454. In **K.V.Chacko v. State of Kerala (2001 CRI.L.J.1179)** the Division Bench of Hon'ble High Court held as below :-

"In order to invoke the rule of 'issue estoppel' not only the parties in the two trials must be the same but also the fact-in-issue proved or not in the earlier trial must be identical with what is sought to be re-agitated in the subsequent trial."

455. In **Radhakrishnan v. State of Kerala [2012 (3) KLT 88]**, it is held as below :-

"9. Section 300 of the Cr.PC. is essentially founded on the principles of 'autrefois acquit' (formerly acquitted and 'autrefois convict' formerly convicted). In this context, it is to be noted that the principle of estoppel is distinct and different from that of double jeopardy embodied in



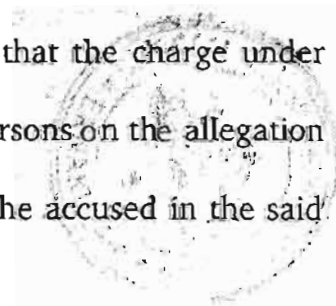
S.300 of the Cr.PC. The rule of issue estoppel prevents re-litigation of the issues which are settled by prior litigation. To constitute an issue estoppel the parties in the two proceedings must be the same and the issue that was decided earlier must be identical with that which is sought to be re-agitated."

456. A reading of the above decisions and Section 300 Cr.PC. closely would show that in order to invoke the rule of issue estoppel, the fact in issue must be identical.

457. On the side of the accused 1 and 3 Exhibit D7 which is the certified copy of the judgment in Sessions Cases 49/2008 and 112/2009 of the 1st Additional District and Sessions Judge, Dharwad, sitting at Hubli, Karnatka was produced. To canvass the issue estoppel, Exhibit D7 was relied on by the 1st accused. I have closely gone through Exhibit D7. The 1st accused herein was the 17th accused in the Exhibit D7 case. None of the other accused herein are the accused in the said case.

458. The accused persons 18 in number in Exhibit D7 case have faced trial for offences punishable under section 120B, 121, 121A, 122, 124A, 153A, A53B, 379, 116, 465, 468, 471, 201 and 511 of IPC, under sections 3, 10 and 13 of Unlawful Activities (Prevention) Act and under sections 4 and 5 of the Explosive Substances Act.

459. A reading of the said judgment would show that the charge under section 10 of the UAP Act was leveled against the accused persons on the allegation that they were members of SIMI, a banned organisation. The accused in the said



case were acquitted as per Exhibit D7 judgment with respect to all charges including the charge under section 10 of the Unlawful Activities(Prevention) Act.

460. Because of the acquittal of A1 herein in Exhibit D7 case with respect to the offence under section 10 of the UAP Act, it has been contended by the learned counsel for the accused that the issue as to whether A1 was a member of SIMI was finally agitated by the prosecution and decided by a court competent jurisdiction and hence the very same issue cannot be re-agitated in this case. This is basing on that principle that the rule of issue estoppel is canvassed by the 1st accused.

461. To decide whether as against the A1 herein the above rule could be invoked, the facts of the Exhibit D7 case will have to be closely scrutinized. In the said case the period of offence was between April 2007 and December 2007. A reading of the summary of the prosecution case therein would indicate that the allegation against A1 herein was that he was a member of SIMI in the said period. However, the allegation in this case is that A1 continued to be a member of SIMI as on 15.08.2006. If so, the facts in both cases cannot be treated to be identical. If the facts are not identical it cannot be said that the issue as to whether A1 was a member of SIMI as on 15.08.2006 was tried by a competent court on a former occasion and therefore the finding of that court in favour of the accused would constitute issue estoppel. I may say that with respect to the transaction herein on the basis of the issue of fact has arisen is the membership of A1 as on 15.08.2006. Despite straining my eyes too much on the lengthy Exhibit D7, I do not find such an issue was raised before the 1st Additional District and Sessions Judge, Dharwad and

the said Court had occasion to consider that issue. If so, the rule of issue estoppel canvassed by the learned counsel for the accused to say that the guilt fastened on A1 under section 10 of UAP Act cannot be re-agitated would not be up held by me.

462. In paragraph 859 of Exhibit D7 judgment it is stated that "the prosecution has miserably failed to prove that the accused are SIMI activists. Assuming for the sake of argument that they are the SIMI activists, the decision in Arup Bhuyan v. State of Assam (AIR 2011 SC 957) which I have already referred above would be attracted." That shows that there was no evidence let in by the prosecution in that case to show that A1 herein was a member of SIMI. But in this case, as already discussed, there is evidence to hold that A1 continued to be a member of SIMI as on 15.08.2006.

463. The sum total of my above discussion is that A1 and A2 has to be fastened with the guilt of continuing to be the members of SIMI, an unlawful association as on 15.08.2006.

464. It is contended that the offences under section 10(a)(i) and 10(a)(ii) of UAP Act raised against the accused are barred by limitation. The learned counsel had canvassed Section 468 Cr.PC. for advancing the above argument. The punishment for offence under section 10(a)(i) and 10(a)(ii) UAP Act is for a term which may extent to 2 years. Under section 468(2)(c) Cr.PC. the period of limitation is 3 years from the date of Commission of the offence. By the time the Court had taken cognizance, that period was over. It is because of the same it is

contended that trial of these offence is barred by limitation and taking cognizance of those offences by this Court was bad.

465. In this context I may refer to Section 468(3) Cr.PC which reads as below :-

468. Bar to taking cognizance after lapse of the period of limitation.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

466. A reading of the above provision would then show that the period of limitation would be determined with reference to the offence which is punishable with more severe punishment when the offences are being tried together. In this case along with Section 10(a)(i) and 10(a)(ii) of the UAP Act, the offences under 13(1)(b)UAP Act and 124A IPC are also being tried. The maximum punishment for offence under section 13(1)(b) UAP Act is 7 years and the maximum punishment for offence under section 124A IPC is imprisonment for life. In that view of the matter sub-section (3) of Section 468 Cr.PC. would squarely apply to the facts in this case.

467. In State of H.P v. Tara Dutt and another (AIR 2000 SC 297) it is held as below :-

The plain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure makes it

crystal clear that under sub-section (2) (a) of Section 468 where the offence for which the accused is charged is punishable with fine only, the prosecution must be launched within six months from the date of commission of the offence. Similarly, under sub-section (2)(b) of Section 468, the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year and under sub-section (2)(c) of the said Section where the offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation provided is three years for taking cognizance. Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment) Act, 1978, provides that in relation to offences which may be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of Section 468 makes it imperative that the limitation provided for taking cognizance in is in respect of the offence charged and not in respect of offence finally proved. This being the position, in the case in hand, when the respondents were charged under Section 468 read with Section 120-B for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the

learned Special Judge cannot be said to be barred by limitation."

468. The facts in the above case are suitable to the facts in this case and therefore the dictum laid down as above has to be applied herein also. In that view of the matter the contention of the learned counsel for the accused canvassing the bar of limitation would not be up held by me.

469. A very serious argument was canvassed by the counsel for accused that the confession statement of PW1 recorded under section 164 Cr.PC is vitiated by illegalities. Exhibit P8 is the said confession statement. It is to be noted that PW1 was arrayed as an accused after PW48 took over the investigation. After the NIA had taken over the investigation it appears PW1 had approached the Magistrate expressing his willingness to confess. It was in the said circumstances the Judicial First Class Magistrate -I, Ernakulam had recorded confession statement of PW1 under section 164 Cr.PC on 21.04.2010.

470. Exhibit P8 would show that when PW1 appeared before the Magistrate on 10.04.2010 he was given sufficient precaution by Magistrate as contemplated under section 164(1) Cr.PC and he was granted time till 20.04.2010 to re-think. On 20.04.2010 PW1 again appeared before the Magistrate but since there was some inconvenience for the Magistrate he was directed to be present on 21.04.2010. On that day PW1 again informed the Magistrate about his willingness to give a confession. Accordingly, the confession was recorded.

471. Section 164(1), (2) and (4) Cr.PC deal about confession. The precautions contained in this statutory provisions were taken by the Magistrate prior to recording the confession as evident from Exhibit P8 and as already stated by me. Exhibit P8 shows that on 10.04.2010 as well as on 21.04.2010 the PW1 was sworn in. That means oath was administered to PW1 on those days.

472. The question posed by the learned counsel for the accused is that it is totally illegal to administer oath prior to recording of confession under section 164(1) Cr.PC. It is basing on that aspect it is contended that Exhibit P8 is vitiated by illegality.

473. Section 164(5) Cr.PC. reads as below :-

“(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.”

474. A reading of the above provision would then show that any statement other than a confession statement has to be recorded in the manner of recording evidence and Magistrate has got the power to administer oath prior to recording such statement. A confession statement is very clearly excluded from this provision. This itself would show that a confession has to be recorded without administering oath to the person giving such confession. In this context I may refer to the decision in Akanman Bora v. State of Assam (1988 CRL.L.J.573).

"Confession should be recorded in the manner provided for recording statement of an accused/suspect and not in the manner provided for recording evidence. If it is recorded in the manner provided for recording evidence by administering oath, then it loses its character in so far the maker is concerned. The fact of administering oath at the recording of confession virtually means that the maker is compelled to give evidence against him, placing him in the status of a witness at the stage of investigation in violation of Art.20(3) of the Constitution of India read with sub-sec. (5) of S.164 of the Code of Criminal Procedure. Administering oath for recording confession will only mean the recording of evidence of the maker for use in subsequent stage against the maker and which is prohibited in law. Such confession is bad in law, and is inadmissible in evidence."

475. In Arjun Rai v. State of Sikkim (2004 CRI.L.J.4747) it is held as below :-

"Sub-section (5) has direct bearing on the point at issue. A close reading of it would indicate that any statement other than a confession made under sub-section(1) shall be recorded in the manner prescribed for recording of evidence and the Magistrate shall have the power to administer oath to such person. Therefore the expression "statement recorded other than a confession" provides key to the question. It means that if he records the statement of a person other than the accused he shall have the power to administer oath to him but if it is a case of recording a

confession, he shall not administer oath to such person (accused). At that stage, we may have a look at sub-section (2) of S.4 of the Oaths Act, 1969 which states inter alia that nothing in the said section shall render it lawful to administer, in a criminal proceeding oath or affirmation to the accused person unless he is examined as a witness for the defence. Therefore recording of confession of the accused by administering oath or affirmation to him is illegal and, therefore, is inadmissible."

476. I have already stated that Exhibit P8 discloses that oath was administered to PW1 on 10.04.2010 and on 21.04.2010. PW1 during cross-examination said that Exhibit P8 statement was recorded after administering oath to him. The said version of PW1 during cross-examination is correct as evident from Exhibit P8 as already stated.

477. In view of all these things, since PW1 was an accused while giving Exhibit P8 confession and when the said confession was recorded after administering oath to PW1 Exhibit P8 in law, cannot be treated as a confession statement. On this score I will have to endorse the contention of the learned counsel for the accused.

478. However, prior to becoming accused on the basis of a report of PW48, PW1 was in the array of a witness especially as a person who gave the first information statement basing on which the prosecution was launched. About 6 months after the giving of the Exhibit P8 statement as per the order dated 23.11.2010 in CrI.MP.No. 1338/2010 PW1 who was A16 at that point of time was

granted pardon by this Court. Thus, from that date onwards he ceased to be an accused and again became in the category of a prosecution witness.

479. In that view of the matter even though Exhibit P8 cannot be treated as a confession statement in view of the legal defects on it as already stated, I strongly hold the view that the same can be now treated as a statement under section 164(1) Cr.PC. For such a statement as already stated oath can be administered. In fact Exhibit P8 statement was given by PW1 inculcating him. Hence same can also be stated as a statement admitting guilt under section 21 of the Evidence Act.

480. Hence even though as already stated Exhibit P8 is to be treated as bad in law when it is approached as a confession statement, it can be treated as an admission under section 21 of the Evidence Act or a normal statement admitting guilt under section 164 Cr.PC. Hence I need not throw Exhibit P8 away from the evidence in this case.

481. As already said, PW1 was the original A16 and on tendering pardon to him and on making him an approver he has become the prosecution witness.

482. The purpose of tendering of pardon to accomplice is given in Section 306(1) Cr.PC. I may quote the said provision as below :-

"S.306. Tender of pardon to accomplice - (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence and

the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof."

483. Thus, the very object of this provision is to allow pardon to be tendered in cases where grave offences are alleged to have been committed by several persons so that with the aid of the evidence of the person pardoned the offence could be brought home against the rest of the accused.

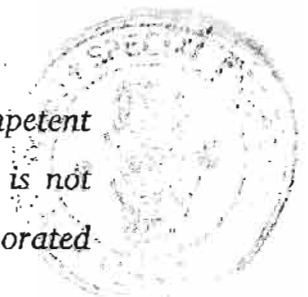
484. The policy behind this is to prevent the escape of offenders from punishment in grave cases for lack of evidence by grant of pardon to accomplices for obtaining true evidence.

485. The manner in which the evidence of accomplice is to be considered is given under two provisions of Indian Evidence Act. Section 114 of Indian Evidence Act permits the court to presume existence of certain facts. Illustration (b) to Sec. 114 reads as below :-

"(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars; "

486. Section 133 of the Evidence Act reads as below :-

" 133. Accomplice – An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated



testimony of an accomplice ”

487. A reading of these two provisions of law may make it appear that these provisions are contradictory, as under the illustration an accomplice is not worthy of credit unless he is corroborated whereas under section 133, a conviction of the basis of the testimony of accomplice is not illegal even if the same is not corroborated.

488. But actually there is no contradiction in between these provisions. In Mrinal Das and Others v. State of Tripura (AIR 2011 Supreme Court 3753) it is held as below :-

“11. Though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars. The evidence of an approver does not differ from the evidence of any other witness save in one particular aspect, namely, that the evidence of an accomplice is regarded ab-initio as open to grave suspicion.

12. If the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particulars; but if the suspicion attaching to the accomplice's evidence be removed, then that evidence may be acted upon even though uncorroborated, and the guilt of the accused may be established upon the evidence alone.”



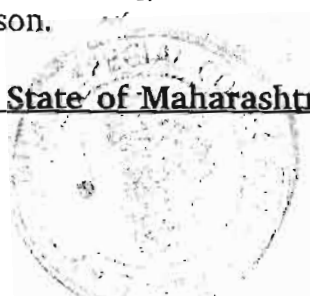
489. These two provisions have to be considered together. In Bhiva Doulu Patil v. State of Maharashtra (AIR 1963 SC 599) it is held as below :-

"The combined effect of Sections 133 and Illustration (b) to Section 114, may be stated as follows :

According to the former, which is a Rule of law, an accomplice is competent to give evidence and according to the latter, which is a Rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

490. It is vehemently contended that PW1 ought not have made an approver by this Court. It is argued that when an accomplice seeking tender of pardon he should implicate himself and then only he can seek pardon. I have already referred about Exhibit P8 statement even though it cannot be stated as a confession legally I took it as a statement and an admission under section 21 of the Evidence Act. Going through the same would show that PW1 had practically implicated himself as wrong doer for having attended the meeting of SIMI. An overall appreciation of the evidence of PW1 would show that he is admitting the guilt of having attended such a meeting. Hence I must say that PW1 in a practicable sense has implicated himself as a guilty person.

491. In Lt. Commander Pascal Fernandes v. State of Maharashtra (AIR 1968 SC 594) it is held as below :-



"14. The next question is whether the Special Judge acted with due propriety in his jurisdiction. Here the interests of the accused are just as important as those of the prosecutor. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused."

492. In this case my learned predecessor appeared to have noticed the nature of evidence of PW1 was likely to give in case pardon was granted to him, the nature of his complicity and degree of his culpability in relation to the offence and in relation to the co-accused. Hence the principle of law laid down by the Hon'ble Supreme Court in the above case has been satisfied herein.

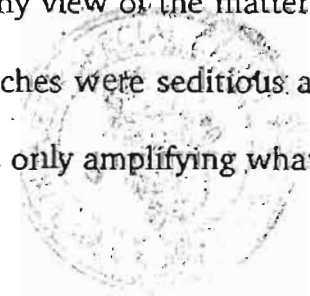
493. Moreover, on the first day of the incident itself PW1 has volunteered himself to give a statement to the police as to what transpired on that day. It is basing on such a statement which is Exhibit P1 only the case was registered and investigation commenced. Only at a later point of time when PW48 took over the investigation he thought of adding PW1 also as an accused. Even at that time role of PW1 was only as a person who has attended the meeting of SIMI and there was no case at that time that PW1 actively involved in any conspiracy to convene the meeting of SIMI.

494. It was noticing all these aspects only the NIA which took over the investigation subsequently thought it wise to project him as an approver. I do not find any illegality or unethical act committed by the NIA in projecting PW1 as an approver or in PW1 becoming an approver.

495. Following the legal provisions and explanation to the legal provisions given by the Hon'ble Supreme Court as above, the evidence of PW1 was considered by me. I have obtained sufficient corroboration to the said evidence from PW31, PW32 and PW37 with respect to the convening of the meeting at Happy auditorium spoken by PW1. Corroboration has been obtained from PW2. I have already discussed the evidence in detail.

496. In short, the purpose of tendering pardon to an accused is quite satisfied in this case and when PW1 has got a lesser role in the crime as compared to the roles of the other accused, the choosing of him as an approver by the prosecution is also legal and correct.

497. In Exhibit P1 or in the subsequent statements PW1 appears to have not stated that he reached the auditorium at 10 'O clock. I may say that this is not a material omission. In Exhibit P1, PW1 also did not give the version that A3 discoursed Quranic verses and the speeches of A2 and speeches of A3. As already stated Exhibit P1 FIR is not a complete encyclopedia. Some omissions therein would not adversely affect the prosecution case. In any view of the matter there is very clear version in Exhibit P1 of PW1 that the speeches were seditious and anti-national and projecting the ideology of SIMI. He was only amplifying what exactly



were heard by him in a subsequent statement and in Court. Hence the omission to give the exact speeches in Exhibit P1 or in Exhibit P8 would not affect the credibility of PW1.

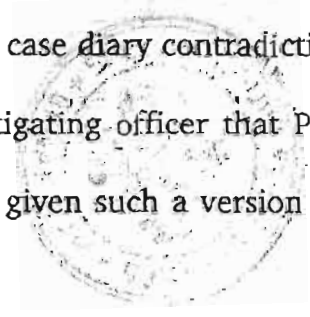
498. It is said by PW31 that from the Binanipuram Police Station they proceeded to the hall at about 12.30 p.m., that to reach the hall about 15 minutes time was taken and waited outside the auditorium for about 15 minutes. If this was the version the time of reaching the hall by the police party at 1.00 p.m. is correct. But in the chief-examination PW31 said that he reached the police station at about 12.45 p.m. If that version is correct the police party could have entered the hall only at about 1.15 p.m. because to PW37 PW31 gave a version that at 1 p.m. they proceeded to Panayikulam.

499. It is to be noted that the versions of PW37 and PW38 as also PW1 is that the police party entered the hall at about 1 p.m. Hence the police party could have moved to the auditorium only at about 12.30 p.m. If so there is some failure to recollect the time of proceeding from the police station by PW31 while he testified in court. The court has to give some concession to such failure especially when PW31 was giving testimony about an incident which took place about 9 years prior to his giving testimony in court. In that view the inconsistency in the time spoken by PW31 also would not affect the prosecution case as to make it a material contradiction.

500. To PW48, PW37 appears to have given a version that on reaching the auditorium the police party heard the voices of somebody speaking from the

up-stair portion but PW37 in court denied of having given such a version. Hence that version is given marking as Exhibit D3. PW37 gave an explanation that such feeble sounds were heard only on reaching near to the grill opening to the step to the up-stairs. There is very consistent version from all the witnesses that when the police party decided to go up stairs they found that the steps leading to the up stairs was closed with a grill and they opened the grill. Hence it is possible that when PW37 gave a version about hearing some voices on reaching near the grill, it was mistakenly recorded by PW47 as Exhibit D3. Hence Exhibit D3 would not affect the credibility of the prosecution case and the same would not at all be considered by me as a serious contradiction.

501. PW47 who took over the investigation from PW37 said that he completed investigation and prepared a final report. But he does not remember as to whether he gave a version to the NIA investigating officer as to the giving of charge sheet prepared by him for the approval of the Additional Government Pleader Shri.Prince. Hence that portion is given marking as Exhibit D5. PW47 said that immediately after the incident superior officer did not reach the Binanipuram police station and they reached only after consuming some time. But he appears to have given a version to the NIA investigating officer that the superior officers reached police station immediately. PW47 does not remember to have given such version and hence that portion is marked as Exhibit D5(a) case diary contradiction. PW47 also appears to have given a version to the investigating officer that PW1 gave a written complaint. Since PW47 denied of having given such a version the



same is marked as Exhibit D5(b) case diary contradiction. Of course, the explanation of PW47 on Exhibit D5(b) is that a complaint given by PW1 was reduced into writing but recorded by the investigating officer as a written complaint is acceptable since the said investigating officer also said so. One need not disbelieve the preparation of a final report by PW47 and given it to approval to Additional Government pleader and one need not disbelieve the reaching of superior officers to the Binanipuram police station. Hence Exhibit D5, D5(a) and D5(b) contradictions also did not discredit PW47.

502. PW48 appears to have given a version to the NIA investigating officer that the filing of a complaint after raiding of the auditorium by PW1 is an after thought. He denied of having given such a version and hence that portion is marked as Exhibit D6. The explanation of PW48 that what he had actually given as statement to the investigating officer was that "the filing of a complaint was an official procedure" is not acceptable. This is because of the fact that PW48 was convinced that PW1 also was a wrong doer and therefore he was not inclined to accept Exhibit P1 as a proper complaint and that is the reason why he filed the report implicating PW1 also as an accused. Hence he definitely would have given Exhibit D6 version. However, giving such a version would never spoil the prosecution case and never discredit PW48 since what PW48 did implicating PW1 is a fact disclosed from case records.

503. PW48 appears to have given a version that none of the attendants in the meeting were local people. He denied of having given such a version. Hence

that portion is marked as Exhibit D6(a) case diary contradiction. Even as per Exhibit P1(a) some of the attendants were local people. Hence PW48 would not have given that none of the local people were present at the meeting. Hence the explanation to Exhibit D6(a) that what he was actually giving was majority of the attendants was from distant places is acceptable.

504. The evidence of PW1 is that except him all others in the audience were clapping while hearing the speech. Hence Exhibit D6(b) version of PW48 that some of the audience were clapping may be correct even though he had denied of having given such a version. In any view of the matter Exhibits D6(a) and D6(b) series contradictions did not at all discredit PW48.

505. Some other inconsistencies highlighted by the counsel for the accused also can be considered. It is deposed by PW37 that at the time of hiding for hearing the speeches in the hall all were sitting in the steps but PW31 and PW32 said that all were standing. I do not find that how PW31, PW32 and PW37 positioned themselves while they were hiding is material. What is material is what they have heard in that position. I have already discussed about what they have heard in that position which was helpful for the prosecution to fasten guilt on the accused. Hence this aspect highlighted by the accused would not be considered by me as serious to throw away the prosecution case.

506. I have already stated about the explanation of PW1 and some other witnesses about the version regarding a written complaint by PW1. It is true PW1 in chief said that he gave a written complaint. But in the re-examination it is

clarified by PW1 that what is meant by him as written complaint is the complaint orally given by him reduced to writing. Such complaint also can be called written complaint if the authorship of the same is on PW1. Hence using the term as written complaint is not that much material to canvass that apart from oral complaint actually a complaint written in the handwriting of PW1 is there which is suppressed by the prosecution. I may say that this plea of the accused cannot at all be entertained.

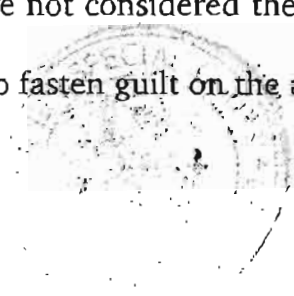
507. Exhibit P15 is the scene mahazar in this case. The same is prepared by PW37. PW6 is the witness to the same. I may say that this is a hopelessly prepared document and it is not helpful to the prosecution. Some aspects on the scene like a half wall which had actually prevented the view from the dais to the steps as spoken by PW37 in court is not mentioned in Exhibit P15. PW1 said that while the meeting was going on all the windows were closed. PW37 did not make any attempt to post a guard for scene guarding as mandated under Police Manual and therefore the position of the window in a closed condition as noticed in Exhibit P15 were in the same position on the date of the incident cannot at all be proved. I am not relying much on Exhibit P15.

508. PW14 was the Village Officer of Alangad Village during 2008-2009. He received Exhibit P28 request to give a Possession Certificate in respect of Happy auditorium, Panayikkulam. He gave Exhibit P29 certificate stating that as on 15.08.2006 the said auditorium and the land wherein it is located were in the possession of CWI and thereafter those came to the joint possession of Gopinathan

Pillai and Gopalakrishnan Nair. PW14 knows the signature and handwriting of Special Village Officer Sri.PK.Vijayan who is not alive. He proved the site plan prepared by the said Vijayan with respect to the scene of occurrence as Exhibit P31 and Exhibit P30 as the covering letter signed by the said Vijayan. The scene of occurrence in this case is shown in Exhibit P31 by giving cross marks in black ink and red ink.

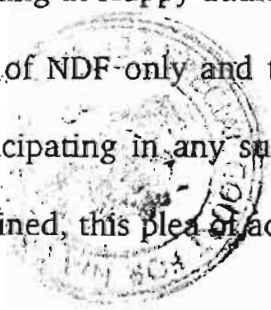
509. I have already stated that with respect to Exhibit P10 diary no suspicion could be cast on the prosecution. I have made a thorough scrutiny of the same on the basis of law and facts. Hence the fact that such a diary was not seized initially by PW37 or PW47 and it took more than one and half month after his investigation by PW48 to seize such a diary would not fasten any doubt on it. The attempt to cast doubt on Exhibit P10 showing that PW48 to create evidence influenced PW2 and her husband and managed to create such a document has not at all met with any success.

510. Of course, the presence of PW15 should have been noted by PW37 on the day of the incident itself. PW31 and PW32 should have stated to PW37 about his presence if PW15 was actually present along with the police officers while they were hiding to hear these speeches. Hence I would endorse the view of the learned counsel for the accused that PW15 cannot at all be treated as a natural witness and is planted subsequently. Moreover, I have not considered the evidence of PW15 at all in the discussion already made above to fasten guilt on the accused.



511. Of course, there are illegalities, faults and lapses on the part of the prosecution. According to the prosecution, the 2nd accused was residing in a house at Calicut under false name Atheek Rahman. Prosecution could unearth there is a real Atheek Rahman. Still no investigation was done with said Atheek Rahman to unearth as to whether he also was a sympathizer of SIMI and had actually allowed A2 to use his name while operating secretly for SIMI. There is also no proper explanation as to how Nanma Books in Calicut could be noticed as one of the areas having connection with A2. But that aspect can be covered because during questioning the police would have gathered some information from A2 about such a book shop and that is the reason why even prior to taking A2 to Calicut and searching the house wherein A2 was residing a search in the Nanma Books was conducted.

512. It is true the then Rural S.P, Ernakulam Shri.Vahab gave a version to PW48 that his initial information was that the meeting was that of NDF. There was lapses on the part of PW48 while interrogating the said officer to rectify him that it was not actually a meeting of NDF. But PW48 did not discharge his duties. Anyway, the prosecution has not examined the said Vahab. Probably because of such a version of Shri.Vahab it is canvassed by the accused that if at all there was any meeting at Happy auditorium on 15.08.2006 such a meeting then would have been that of NDF only and the accused cannot be made responsible for convening and participating in any such meeting. But in the light of the clear evidence already obtained, this plea of accused will not be accepted.



513. It is argued by the learned Counsel for the accused that the statements under section 161 Cr.PC given by some other witnesses, who were not examined in Court, to the investigating officer also have to be perused and if so much inconsistency could be noticed regarding the information, the reaching at the place of occurrence, the versions they could hear from the hall etc. I may say that this Court has to rely on the evidence before the Court and not on something which is not as evidence before the Court. A statement under section 161 Cr.PC can be looked into if from those statements any material contradictions were proved. I cannot even look into the statements of those witnesses who are not examined in court even to unfold any circumstances. The argument by the learned counsel, therefore, will not be entertained by me.

514. After the NIA took over the investigation, PW49 initially conducted the investigation. Thereafter, PW50, the Superintendent of Police, NIA took over the investigation and completed the same. It was PW50 who moved the application to tender pardon to PW1. The final report in this case was also prepared by PW50.

515. I have covered only material and relevant evidence in this case during the course of my discussion herein. I may say that I have not entered into discussion on some totally unimportant and irrelevant materials brought in by the prosecution.

516. The accused 1 to 5 have taken up a plea of alibi. It is said by A1 and A2 that while they were in Ernakulam on 15.08.2006, in connection with the treatment of Rameez Raj, the brother of the 2nd accused who had met with a serious

road traffic accident, they were apprehended by the Dy.SP, Aluva during the course of vehicle inspection. The 3rd accused contended that on 15.08.2006 he had gone for seeing a friend at which time he was taken by the police from the Aluva bus stand. The 4th accused contended that on 15.08.2006 from the shop of one Alikka where he had gone for purchasing groceries he was forcefully apprehended by the police. The 5th accused contended that he was a pillion rider on a motor cycle, that on vehicle checking the police found that the rider did not have proper documents for driving the vehicle and he was taken by the police on that day.

517. The law is perfectly settled that once the plea of alibi is taken the burden is on the accused to prove the same. In this case there was total failure on the part of the accused to prove this plea in the manner in which they raised. No suggestion was given to any of the material prosecution witnesses that these accused were actually taken to police custody in the manner as stated by them. It would then appear that this plea is raised by the accused after their questioning under section 313 Cr.PC. just to save from criminal liability and without any bonafides.

518. The above discussion boils down to this.

(a) The accused 1 to 5 entered into a criminal conspiracy for convening the meeting of SIMI, a banned association and a terrorist organization, on 15.08.2006 at Happy auditorium, Panayikulam and convened such a meeting for purposes of indulging in acts of Sedition and unlawful activity.

- (b) The accused 1 to 5 had actively taken part in the said meeting.
- (c) In the said meeting there was inciting of unlawful activities for cession of Kashmir.
- (d) In the said meeting the accused 2 and 3 delivered seditious speeches and speeches to spread ideology of SIMI.
- (e) The accused 1 and 2 were members and continued to be the members of SIMI as on 15.08.2006.
- (f) Even though the accused 6 to 12 and 14 to 17 participated in the said meeting their participation was without having full knowledge about the fact of convening the meeting was for spreading the ideology of SIMI.
- (g) The accused No. 6 is found not have become member of SIMI and not to have continued to be the member of SIMI as on 15.08.2006.

Points 1 to 6 are found as above.

519. **Point No. 7** :- In view of the above finding, the prosecution has succeeded in proving that the accused 1 to 5 have committed the offences under section 120B IPC r/w Section 124A IPC and under sections 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act and under sections 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act, that the accused 2 and 3 have committed the offence under section 124A IPC and accused 1 and 2 have committed the offence under section 10(a)(i) of Unlawful Activities (Prevention) Act and they are convicted thereunder. The prosecution has not succeeded in proving guilt fastened on the accused 1, 4 and 5 under section 124A IPC, the guilt

fastened on the accused 6 to 12 and 14 to 17 under section 10(a)(ii) of Unlawful Activities (Prevention) Act and on 6th accused under section 10(a)(i) of Unlawful Activities (Prevention) Act and these accused are acquitted with respect to the said offences.

520. The adequate punishment that would be imposed on the accused who were convicted of various offences as mentioned in aforesaid paragraph would be passed after hearing them on the question of sentence. It is found so now.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, this the 25th day of November 2015.

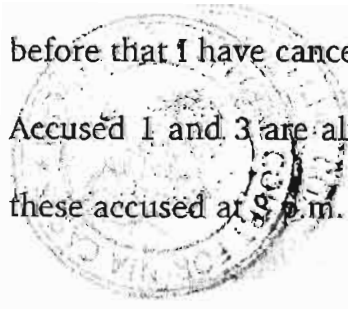
Sd/-

K.M.Balachandran
Judge

ORDER ON SENTENCE DATED 30.11.2015

After pronouncing the order of conviction as above on 25.11.2015, I asked the accused 1 to 5 as to whether they have got to say anything regarding the sentence to be imposed on them. They prayed for time to make submission on that aspect.

In view of the said submission the case was adjourned to 26.11.2015 and before that I have cancelled the bail of accused 2, 4 and 5 and they were remanded. Accused 1 and 3 are already under judicial custody. I have directed to produce all these accused at 9 a.m. on 26.11.2015.



Accordingly, on 26.11.2015 at 3.p.m. accused 1 to 5 were produced before me. I questioned them again as to whether they have got to say anything. The 1st accused contended that he is an Engineering Graduate and unmarried person and has not been involved in any other cases.

The 2nd accused contended that he is a M.A. B.Ed Degree holder, that his father is not alive, that his brother is paralytic, that he is a Diploma holder in Journalism also, that the entire burden to look after the family is on him.

The 3rd accused contended that he is a Graduate, married and has got small children, that the entire burden to look after the family is on his shoulders.

The 4th accused contended that his father is not alive, that his mother is a cancer patient and has to undergo Chemotherapy regularly, that the entire responsibility of the family is upon him.

The 5th accused contended that he is a member of a poor family, that he has started an educational institution at Kozhikode which is only at its developing stage and himself and his wife are now residing at Kozhikode that there is nobody to look after his family.

All these accused prayed for mercy of the Court.

I have heard the learned Public Prosecutor and the learned Counsel for the accused 1 to 5 on the aspect of sentence. The learned Public Prosecutor canvassed that since a very serious offence against the nation is committed by the accused persons with respect to the offence under section 124A IPC, they should be given

extreme punishment of imprisonment of life provided under the said provision of law.

Learned Counsel for the accused submitted that when Section 124A IPC refers about 3 categories of sentences, the gravity of the offence is the criteria of it and thus the offence proved would not attract the giving of the extreme sentence of imprisonment of life.

I have already quoted Section 124A IPC in this judgment. The same gives three categories of punishments. They are :-

- a) Imprisonment for life to which fine may be added.
- b) Imprisonment which may extend to 3 years to which fine may be added.
- c) Fine.

A perusal of the provision of statute and a visualisation of the same would permit me to hold that the statute has incorporated three different categories of sentence for a proved offence under section 124A IPC taking note of the degree of gravity in committing the offence. No doubt, as I have already stated, the intention of the accused 2 and 3 while rendering seditious speeches was excite people to commit violence. But in this case it is proved that the listeners of the speeches of A2 and A3, that is acquitted accused and PW1, had not indulged to commit any violence. In fact it was PW1 who set the law in motion by giving a First Information Statement. I have also said that the case of encouragement alleged as made by the accused 6 to 12 and 14 to 17 was not proved by the prosecution. Hence, even

though the speeches rendered by accused 2 and 3 were intending to excite violence, an actual violence was not committed thereafter. Hence I would say that the gravity herein would not attract to the extreme sentence of imprisonment for life whereas would attract only sentence of imprisonment for 3 years for the conviction under section 124A IPC.

Of course, offence under section 120B is a substantive offence. But the offences conspired to do were actually committed by all the conspirators also except the offence of sedition. Hence separate sentencing would be imposed on the conspirators with respect to the actual offence committed by them. If so it is not necessary to impose sentence on the accused 1 to 5 for the offences under section 120B r/w 10(a)(ii) and 13(1)(b) of the Unlawful Activities (Prevention) Act. Similarly, accused 2 and 3 need not be imposed with a separate sentence for 120B r/w 124A IPC. However, accused 1, 4 and 5 would be imposed with a separate sentence for the offence under section 120B r/w 124A IPC. I may say that adopting the said course would not offend the principle that the conviction shall be followed by a sentence in all cases.

As stated by the learned Public Prosecutor offence against the nation cannot be taken lightly by showing much leniency. Hence even though much has been canvassed by the accused to show leniency towards them, as already quoted by me above, I find that such sort of leniency cannot be extended. Hence I also find that the maximum sentence stated in the UAP Act would be imposed on them with respect to the conviction under the provisions of the said Act and I also find that

in the circumstances of the case the accused persons are not entitled to get the benefit of concurrent running of sentence.

Even though the learned counsel for the accused canvassed for extending the benefit of Probation of Offenders Act to the accused, since the offences committed by them are against our nation I find that this is not a fit case wherein the benefit of the Probation of Offenders Act could be extended to them.

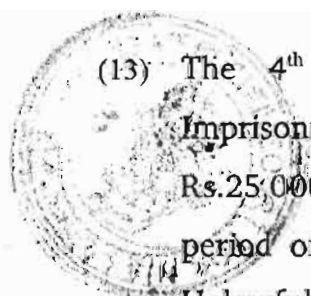
The period of remand undergone by the accused would be given set off as mandated under section 428 Cr.PC.

In the result,

- (1) The 1st accused (P.A.Shaduly) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w section 124A IPC.
- (2) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.
- (3) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(ii) of Unlawful Activities (Prevention) Act.

- (4) The 1st accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(i) of Unlawful Activities (Prevention) Act.
- (5) The 2nd accused (Abdul Rasik) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 124A IPC.
- (6) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.
- (7) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(ii) of Unlawful Activities (Prevention) Act.
- (8) The 2nd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(i) of Unlawful Activities (Prevention) Act.

- (9) The 3rd accused (Ansar @ Ansar Nadvi) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 124A IPC.
- (10) The 3rd accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.
- (11) The 3rd accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(ii) of Unlawful Activities (Prevention) Act.
- (12) The 4th accused (Nizamudeen @ Nizumon) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w 124A IPC.

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- (13) The 4th accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.

- (14) The 4th accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(ii) of Unlawful Activities (Prevention) Act.
- (15) The 5th accused (Shammi @ Shammas) is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 6 months for the conviction under section 120B r/w 124A IPC.
- (16) The 5th accused is further sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- in default to undergo Rigorous Imprisonment for a period of 8 months for the conviction under section 13(1)(b) of Unlawful Activities (Prevention) Act.
- (17) The 5th accused is further sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of 3 months for the conviction under section 10(a)(ii) of Unlawful Activities (Prevention) Act.
- (18) The sentences shall run consecutively with the result the accused 1 and 2 will have to undergo substantive sentence of 14 years each and the accused 3, 4 and 5 will have to undergo a substantive sentence of 12 years each.



(19) All the material objects exhibited in this case, namely, MO1 series, MO2 series, MO3 series MO4 series, MO5, MO6 series, MO7 series, MO8 to MO10 shall be kept along with the case records.

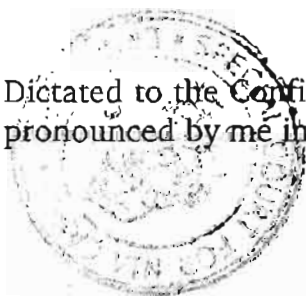
(20) Set off under section 428 Cr.PC. is allowed as below :-

- (a) To 1st Accused : The period from 15.08.2006 to 20.10.2006 and from 21.04.2014 to 30.11.2015
- (b) To 2nd Accused : The period from 15.08.2006 to 20.10.2006 and from 25.11.2015 to 30.11.2015
- (c) To 3rd Accused : The period from 15.08.2006 to 20.10.2006 and from 21.04.2014 to 30.11.2015
- (d) To 4th Accused : The period from 15.08.2006 to 20.10.2006 and from 20.05.2010 to 24.05.2010 and from 25.11.2015 to 30.11.2015
- (e) To 5th Accused : The period from 15.08.2006 to 20.10.2006 and from 25.11.2015 to 30.11.2015

(21) The accused 6 to 12 and 14 to 17 are acquitted under section 235(1) Cr.PC. with respect to all charges levelled against them. Their bail bonds are cancelled and they are set at liberty.

(22) The accused 2, 4 and 5 are acquitted with respect to the charge under section 124A IPC.

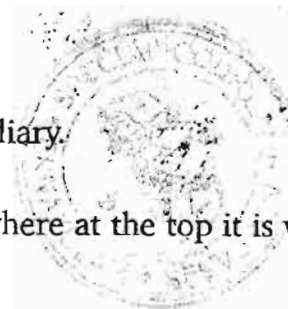
Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, on this the 30th day of November 2015.



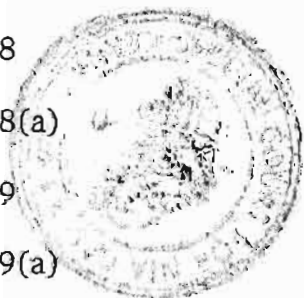
Sd/-
K.M.Balachandran
Judge

APPENDIXProsecution Exhibits:-

P1	15.08.2006	FIS
P1(a)	15.08.2006	FIR
P2		Pamphlet titled as - “ അധിനിവേശവും ചെറുത്തു നില്പും ”
P3		A book titled “Mass resistance in Kashmir”
P3(a)		Map pasted on the last page of Ext.P3
P3(b)		Issuance slip of Hira Library in Ext.P3
P4		Pamphlet - “ ലാഭകരമായ കച്ചവടം ”
P5		Pamphlet - “ വർണ്ണ വ്യവസ്ഥക്കെതിരെ പോരാടുക ”
P6		A book titled “അതിരുകൾ അറിയാത്ത പക്ഷി”
P6(a)		Issue slip in Ext.P6
P6(b)		1 st page of Ext.P6
P6(c)		Inner side of front cover page of Ext.P6
P6(d)		Inner side of back cover page of Ext.P6
P7	31.12.2008	Arrest Memo of Rasheed (PW1)
P8		Statement of Rasheed(PW1) recorded by JFCM, Ernakulam, u/s.164 Cr.PC.
P9	23.11.2010	Application submitted by Rasheed (PW1) to make him approver
P10		Diary of 2004
P10(a)		Last but one page in Ext.P10 diary.
P10(b)		A page in the Ext.P10 diary, where at the top it is written NOV13



- P11 Case diary contradiction portion in the statement of PW3
- P12 List of SIMI leaders, members and workers having 10 sheets
- P12(a) Entry No. 4 in Earattupetta list in the 9th sheet of Ext.P12
- P12(b) The page of Ext.P12 in which the name of Sameer.A.Y is mentioned.
- P12(c) The page of Ext.P12 in which the name of Sabir.PB is mentioned.
- P12(d) The page of Ext.P12 in which the name of Sarfaras Nawas is mentioned.
- P12(e) The page of Ext.P12 in which the name of Shaduli. P. A. is mentioned.
- P12(f) The page of Ext.P12 in which it is written as "List of Sympathisers"
- P13 10.07.2004 Rent Agreement executed between Manoharan Pillai (PW4) and Atheeq Rahman
- P14 21.08.2006 Seizure Mahazar of Ext.P13.
- P15 16.08.2006 Scene Mahazar
- P16 Case diary contradiction portion in the statement of PW6
- P16(a) Case diary contradiction portion in the statement of PW6
- P16(b) Case diary contradiction portion in the statement of PW6
- P17 Visiting Card of Mahin.C.A., Nanma Books, Calicut.
- P18 Case diary contradiction portion in the statement of PW7
- P18(a) Case diary contradiction portion in the statement of PW7
- P19 Case diary contradiction portion in the statement of PW9
- P19(a) Case diary contradiction portion in the statement of PW9
- P20 Case diary contradiction portion in the statement of PW10



P21		Case diary contradiction portion in the statement of PW11
P22	18.08.2006	Search list containing 6 pages
P22(a)		Item No. 5 in Ext. P22 - Notice in Malayalam
P22(b)		Item No. 17 in Ext. P22 - Visiting Card of Nanma Books
P22(c)	08.08.2006	Item No. 10 in Ext. P22 - Reliance Phone bill in the name of A2 Rasik.PA.
P22(d)		Hand written article titled as “ ജിഹാദ് ജമാഅത്ത ഇസ് ലാമിയുടെ കാഴ്ചപ്പാടിന് മറുപടി ”
P23 (a & b)		2 cheque books of Fahad Salim (PW12) of Bank of Maharashtra
P24		Pass book of Fahad Salim (PW12) of Bank of Maharashtra
P25		Electoral Identity Card of Fahad Salim (PW12)
P26		Case Diary contradiction portion in the statement of PW12
P26(a)		Case Diary contradiction portion in the statement of PW12
P27		Case Diary contradiction portion in the statement of PW13
P27(a)		Case Diary contradiction portion in the statement of PW13
P27(b)		Case Diary contradiction portion in the statement of PW13
P27(c)		Case Diary contradiction portion in the statement of PW13
P27(d)		Case Diary contradiction portion in the statement of PW13
P28	03.02.2009	Request letter for Possession Certificate
P29	03.02.2009	Possession Certificate issued by Village Officer, Alangad
P30	20.09.2009	Covering letter of site plan in Cr. 139/2006 of Binanipuram PS
P31		Site Plan prepared by Village Officer, Alangad in Cr. 139/2006 of Binanipuram PS

P32		Seizure Mahazar of Ext.P10 Diary.
P33 series (a) to (cd)		Wall posters – 82 nos. of Islamic Students Association
P34(a & b)		Notice of Islamic Students Association (2 Nos)
P35	08.06.2009	Search list for the above Circulars and Wall Posters
P36		Case diary contradiction portion in the statement of PW18
P37		Case diary contradiction portion in the statement of PW19
P37(a)		Case diary contradiction portion in the statement of PW19
P37(b)		Case diary contradiction portion in the statement of PW19
P38		Residence Certificate issued by PW20
P39		Permanent residence certificate issued by PW21
P40		Permanent residence certificate issued by PW22
P41		Permanent residence certificate issued by PW23
P42	20.10.2009	Permanent residence certificate issued by PW24
P43	18.07.2009	Permanent residence certificate issued by PW25
P44	21.10.2009	Residence Certificate issued by PW26
P45	25.11.2009	Residence Certificate issued by PW27
P46	20.10.2009	Permanent residence certificate issued by PW28
P47	31.10.2009	Permanent residence certificate issued by PW29
P48		Report regarding contents of 2 VCDs prepared by PW30 (3 pages)
P49		Covering letter of Ext. P48
P50		Report of Floppy disc and Audio CD with its enclosures prepared by PW30

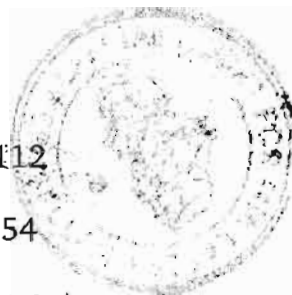
- P50(a) Print outs of pages in between Pages No. 4 & 5 of Ext. P50
- P50(b) Print out of MO6(i) Pages between page 7 and 8 of Ext.P50 (4 pages)
- P50(c) Content in MO7(a) in Page 10 of Ext.P50, portion marked as "മുസ് ലീം സമൂഹത്തിന്റെകഴിയാതെ പോകുന്നു."
- P50(d) Content in MO7(a) in Page 12 of Ext.P50, portion marked as "അംബേദ്കർ വധിക്കപ്പെട്ടു മാനം നമുക്കു പഴിക്കാം"
- P50(e) Content in MO7(b) in Page No. 13 of Ext.P50, portion marked as "താലിബാൻ നിലനിന്നാൽ സാമാന്യ ബുദ്ധിയുള്ളവർക്ക് അറിയാം."
- P50(f) Content in MO7(b) in Page No.14 of Ext.P50, portion marked as "അതോടൊപ്പം തന്നെ സംഘടന സിമി"
- P50(g) Content in MO7(b) in Page No.15 of Ext.P50, portion marked as "സിമിയെന്നു പറയുന്ന എന്നു അവർക്കറിയാം."
- P50(h) Content in MO7(b) in Page No.16 of Ext.P50, portion marked as "ഉപവിഷ്ടരായിരിക്കുന്ന ബാബറി പള്ളി പൊളിച്ചു. അതെന്തിനാ ? "
- P50(i) Content in MO7(c) in Page No.18 of Ext.P50, portion marked as "മുസ്ലീം നേതാക്കൾ ഭരണവർഗ്ഗം അംഗീകരിക്കുകയില്ല."
- P50(j) Content in MO7(c) in Page No.18 of Ext.P50, portion marked as "അജ്ഞാതവിനെതിരെയുള്ള..... ജിഹാദ്."
- P50(k) Content in MO7(c) in Page No.18 of Ext.P50, portion marked as "സ്വന്തം നാട്ടിൽ സമുദായത്തിനു അനിവാര്യമായി തീരുന്നു."
- P50(l) Content in MO7(c) in Page No.18 of Ext.P50, portion marked as "ആരാധനസ്ഥാതന്ത്ര്യത്തിനും ജിഹാദ് അനിവാര്യമാണ്. "
- P50(m) Content in MO7(g) in Page No.22 of Ext.P50, portion marked as "സിമിയുടെ മുൻ സംസ്ഥാന നിങ്ങളോട് സംസാരിക്കുന്നു."

- P50(n) Content in MO7(g) in Page Nos.24, 25 & 26 of Ext.P50, portion marked as "ഈ രാജ്യത്തെ ഞാനെന്റെ വാക്കുകൾ അവസാനിപ്പിക്കുന്നു. "
- P50(o) Content in MO7(l) in Page No.33 of Ext.P50, portion marked as " നമ്മുടെ മതത്തിന്റെ..... നമ്മുടെ അഭിമാനം സാക്ഷ്യമായില്ല."
- P50(p) Content in MO7(l) in Page No.33 of Ext.P50, portion marked as "ഹിന്ദു അജ്ഞാതയുടെ കീഴെ മുന്നോട്ടു പോകണം."
- P51 12.05.2010 Covering letter of Ext.P50
- P52 Programme chart seized from A4 Nizamudhin
- P53 2006 - Executive Diary
- P54 A book titled - "ഇസ്ലാമും ജനാധിപത്യവും"
- P54(a) Page No. 44 of Ext.P54
- P55 A book titled "അജ്ഞാതന്റെ കക്ഷി തന്നെയാണ് അതിജീവിക്കുന്നവർ "
- P56 A pamphlet titled "തട്കിറ "
- P56(a) Last page of Ext. P56
- P57 Driving licence of A1 - Shaduli
- P58 Programme chart seized from A2 Razik
- P59 Pamphlet titled "കാമ്പസ് പ്രക്ഷുബ്ധമാകണം"
- P60 'ദിന' collection of articles of Prabhodhanam weekly (36 pages)
- P61 Pamphlet titled " ട്രാഡ് തടവുകാരെ സഹായിക്കുക "
- P62 A book titled "ഭരണകൂട ഭീകരത വസ്തുതാ വിപ്ലവങ്ങൾ "
- P63 15.08.2006 Seizure Mahazar

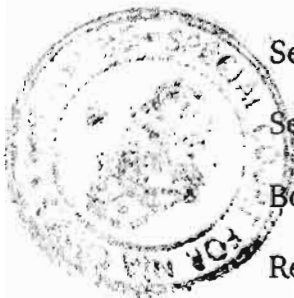
P64		Pamphlet “ സ്വാതന്ത്ര്യത്തിന്റെ ഒരു നാൾ കൂടി ”
P65		Search list
P66		Issue Register of Hira Library
P66(a)		Index pages 1 to 3 of Ext.P66 Issue Register of Hira Library
P66(b)		Page No. 175 of Exhibit P66
P67	24.03.2003	Computer print out of invoice (4 pages)
P67(a)		2 nd page of Ext.P67
P68		Internet copy of script regarding 'Muthanga' incident
P69		Article by name 'Political state of Affairs of Kerala' (4 sheets)
P70		Address slip of Razik.A.Raheem
P71		Report submitted to JFCM IV, Kozhikode
P72	06.10.2008	Seizure Mahazar
P73	18.08.2006	Search list
P74	18.08.2006	Advance search memorandum
P75		Form 15 sent to JFCM-I Kozhikode
P76		Book titled “താലിബാൻ നേർ ചിത്രങ്ങളുടെ ആൽബം ” by Asif
P77		Telephone index book
P78		Address list of 25 persons (3 pages)
P79		25 names and address written in white paper
P80		White paper containing 4 names and addresses
P81		A white paper in which written “ ആഗസ്റ്റ്, എൻ കേൾക്കുമ്പോൾ എഴുതാൻ മറക്കയില്ലല്ലോ ” Below signed, writing “ ഇക്കാക്ക ”
P82		Crescent International – news magazine

- P83 Post Card addressed to J.S.Paul
- P84 Post Card addressed to Abdu Samad
- P85 Letter pad in which 15 pages are written with pen
- P86 Income & Expenses register
- P87 A paper on which written "agency sales due recovered".
- P88(a) A paper starting with name Hanza Karadan
- P88(b) A paper starting with name Irahim
- P88(c) A paper starting with name Salim
- P88(d) A paper starting with name Althif Ahmed
- P89 21.10.2006 Photocopy of letter
- P90(a) Photocopy of Bio-data of Habeeb Muhammed
- P90(b) Photocopy of Higher Secondary Examination certificate of Habeeb Muhammed
- P90(c) Photocopy of SSLC book of Habeeb Muhammed
- P91 15 papers containing the seal "Government model co-operative society Balaramapuram" and writing New media presents
- P92 Letter having 24 pages starting with writing A.K.Abdul Majeed
- P93 Scripture having 25 sheets starting with Dr. Jadeeda
- P94 Scripture having 36 sheets starting with Noorul Ameen
- P95 Visiting card of Fazil Fareed
- P96 Property list
- P97 14.07.2009 Seizure Mahazar
- P98 Attested Copy of letter by Deputy Supdt.of Police, Special Branch CID, Kottayam on the subject – Current activities and office bearers of SIMI

P99	Attested Copy of Names of Office Bearers of SIMI, Kottayam District
P100	Arrest Memo of Shaduli - A1
P101	Inspection Memo of Shaduli - A1
P102	Arrest Memo of Abdul Razik - A2
P103	Inspection Memo of Abdul Razik - A2
P104	Arrest Memo of Ansar - A3
P105	Inspection Memo of Ansar - A3
P106	Arrest Memo of Nizamudhin - A4
P107	Inspection Memo of Nizamudhin - A4
P108	Arrest Memo of Shammas - A5
P109	Inspection Memo of Shammas - A5
P110	Search Memorandum
P111	Search List
P112	A Book titled " ബാബറി മസ്ജിദ് ഫത്വകൾ "
P113	General body notice of Edappalli Mahal Muslim Jama ath Committee.
P113(a)	Reverse page of Ext.P113
P114	Summons issued by VII Metropolitan Magistrate, Chennai
P115	Electoral ID card of Basheer Ahmed
P116	Search Memorandum
P117	Search List
P118	Another copy of Ext.P112
P119	Another copy of Ext. P54
P120	15.08.2006 Form 15 – List of documents



- P121 16.08.2006 List of property (T 416/06)
- P122 16.08.2006 List of property (T 425/06)
- P123 Affidavit by K.N.Rajesh, SI submitted before JFCM, North Parvur
- P124 17.08.2006 Search Memorandum
- P125 16.08.2006 Search list
- P126 16.08.2006 Report on Ext.P111 search list submitted by SI of Police Binanipuram
- P127 16.08.2006 Report on Ext.P117 search list submitted by SI of Police Binanipuram
- P128 Re-registered FIR of NIA
- P129 Search Memorandum
- P130 Search List
- P131 Book by name "ചെമ്മുഖം" വിപ്ലവത്തിന്റെ ഇതിഹാസം
- P132 Book titled as "കരുണ കാശ്ചീർ "
- P133 Book titled as "മുസ്ലീമിന്റെ ശത്രു ഇന്ത്യയുടെ ശത്രു "
- P134 Search Memo of the house of A2
- P135 Search List after the search in the house of A2
- P136 Search Memo in the house of A6
- P137 Search List after the search in the house of A6
- P138 Search Memo in the house of A7
- P139 Search List after the search in the house of A7
- P140 Book titled "ഹിന്ദുത്വ വാദവും ഇന്ത്യൻ മുസ്ലീംകളും"
- P141 Report submitted before JFCM, Kodungalloor
- P142 Certified photocopy of FIR in Crime No.120/08 of Pithampur Police Station.



P142(a)		English translation of Ext. P142
P143		Certified photocopy of Arrest Memo of Shaduly in Ext.P142 case
P143(a)		English translation of Ext. P143
P144		Certified photocopy of Arrest Memo of Abdul Razik in Ext.P142 case
P144(a)		English translation of Ext. P144
P145		Certified photocopy of property seizure memo in Ext.P142 case
P145(a)		English translation of Ext. P145
P146		Certified photocopy of property seizure memo A3 Ansar in Ext.P142 case
P146(a)		English translation of Ext. P146
P147	16.10.2010	Order of Ministry of Home Affairs signed by PW42, sanctioning prosecution.
P148		Covering letter of report and documents sent to Investigating officer by PW43
P149		Report sent to Investigating officer by PW43
P150	18.08.2006	Search Memorandum
P151		Form -15
P152		Property List
P153	20.03.2011	Letter from K.Mahesh Kumar
P154	20.03.2011	Inventory prepared by Maheswaran, Immigration SI, CIAL at CIA Nedumbassery at 8.45 Hrs.
P155	20.03.2011	Inventory prepared by Maheswaran, Immigration SI, CIAL at CIA Nedumbassery at 8.45 Hrs.
P156	20.03.2011	Arrest & Personal search memo of A17-Nissar
P157	17.08.2006	Report of search by PW47



P158 16.08.2006 Search list of house of A1 by K. N. Gopalakrishnan, ASI

P159 21.08.2006 Report on Ext. P14

P160 List of documents regarding Ext.P13

P161 21.08.2006 Carbon copy of request

P162 Request to include the documents of Hira complex search

P163 Search Mahazar containing details received from Police Hi-Tech Cell

P164 Report on Ext. P163

P165 Mahazar of E-mail account of A1

P166 Report on Ext. P165

P167 Property list of properties seized by PW38

P168 Property list of properties seized from the house of A4 by PW37

P169 Seizure mahazar of articles alleged to be of A1 seized from a shop

P170 Report of Ext.P169 mahazar

P171 Report of Ext.P130 Search list

P172 15.09.2008 Order No.17/camp/GIG/APB/2008 of DIG, directing PW48 to investigate.

P173 Report of P172 to JFCM, N.Paravur

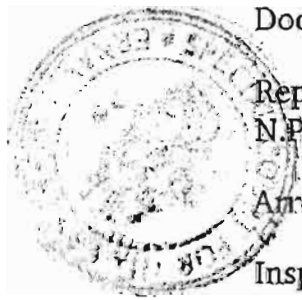
P174 Document list of Ext.P10

P175 Report to incorporate A6 & A7 in FIR before JFCM, N.Paravur

P176 Arrest Memo of A6

P177 Inspection Memo of A6

P178 Arrest Memo of A7



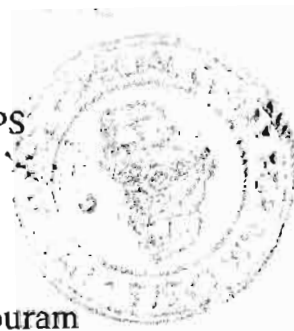
P179		Inspection Memo of A7
P180		Arrest Memo of A8
P181		Inspection Memo of A8
P182		Report to incorporate A9 in FIR before JFCM, N.Paravur
P183		Arrest Memo of A9
P184		Inspection Memo of A9
P185		Arrest Memo of A10
P186		Inspection Memo of A10
P187		Arrest Memo of A11
P188		Inspection Memo of A11
P189		Arrest Memo of A12
P190		Inspection Memo of A12
P191		Report to incorporate A13 in FIR before JFCM, N.Paravur
P192		Arrest Memo of A13
P193		Inspection Memo of A13
P194		Report to incorporate A14, A15 & PW1 in FIR before JFCM, N.Paravur
P195		Arrest Memo of A14
P196		Inspection Memo of A14
P197		Arrest Memo of A15
P198		Inspection Memo of A15
P199	31.12.2008	Inspection memo of PW1 Rasheed
P200		Ownership Certificate of Happy Auditorium
P201		Copy of relevant pages of Building Tax Assessment Register of Alangad Panchayath

P202		Forwarding Note of 36 CDS to N.Paravur Tahasildar
P203		Report to incorporate A16 in FIR before JFCM, N.Paravur
P204		Arrest Memo of A16
P205		Inspection Memo of A16
P206	09.06.2009	Form 15 property list of Exts.P33 & P34 series
P207		Report to JFCM, N.Paravur to incorporate A17 in FIR
P208		Request to obtain documents from JFCM, N,Paravur
P209	27.01.2010	Report returning documents to JFCM, North Paravur
P210	08.02.2006	Gazette notification
P211	13.02.2006	Gazette notification
P212	11.08.2006	Gazette notification
P213	07.02.2008	Gazette notification

Prosecution Witness

PW1	Rasheed @ Rasheed Maulavi
PW2	Rasiya
PW3	Ashraf, S/o Kunjumammad
PW4	Manoharan
PW5	Murkesh Manoharan
PW6	Rafeeq
PW7	Mahin
PW8	Shihab
PW9	Mohammed Sherif
PW10	Ashraf, S/o Sulaiman

PW11	Abdul Sathar
PW12	Fahad Salim
PW13	Nadir.PH
PW14	K.P.Madhu, Village Officer
PW15	George N.T.
PW16	Karim
PW17	Thulaseedharan
PW18	Abdul Azeez
PW19	Shabeer
PW20	N.Geetha Kumari, Village Officer
PW21	Tomy Sebastian, Village Officer
PW22	K.G.Shaji , Village Officer
PW23	T.R.Sangeeth, Village Officer
PW24	K.Bindu, Village Officer
PW25	K.Satheesan Nair, Village Officer
PW26	K.Jajara, Village Officer
PW27	A.S.Gouthaman, Village Officer
PW28	Sunil Mathew, Village Officer
PW29	P.S.Ravindran Nair
PW30	K.P.Thampi
PW31	P.B.Pradeep
PW32	P.M.Sakeer
PW33	P.L.Sharju, Sub Inspector, Nadakkav PS
PW34	P.Mohandas, Police Constable, Kaplanchery PS
PW35	A.J.Babu, Circle Inspector, Kozhikode Town
PW36	G.Sreedharan, Dy.SP, SB CID HQ
PW37	K.N.Rajesh, Sub Inspector of Police, Binanipuram



PW38	N.B.Asainar, Sub Inspector of Police, Vazhakkulam
PW39	Tomy Sebastian, Circle Inspector of Police
PW40	P.Vikraman, Circle Inspector
PW41	B.PS.Parihar
PW42	Virendra Kumar
PW43	Vivekanandan
PW44	Johny Mathew, Dy.SP CBCID, Kottayam
PW45	Assinar, CI of Police
PW46	C.Radhakrishna Pillai, Circle Inspector
PW47	Babu Kumar, Circle Inspector
PW48	S.Sasidharan, Dy.SP, Malappuram
PW49	Ravi Gambhir, DYSP, NIA, New Delhi.
PW50	Lhari Dorjee Lhatoo IPS, SP NIA, New Delhi

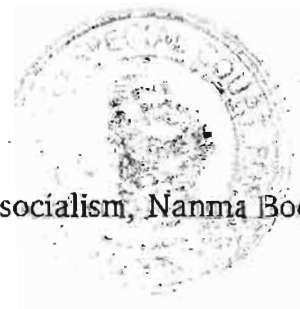
Defence Exhibits:-

D1	Case Diary contradiction in the 161 statement of PW16
D2	Copy of P51 without seal and signature
D3	Case Diary contradiction in the 161 statement of PW37
D4	Case Diary contradiction marked in the statement of PW32
D5	Case Diary contradiction marked in the 161 statement of PW47
D5(a)	Case Diary contradiction marked in the 161 statement of PW47
D5(b)	Case Diary contradiction marked in the 161 statement of PW47
D6	Case Diary contradiction in the 161 statement of PW48
D6(a)	Case Diary contradiction in the 161 statement of PW48
D6(b)	Case Diary contradiction in the 161 statement of PW48
D7	Certified copy of common judgment in SC.49/2008 & SC.112/2009 by Sessions Judge, Dharwad dated 30/04/2015.

Defence Witnesses:- NIL

Material Objects:-

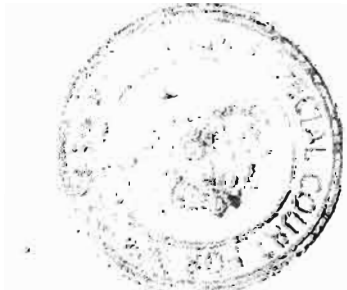
- MO1 Malayalam VCD
- MO1(a) English VCD
- MO1(b) Cover of VCD
- MO2(a) CD2 on which written 'Al Quran'
- MO2(b) CD3 on which written 'Al Quran'
- MO2(c) CD4 on which written 'Al Quran'
- MO2(d) CD5 on which written 'Al Quran'
- MO3(a) CD on which written "life of phophet Yusuf Islam"
- MO3(b) CD on which written "Islamic Dictionary"
- MO3(c) CD on which written "Alif BA TA Yaseen"
- MO4(a) CD on which written AL- QURAN 1
- MO4(b) CD1 on which written "A is for Allah Yusuf Islam"
- MO5 CCD – Tech-com – on which written "Islam as Introduction, 20.12.05, Iliyas Nadvi
- MO6(a) CD on which written - Malayalam
- MO6(b) CD on which written – Pictures and Games
- MO6(c) CD on which written - SR
- MO6(d) CD on which written – Al Rasah
- MO6(e) CD on which written – Adobe Premier
- MO6(f) CD on which written - Imation
- MO6(g) CD on which written - Drivers
- MO6(h) CD on which written – Islamic Clipart
- MO6(i) CD on which written – Learn Arabic
- MO6(j) CD on which written – Globe Intelligence
- MO6(k) CD on which written - Alim
- MO6(l) CD on which written – "പാതയം" Nationalisam socialism, Nanma Books corner



- MO6(m) CDR - Tahfiz Al - Quran
 MO7(a) CD - on which written I(2)
 MO7(b) CD - on which written 2
 MO7(c) CD - on which written 3
 MO7(d) CD - on which written 4
 MO7(e) CD - on which written 5
 MO7(f) CD - on which written 6
 MO7(g) CD - on which written 7
 MO7(h) CD - on which written 8
 MO7(i) CD - on which written 9
 MO7(j) CD - on which written 10
 MO7(k) CD - on which written 11
 MO7(l) CD - on which written 12
 MO7(m) CD - on which written INTUC
 MO8 Floppy Disc
 MO9 Nokia Mobile Phone (White)
 MO10 Plastic flux of Nanma books

Sd/-
 K.M.Balachandran
 Judge
 (By Order)

// True Copy //



copied by: ✓

copied by: *[Signature]*

[Signature]
 Sheristadar

Judgment in
S.C.No. 01/2011/NIA
Dated 30.11.2015