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Division Bench

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)**

Criminal Appeal No. 20 /2010 (DB)

**APPELLANT
In Jail**

Dr. Vinayak (Binayak) Sen
S/o Dr. D.P.Sen, aged 60
years. R/o A-26, Surya
Apartment, Katora Talab
Raipur (C.G.)

P.R. No. 120/11
Presented by Sri. S. Ven. K. Sahu
Dated 25/11/11
2-20 P.M.

VERSUS

RESPONDENT

State of Chhattisgarh
Through District Magistrate
District Raipur (C.G.)

**CRIMINAL APPEAL U/S. 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE**



No.	CONVICTION	SENTENCE
1.	U/s. 124 'A' read with section 120 B of Indian Penal Code.	Life Imprisonment and fine of Rs. 5000/- (Rupees Five Thousand only) and in default of payment of fine additional Rigorous Imprisonment for one year.
2.	U/s. 8 (1) of Chhattisgarh Vishesh Jansurksha Adhiniyam 2005	Rigorous Imprisonment for two years and fine of Rs. 1000/- (Rupees one Thousand only) and in default of payment of fine additional R.I. for three months.
3.	U/s. 8 (2) of Chhattisgarh Vishesh Jansurksha Adhiniyam 2005	Rigorous Imprisonment for one year and fine of Rs. 1000/- (Rupees one Thousand only) and in default of payment of fine additional R.I. for three months.
4.	U/s. 8 (3) of Chhattisgarh Vishesh Jansurksha Adhiniyam 2005	Rigorous Imprisonment for three years and fine of Rs. 1000/- (Rupees one Thousand only) and in default of payment of fine additional R.I. for three months.
5.	U/s. 8 (5) of Chhattisgarh	Rigorous Imprisonment for



	Vishesh Jansurksha Adhiniyam 2005	five years and fine of Rs. 1000/- (Rupees one Thousand only) and in default of payment of fine additional R.I. for three months.
6.	U/s. 39 (2) of Unlawful Activities (Prevention) Act 1967	Rigorous Imprisonment for five years and fine of Rs. 1000/- (Rupees one Thousand only) and in default of payment of fine additional R.I. for three months.
All sentences shall run concurrently.		

Being aggrieved by the judgement of conviction and order of sentence dated 24/12/2010 (a certified copy of which is filed hereto as **ANNEXURE-A/1**) passed by 2nd Additional Sessions Judge Raipur, District Raipur (C.G.) in Sessions Trial No. 182/2007, convicting and sentencing the appellant as stated hereinabove, appellant herein, most humbly and respectfully begs to prefer this appeal against the same on following facts and grounds :

BRIEF FACTS OF THE CASE :

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH

CORAM: HON'BLE MR. T.P. SHARMA AND
HON'BLE MR. R.L. JHANWAR, JJ.

Criminal Appeal No.20 of 2011

APPELLANT: Dr. Vinayak (Binayak) Sen
(In Jail)

Versus

RESPONDENT: State of Chhattisgarh

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Mr. Ram Jethmalani and Mr. Surendra Singh, Senior Advocates with Ms. Nitya Ram Krishan, Ms. Lata Krishna Murti, Mr. Mahendra Dubey and Mr. Neeraj Mehta, Advocates for the appellant.

Mr. Kishore Bhaduri, Additional Advocate General/Additional Public Prosecutor with Mr. Ashutosh Singh Kachhawaha, Deputy Advocate General and Mr. Chandresh Shrivastava, Panel Lawyer for the State/ respondent.

AND

Criminal Appeal No.54 of 2011

APPELLANT: Pijush (Piyush) @ Bubun Guha
(In Jail)

Versus

RESPONDENT: State of Chhattisgarh

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Mr. Mahendra Dubey, Advocate for the appellant.

Mr. Kishore Bhaduri, Additional Advocate General/Additional Public Prosecutor with Mr. Ashutosh Singh Kachhawaha, Deputy Advocate General and Mr. Chandresh Shrivastava, Panel Lawyer for the State/ respondent.

ORDER
(10th February, 2011)

The following order of the Court was passed by T.P. Sharma, J: -





1. Applications under Section 389 of the Code of Criminal Procedure, 1973, (for short 'the Code'), I.A.No.1 filed on behalf of Vinayak (Binayak) Sen in Cr.A.No.20/2011 and I.A.No.1 filed on behalf of Pijush (Piyush) Guha @ Bubun Guha in Cr.A.No.54/2011 for suspension of sentence and grant of bail during the pendency of appeal against the judgment of conviction & order of sentence dated 24-12-2010 passed by the 2nd Additional Sessions Judge, Raipur in Sessions Trial No.182/2007 are being disposed of by this common order.
2. Appellant in Cr.A.No.20/2011 Binayak Sen has been convicted for commission of the offence of sedition punishable under Section 124A of the IPC; Sections 8 (1), 8 (2), 8 (3) & 8 (5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 (for short 'the Act, 2005'); and Section 39 (2) of the Unlawful Activities (Prevention) Act, 1967 (for short 'the Act, 1967') and sentenced as under: -

Conviction	Sentence
Sec.124A read with Sec. 120B of the IPC	Imprisonment for life & fine of Rs.5,000/-, in default additional RI for one year.
Sec. 8 (1) of the Act, 2005	RI for two years & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 8 (2) of the Act, 2005	RI for one year & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 8 (3) of the Act, 2005	RI for three years & fine Rs.1,000/-, in default additional RI for three months.
Sec. 8 (5) of the Act, 2005	RI for five years & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 39 (2) of the Act, 1967	RI for five years & fine of Rs.1,000/-, in default additional RI for three months.

3. Appellant in Cr.A.No.54/2011 Piyush Guha has been convicted for commission of the offence of sedition punishable under Section 124A of the IPC; Sections 8 (1), 8 (2), 8 (3) & 8 (5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 (for short 'the Act, 2005'); and Section 39

(2) of the Unlawful Activities (Prevention) Act, 1967 (for short 'the Act, 1967') and sentenced as under: -

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Sec. 124A read with Sec. 120B of the IPC	Imprisonment for life & fine of Rs.5,000/-, in default additional RI for one year.
Sec. 8 (1) of the Act, 2005	RI for two years & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 8 (2) of the Act, 2005	RI for one year & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 8 (3) of the Act, 2005	RI for three years & fine Rs.1,000/-, in default additional RI for three months.
Sec. 8 (5) of the Act, 2005	RI for five years & fine of Rs.1,000/-, in default additional RI for three months.
Sec. 39 (2) of the Act, 1967	RI for five years & fine of Rs.1,000/-, in default additional RI for three months.

4. Mr. Ram Jethmalani arguing for appellant Binayak Sen submits that although at the stage of considering suspension of sentence and grant of bail, the appellate Court is not required to consider entire evidence in detail, but the appellate Court is required to consider prima facie existence of legal evidence against the appellant showing commission of offence by him.

5. Mr. Ram Jethmalani points out that while dealing with the question of ordinary bail and bail in the event of arrest, Constitution Bench of the Supreme Court in the matter of **Gurbaksh Singh Sibbia etc. v. The State of Punjab**¹ has specifically held that legislature itself has left discretion of the High Court unfettered relating to ordinary bail and has not attempted to lay down any particular rule which may bind the High Court for exercising its jurisdiction in grant or refusal of bail. The principles to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception. An accused

¹ AIR 1980 SC 1632

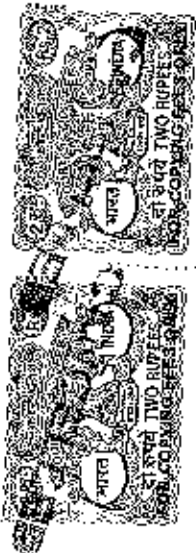


person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

6. Mr. Ram Jethmalani further submits that even as per case of the prosecution, conviction is substantially based on alleged extra judicial confession of co-accused Piyush Guha made at the time of his arrest, before police, relating to three disputed documents Articles 8, 9 & 10, deposing that those letters were given to him by appellant Binayak Sen for their delivery at Kolkata. Even as per the prosecution, police has not recorded any such statement and co-accused Piyush Guha has not made any statement before any person or Magistrate other than the police. In these circumstances, even if these facts are admitted that Piyush Guha has made confessional statement relating to the aforesaid three letters, same would not be admissible in evidence in terms of Sections 24, 25 & 26 of the Indian Evidence Act, 1872 and it cannot be used against appellant Binayak Sen and even against co-accused Piyush Guha. Appellant Binayak Sen, in connection with private affairs and affairs relating PUCL including health of co-accused Narayan Sanyal, visited jail 32 times to meet Narayan Sanyal who was in custody at Bilaspur jail and subsequently at Raipur jail with due permission from the jail authorities. As per evidence, superior authority had directed for strict surveillance upon appellant Binayak Sen during his visit to jail and meeting with Narayan Sanyal and, therefore, the jail authority used to arrange meetings in separate room under strict surveillance and control, and all meetings were held in presence of jail authorities. Appellant Binayak Sen used to talk in Hindi, he had not talked in English or

Bengali. The discussions were normal and not relating to commission of any offence. This evidence is even prima facie not sufficient for casting liability upon Binayak Sen for commission of the offence of sedition and any other offences. Binayak Sen is not member of any banned organization, he has not committed offences punishable under the aforesaid provisions of law, he is member of Peoples' Union for Civil Liberties (PUCL) and has dedicated his life to bring awareness amongst illiterate people of remote areas towards the atrocities committed by police and public servants. Conducting awareness meetings for illiterate people residing in remote places especially, in forests against the police atrocities and other civil rights, is not offence. By conducting such meeting the appellant has not attempted to bring into hatred or contempt, or excite or attempts to excite disaffection including disloyalty and all feelings of enmity towards the Government established by law.

7. Mr. Ram Jethmalani also submits that in examination under Section 313 of the Code, no question relating to Articles 8, 9 & 10 were put to appellant Binayak Sen and also question relating to confession of accused Piyush Guha has not been asked. Therefore, aforesaid documents and the alleged confessional statement cannot be used against the appellant. While answering the questions put to him, appellant Binayak Sen gave his defence in writing on 23-10-2010 in which he specifically took defence that he is a doctor, specialized in child health, having degree of MD (Pediatrics), he had also joined faculty of the Centre for Social Medicine and Community Health at Jawaharlal Nehru University in New Delhi and worked for two years. He had worked intensively in the diagnosis and treatment of Tuberculosis and understood many of the social and economic causes of disease. He was strongly influenced by the work of Marjorie Sykes, the biographer of





Mahatma Gandhi, who lived at Rasulia centre. He has also worked with Late Shankar Guha Niyogi and the workers of the Chhattisgarh Mines Shramik Sangh. He helped to establish the Shaheed Hospital. He has worked to develop a health programme among the Adivasi population in and around village Bagurnala which today is in Dhamtari District. After formation of the State of Chhattisgarh, he was appointed as member of the advisory group on Health Care Sector reforms, and helped to develop the Mitandin programme, which in turn, became the role model for the ASHA of the National Rural Health Mission. He has also worked on Human Rights which has been nationally and internationally recognized. He has been awarded Paul Harrison Award by the CMC, Vellore in 2004; the RR Keithan Gold Medal by the Indian Academy of Social Sciences in 2007; and has received the Jonathan Mann award for Health and Human Rights from the Global Health Council in 2008. He is member of Peoples' Union for Civil Liberties (PUCL) since 1981, founded by Late Jayprakash Narayan during the years of Emergency. PUCL led the campaign for the preservation of the freedom of speech, prevention of custodial violence and for the public accountability of the police. He was General Secretary for Chhattisgarh unit of PUCL and presently he is President of the State unit and Vice President of its National body. As per his written defence, in Chhattisgarh, the PUCL has been in the forefront of exposing the atrocities of the police. Atrocities by men in uniform against vulnerable sections continue to be a serious problem in the State. Efforts of PUCL were always directed towards establishment of good governance and constitutional values. In many cases of Human Rights abuse involving police, PUCL has acted as a whistleblower in the matter of exposing the true nature of the Salwa Judum. The Salwa Judum, which began in the Dantewada District in 2005, has been

represented by the State Government as a spontaneous peoples' movement against the Maoists active in the area. However, investigation led by PUCL and involving several other Human Rights organizations revealed that it was in reality a State sponsored and State funded as well as completely unaccountable vigilante force, to which arms were provided by the Government. Aforesaid activities of the Government were seriously objected by several independent organizations including the National Human Rights Commission and international organizations like UNICEF. The appellant was also invited to have dialogue with them about the restoration of normalcy in the region affected by Salwa Judum. In 2006, PUCL organized two major conventions opposing the proposal to enact the Chhattisgarh Special Public Security Act, on the view that it contravenes the civil liberties assured by the Constitution. PUCL has filed a Civil Writ Petition before the High Court of Chhattisgarh relating to its veracity. As per his written defence, for all the aforesaid reasons, the police of the State and the State Government have harboured grudge against him, and the then DGP has also threatened him to take action against PUCL and its office bearers which has been published in the newspaper. In his written defence, the appellant has also claimed that in his capacity as a Human Rights worker he was approached by the family of Narayan Sanyal to look after his health and well being after he was brought to Raipur jail in 2006. When Narayan Sanyal was in Raipur jail he visited Raipur jail along with lawyer and after obtaining permission from the police authorities, he several times visited jail as a PUCL office bearer to meet Narayan Sanyal. During his visit, he played a role in facilitating the surgery of Narayan Sanyal. During the aforesaid period, there was considerable correspondence between the prisoner's family, jail administration and medical authorities with him. He acted upon the





letter received from one Madanlal Barkhade by post about prison conditions in Raipur Central Jail which he released to the press. Documents recovered from his house are ordinary and transparent conduct of his work, he has not received any document secretly or clandestinely. One document was sent to him by post by Shri Govindan Kutty, Editor of Peoples' March. He has also received another document No.A20 written by Madanlal Barkhade and document No.A21 by Dr. Kalpana Kannabiran. Articles A23 & A26 were available for distribution in a seminar on the Salwa Judum organized by Nelson Mandela Centre for Peace and Conflict Resolution, Jamia Millia Islamia, New Delhi to which he was invited. Article A24 was also received by him by post. Some newspaper clippings were also seized from his house. He has also taken defence that during the course of search and seizure of documents which were seized by police officer Rajput, under Rajput's dictation seizure memos were prepared by TI Jagrit. Copy of charge sheet was received by his counsel Mr. Amit Banerjee who has pointed out that documents A19 to A24 do not bear the signature of panch witnesses and copies of documents A25 to A37 have not been supplied to him despite the court order. Computer and DVD have been seized from his house, but contents of computer were copied in his absence. He has also taken defence that he has never seen Deepak Choubey (PW-7), he did not introduce Narayan Sanyal to him and he has been falsely implicated and prosecuted, and the documents have been fabricated by police authorities.

8. Mr. Ram Jethmalani contends that by written defence appellant Binayak Sen has categorically explained the entire situation, the circumstances of his working, his meeting with Narayan Sanyal, possession of documents and fabrication of documents by police authorities. This is evidence

against the prosecution and unless it is proved false, same is admissible in evidence under the law. Mr. Ram Jethmalani further contends that every circumstance which the prosecution proposes to rely and which may be treated against the accused is required to be put to the accused for obtaining his explanation/answer under Section 313 of the Code, and if the circumstances are not put before the accused under Section 313 of the Code, same cannot be used against the accused. Mr. Ram Jethmalani also contends that if it is considered that the appellant has criticized the action and activities of the government or police, and even if he had gone to the extent of saying that the Government missionaries have failed, then also same would be within the ambit of Right to Freedom of speech and expression protected under Articles 19 (1) (a) & 19 (2) of the Constitution of India.

9. Mr. Ram Jethmalani placed reliance in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**² in which the Supreme Court has held that circumstances not put to the appellant in his statement under Section 313 of the Code must be completely excluded from consideration because the appellant did not have any chance to explain them. Mr. Ram Jethmalani further placed reliance in the matter of **Kedar Nath Singh v. State of Bihar**³ in which the Supreme Court has held that "the explanations appended to the main body of S. 124A 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



² (1984) 4 SCC 116

³ AIR 1962 SC 955

11. Mr. Ram Jethmalani further argued that Courts are under obligation to frame accurate charge for the offence to provide sufficient opportunity to 124A of the IPC.

about communism by itself is not seditious punishable under Section extracts of speeches from Mao Tse Tung expounding his philosophy Gujarat High Court further held that possession of a book containing 184 or create public disorder or have the intention or tendency to do so. 124A of the IPC only if they excite violence or disturb law and order words, deeds or writings constitute seditious punishable under Section the matter of Kedar Nath (supra), Gujarat High Court has held that others v. State of Gujarat and another² in which by placing reliance in also placed reliance in the matter of Manubhai Tribhovandas Patel and disorder or have the intention or tendency to do so. Mr. Ram Jethmalani IPC, unless they incite violence or disturb law and order or create public by itself is not the act of seditious punishable under Section 124A of the publications or publication of hand book containing the view of any writer 10. Mr. Ram Jethmalani further submits that possession of handbooks.

incitement to violence". tendency to create disorder, or disturbance of law and order, or be so construed as to limit their application to acts involving intention or to suppress. Viewed in that light, the provisions of the sections should antecedent history of the legislation, its purpose and the mischief it seeks literal meaning of the words used, but also take into consideration the interpreting an enactment the Court should have regard not merely to the rights and the interest of public order. It is also well settled that in the section strikes the correct balance between individual fundamental prevent such activities in the interest of public order. So construed,



meet the charges by the accused persons and in case of any disobeying the direction of law with intent to save any person from punishment, the charge must set out the disobedience charged and the law infringed as required under Illustration (f) to Section 213 of the Code. But in the present case, detailed charges have not been framed by the Court to enable the accused to answer the aforesaid charges. Therefore, on the ground of substantial defect in charge, conviction and sentence imposed upon the appellant are not sustainable under the law.

12. Mr. Ram Jethmalani also argued that the Courts are under obligation to record clear finding relating to commission of distinct offences on the basis of distinct evidence and in case it is doubtful that under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court is required to express distinctly the same, and pass judgment in the alternative as required under subsection (2) of Section 354 of the Code. But in the present case, the judgment is vague and findings are not clear to enable the person to understand that the Court has convicted the appellant under which part and under which provisions of law.

13. Mr. Ram Jethmalani also submits that in order to convict the accused under Sections 8 (1), 8 (2), 8 (3) & 8 (5) of the Act, 2005, the prosecution is required to prove the fact that the accused was member of unlawful organization and the organization was unlawful within the meaning of clause (f) of Section 2 of the Act, 2005 and was involved in unlawful activity. But in the present case, the prosecution has not adduced any evidence to prove the aforesaid facts. Likewise, the prosecution has also not adduced any evidence to prove the factum of support given to terrorist organization by appellant Binayak Sen and, therefore, conviction



of the appellant under Section 39 (2) of the Act, 1967 is not sustainable under the law.

14. In addition to the argument advanced by Mr. Ram Jethmalani on behalf of appellant Binayak Sen, Mr. Surendra Singh, learned Senior Advocate argued that as per evidence of B.S. Jagrat (PW-95), he, under the direction of superior authorities, was making search of public places; on 6-5-2007 appellant Piyush Guha was found in suspicious circumstances, he was having a bag and he did not disclose his correct address; he was interrogated and his bag was searched, and articles, three letters & money were found. Anil Kumar Singh (PW-1) has supported the aforesaid search and as per his evidence, appellant Piyush Guha made statement to the police that three letters found in his possession were given by accused Narayan Sanyal to appellant Binayak Sen for sending the same to Kolkata. This evidence is confessional statement of Piyush Guha and is not admissible in evidence. Mr. Surendra Singh placed reliance in the matter of **Aghnoo Nagesia v. State of Bihar**⁵ in which the Supreme Court has held that any confession made before police officer by the accused is not admissible in evidence. Mr. Surendra Singh further argued that on the basis of aforesaid statement of appellant Piyush Guha, house of appellant Binayak Sen was searched and articles found in the house of the appellant were seized vide Exs.P-20 & P-21 including computer, DVD & CD, but Article A37 written by the alleged Chhattisgarh Rajya Committee CPI (Maovadi) dated 1-12-2005 to the appellant does not find place in Exs.P-20 & P-21. Mr. Surendra Singh also argued that this document has not been seized by the police, even it did not reveal that it was sent by some person by dak to the appellant and copy of this document has also not been supplied to the appellant

⁵ AIR 1966 SC 119

along with charge sheet, but with a view to implicate the appellant falsely, the police has prepared this forged document. As per Exs.P-20 & P-21, Articles A19 to A36 have been seized vide Exs.P-20 & P-21 along with computer, CD & DVD. Mr. Surendra Singh submits that these articles are printed materials, letter written by one Madantlal Barkhade relating to problems in jail, some newspaper cuttings and two booklets which were not published by appellant Binayak Sen. Letter has not been written by the appellant and he has collected paper cuttings relating to naxalites and police atrocities which has already been published in different newspapers, same cannot be treated as seditious material prepared by the appellant.

15. Mr. Surendra Singh further submits that the prosecution has further relied upon the evidence of Deepak Choubey (PW-7), as per whose evidence, he had given his house on rent to accused Narayan Sanyal at the instance of appellant Binayak Sen who introduced Narayan Sanyal as his acquaintance. Thereafter, in 2006, he claims to have come to know that Narayan Sanyal was arrested by Andhra Pradesh police which is against the material collected on behalf of the prosecution, because as per prosecution, Andhra Pradesh police has not arrested Narayan Sanyal in the house of Deepak Choubey (PW-7) and Narayan Sanyal has been arrested by Ch. Deva Reddy (PW-59) – Sub Inspector of Police, CID, Hyderabad in Andhra Pradesh while he was moving near bus stand of Bhadrachalam (AP). Mr. Surendra Singh also submits that the prosecution has tried to prove the fact that the appellant has attended Naxalite meetings in different areas, especially within the jurisdiction of Police Station Konta and Police Station Chhuria. The prosecution has examined Vijay Thakur (PW-41) – the then Police Inspector posted at Police Station Konta and Sher Singh Bande (PW-49)



-- Police Inspector Police Station Chhuria, who have deposed that they were informed by the villagers that appellant Binayak Sen attended Naxalite meetings in their areas, in their evidence they have deposed that they have not seen appellant Binayak Sen in any meeting and they were informed by other villagers. Even in the statement of Vijay Thakur (PW-41) recorded under Section 161 of the Code dated 12-8-2008, name of appellant Binayak Sen does not find place in the list of people who have attended such alleged meeting. Evidence of aforesaid responsible police officers reveal that their evidence is based on conjectures & surmises and statements not admissible in evidence.

16. Mr. Surendra Singh also submits that evidence of S.R. Thakur (PW-43) – Sub Jail Superintendent and P.K.S. Chauhan (PW-51) – Retired Jailor, are sufficient to establish the fact that either they were present in the meeting of the appellant with Narayan Sanyal personally, or their officers were present on account of direction of superior authority, the appellant has never informed them that he is relative of Narayan Sanyal and they have intimated the discussion of Narayan Sanyal & the appellant to the police.

17. Mr. Surendra Singh contends that as per prosecution, Shankar Singh & Amita Shrivastava are hardcore naxalites, but the prosecution has not adduced any evidence to show that how they are hardcore naxalites. The prosecution has also not adduced any evidence to show that the appellant was in association of hardcore naxalites. Mr. Surendra Singh further placed reliance in the matter of **Javed Masood and Anr. v. State of Rajasthan**⁶ in which the Supreme Court has held that if a witness is not declared hostile by prosecution, his evidence is binding on prosecution. In the present case, most of the witnesses have not been


⁶ AIR 2010 SC 979

declared hostile by the prosecution and, therefore, their statements are binding on the prosecution. Mr. Surendra Singh also placed reliance in the matter of **Bhugdomal Gangaram and others v. State of Gujarat**⁷ in which the Supreme Court has held that testimony of the person based on information of another person is not admissible in absence of examination of the informant as a witness.

18. Mr. Surendra Singh further contends that as per Ex.P-367 notification dated 22-4-2009, State Government of Chhattisgarh has declared Communist Party of India (Maoist) and its Six front Dandkarayan Adhivasi Kishan Majdoor Sangh, Krantikari Adhivasi Mahila Sangh, Krantikari Adhivasi Balak Sangh, Krantikari Kishan, Mahila Mukti Manch, R.P.C. & Jantana Sarkar Committee Organization as Unlawful Organizations under Section 3 (1) of the Act, 2005 for a period of one year from 12th April, 2009. Therefore, before declaring the organizations unlawful under Section 3 (1) of the Act, 2005 any action by such organizations would not be cognizable under the Act, 2005.

19. Mr. Mahendra Dubey, learned counsel appearing on behalf of appellant Piyush Guha, argued that appellant Piyush Guha is a Bidi leaf businessman, he used to visit Raipur in connection with his business; on 1-5-2007 he came to Raipur in relation to his business, he stayed at Mahendra Hotel and on same day he was taken by police, closing his eyes with tape, he was detained for six days at different places and his signatures were obtained on some papers on 6-5-2007. He is no way connected with commission of any offence. As per evidence of B.S. Jagrat (PW-95), appellant Piyush Guha has been arrested near railway station on 6-5-2007 under suspicious condition, but this witness himself has filed reply supported by affidavit before the Supreme Court in bail

⁷ (1984) 1 SCC 319




petition of appellant Binayak Sen in which he has specifically mentioned that he has arrested appellant Piyush Guha from Mahendra Hotel which he has tried to explain in the present case that by mistake he has mentioned the place Mahendra Hotel. Piyush Guha has not made any confession before any person including police and he was not in possession of Articles 8, 9 & 10, the alleged disputed letters. When Piyush Guha was detained, his bag was checked, thereafter he was taken to the police station where seizures were prepared but articles were not sealed. Although recovery memo reveals that articles have been sealed, but evidence of B.S. Maravi (PW-69) -- Senior Superintendent of Police reveals that at the time of granting permission for registration of FIR as required under sub-section (3) of Section 16 of the Act, 2005, he perused the documents seized from Piyush Guha brought before him along with Ex.P-179. This reveals that the documents were not sealed and there was likelihood of tampering. The prosecution has utterly failed to produce any evidence against appellant Piyush Guha relating to his association with any organization which has been declared unlawful or which are unlawful organizations and any activity in association with the aforesaid organizations and, therefore, his conviction & sentences for the aforesaid offence are not sustainable under the law.

20. Mr. Mahendra Dubey placed reliance upon the order dated 3-2-2011 passed by the Supreme Court in the matter of **Arup Bhuyan v. State of Assam** {Cr.A.No.889/2007} in which the Supreme Court has held that mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.

21. On the other hand, Mr. Kishore Bhaduri, learned Additional Advocate General/Additional Public Prosecutor appearing on behalf of the State/ respondent, vehemently opposed the applications and submitted that in order to prove aforesaid charges the prosecution has examined sufficient number of witnesses and has also proved the documents. Defence has also examined defence witnesses and has proved the documents. Evidence adduced on behalf of the prosecution is sufficient for drawing inference that conviction of the appellants is well founded. At the stage of considering application under Section 389 (1) of the Code for suspension of sentence and grant of bail during the pendency of appeal, no meticulous scrutiny of evidence is required. At the time of such consideration, defence of innocence is not available to the appellant who has been convicted & sentenced by the court of competent jurisdiction. Mr. Kishore Bhaduri while relying upon the evidence of various witnesses and documents, further submitted that as held by the Supreme Court in **Kedar Nath's case** (supra), criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental rights 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 act of the person falls within the ambit of sedition. In the present case, the appellants have crossed the limits of criticism. Mr. Kishore Bhaduri also submitted that sentence imposed upon the accused after appreciation of evidence should not be suspended in a routine manner.

22. Mr. Kishore Bhaduri placed reliance in the matters of **State of Maharashtra v. Madhukar Wamanrao Smarth^B** and **Sidhartha**

^B AIR 2008 SC 1793



Vashisht alias Manu Sharma v. State (NCT of Delhi)⁹ in which the Supreme Court has held that suspension of sentence only on the ground that bail granted during trial was not misused and likelihood of delay in disposal of appeal is not proper.

23. These are applications under Section 389 (1) of the Code for suspension of sentence and grant of bail to the appellants namely Binayak Sen & Piyush Guha during the pendency of appeals. The appellants have been convicted & sentenced vide judgment dated 24-12-2010 for commission of aforesaid offences and sentenced to undergo imprisonment for life along with other sentences.

24. By detailed arguments and comprehensive presentation on behalf of the appellants, learned counsel for the appellants have submitted that even on merits, conviction of the appellants is not sustainable under the law and evidence collected on behalf of the prosecution is not sufficient for drawing inference that the appellants have committed aforesaid offence including the offence of sedition or that by their act they have excited disaffection towards the Government established by law or have shown disloyalty and all feelings of enmity.

25. By detailed submission, learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the applications and contended that evidence adduced on behalf of the prosecution and admission of accused persons by adducing defence witnesses are sufficient to establish the fact that the appellants have committed aforesaid offence including the offence of sedition. The appellants have been convicted only on 24-12-2010 and there is no likelihood of delay in hearing the appeals.

⁹ AIR 2008 SC 2889

26. At the stage of considering application for suspension of sentence and grant of bail in accordance with Section 389 (1) of the Code, the Court is not required to meticulously examine the evidence; the Court is only required to prima facie assess the evidence adduced on behalf of the parties to ascertain whether conviction of the appellants is well founded on the basis of admissible evidence and whether there exists ground for suspension of sentence and grant of bail to the appellants, during the pendency of appeals.

27. At the time of granting bail to the accused during trial in accordance with Sections 437, 438 & 439 of the Code, the Court is required to consider prima facie case on the basis of material collected on behalf of the prosecution at the time of such consideration, but at the time of consideration of suspension of sentence in accordance with Section 389 (1) of the Code by the appellate Court, the Court is required to summarily examine the legally available evidence after conclusion of trial and pass reasoned order. Provisions of Section 389 (1) of the Code read as follows: -

"389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."

28. At the time of such consideration, the Courts have opportunity to examine and consider legally admissible evidence marshalled during trial. At the time of considering the application for suspension of sentence and grant of bail, sentence should not be suspended in a routine manner. Normally, sentence should not be suspended in cases of conviction relating to heinous offence involving capital punishment or





imprisonment for life. It is pertinent to note that after conviction by competent court in elaborate trial the theory of presumably innocent person loses ground.

29. While dealing with the question of suspension of sentence the Supreme Court in the matter of **Anil Ari v. State of West Bengal**¹⁰ has held that exercise of power under Section 389 (1) of the Code should be used only after careful consideration of relevant aspects, mere fact of grant of bail during trial and absence of its misuse is not sufficient to suspend sentence and grant bail. While dealing with same question, the Supreme Court in the matters of **Ramji Prasad v. Rattan Kumar Jaiswal and another**¹¹ and **Vijay Kumar v. Narendra and others**¹² has held that at the time of considering the question of suspension of sentence, the Court is required to consider gravity and seriousness of the offence. In the matter of **State of Haryana v. Hasmat**¹³ while reversing the order suspending sentence, the Supreme Court has observed in paras 6 & 7 that:-

"6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. **The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and**

¹⁰ AIR 2009 SC 1564

¹¹ AIR 2000 SC 3564

¹² (2002) 9 SCC 364

¹³ AIR 2004 SC 3936

grant of bail should not be passed as a matter of routine.

7. The Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the period the accused-respondent was granted parole."

30. While dealing with same question, the Supreme Court in **Madhukar Wamanrao's** case (supra) has held even in case of cheating, forgery and conspiracy, the Court is required to consider gravity of offence, and considering gravity of offence, order of suspension was reversed. While dealing with same question, the Supreme Court in the matter of **Sidhartha Vashisht** (supra) has held that at the time of considering suspension of sentence the Court is required to consider seriousness of offence, manner in which it was said to have been committed, gravity of offence and time for hearing the appeal.

31. In the present case, conviction is inter alia for offence of conspiracy and sedition. It is trite to say that for constituting the offence of conspiracy and sedition it is neither necessary that the person accused should himself be the author of the seditious material nor is it necessary that there should be actual or attempted hatred, contempt or disaffection, brought or excited, by the accused himself. The existence of conspiracy can be gathered from circumstances leading to irresistible inference of an agreement between two or more persons. Once conspiracy is proved the act of one conspirator becomes act of the other.



32. During course of trial, the prosecution examined 95 witnesses and proved 129 articles and 417 exhibits. Defence examined eleven witnesses and produced 40 documents.


33. As per case of the prosecution in a nutshell, co-accused Narayan Sanyal is a hardcore naxalite and member of banned organizations, he was having close intimacy with appellant Binayak Sen and he was arrested by Ch. Deva Reddy (PW-59) on 3-1-2006 at Bhadrachalam bus stand. Co-accused Narayan Sanyal was required in cases registered in this State and he was detained in Raipur Central Jail where after obtaining permission from authorities, appellant Binayak Sen visited Raipur jail for meeting Narayan Sanyal for thirty-three times from 26-5-2006 to 30-4-2007. Appellant Piyush Guha was arrested on 6-5-2007 while he was moving near Raipur Railway Station and three letters Articles 8, 9 & 10, of which, one is written in Bengali were seized from the possession of appellant Piyush Guha along with other articles. As per evidence of prosecution witnesses, appellant Piyush Guha made confession before police that those three letters have been given by Narayan Sanyal to appellant Binayak Sen for sending the same to Kolkata and appellant Binayak Sen has handed over those letters to appellant Piyush Guha, but this part of evidence i.e. confessional statement is not admissible in evidence. However, the fact remains that prior to seizure of these letters the Government machinery has permitted appellant Binayak Sen to meet Narayan Sanyal who was in Raipur Central Jail and Binayak Sen has visited jail thirty-three times within short span i.e. from 26-5-2006 to 30-4-2007. Appellant Binayak Sen has visited jail to meet Narayan Sanyal one time in May 2006; two times in June 2006; three times in July 2006, August 2006, September 2006, October 2006, November 2006, December 2006, January 2007 i.e. total twenty-one times; one time in

February 2007; three times in March 2007 and five times in April 2007. After arrest of appellant Piyush Guha and seizure of three disputed letters from him, house of appellant Binayak Sen was searched and Binayak Sen was arrested on 14-5-2007. The alleged Articles 8, 9 & 10 have been examined by the handwriting expert and as per report of the handwriting expert, aforesaid articles were written by Narayan Sanyal. While Narayan Sanyal was in custody, he wrote letter Article A24 from jail to appellant Binayak Sen on 3-6-2006. As per evidence collected on behalf of the prosecution, accused Narayan Sanyal has also tried to send letter Article A14 on 17-12-2006 to some other prisoner which has been seized. Appellant Binayak Sen is member of PUCL and also General Secretary of Chhattisgarh Lok Swatantrya Sangathan (as per Exs.D-9 & D-10).

34. During course of search of the house of Binayak Sen, Article A19 – one booklet of Communist Party of India (ML) of November-December 2004, Article A20 – one letter written by Madanlal Barkhade from jail to Binayak Sen addressing him as "प्रिय कॉमरेड बिनायक सेन" relating to problems in jail, Article A21 – one printed material Andhra Pradesh: Women's Rights and Naxalite Groups, Article A22 – photocopy of one hand written letter, Article A23 – one booklet like papers, Article A24 – letter written by Narayan Sanyal to appellant Binayak Sen, paper cuttings relating to human rights and Naxalites, atrocities of police and Article A36 – one booklet of Salwa Judum, have been seized which have been admitted by appellant Binayak Sen.

35. As per case of the prosecution, Article A37 – the alleged letter written by Chhattisgarh Rajya Committee CPI (Maovadi) to appellant Binayak Sen in which the appellant was addressed as "प्रिय साथी" has also been seized from the house of the appellant at the time of seizure which has been





denied by the appellant. Seizure of this article does not find place in seizure memo Ex.P-20, but same was part of charge sheet. By examining defence witness Amit Banerjee (DW-5), defence has tried to prove that they have not received aforesaid copy, but as per record of the trial Court and evidence of this witness, virtually he has not received copy of charge sheet and the appellant himself has received copy of charge sheet and his counsel Mr. Kamlesh Ganjir was present at the time of receiving such charge sheet. They have not objected at the time of filing charge sheet relating to non-supply of any document. While answering to additional questions No.8 to 25 put to the appellant in his examination under Section 313 of the Code, the appellant answered that he does not know the photographs of Shankar & Amita Shrivastava, he does not know about their job & residence, providing service to Amita Shrivastava by his wife and introduction of Amita Shrivastava before Bank by his wife. Although as per evidence of Prahlad Sahu (DW-1) – Samanvayak of Roopantar Institution working since 1997, Shankar Singh was working as teacher in Roopantar, but he has left the job since 2005 and the appellant is also a member (karyakarta) of Roopantar. Initially this witness has deposed that office of Roopantar was in Kakkad Bhawan from 1997 to 2000, from 2000 to 2007 it was at Kanwarram Chowk, Katora Talab, Raipur and thereafter since 2007 the office is situate at Vijeta Complex, Amlidih, Raipur. However, as per para 5 of his evidence, registered office of Roopantar is situate at A-26, Surya Apartments, Katora Talab, Raipur, residence of appellant Binayak Sen. As per his evidence, he does not know the situation of Kakkad Bhawan.

36. On 3-1-2006 Article A1 – one bulletin named Prabhat was found in possession of appellant Piyush Guha, which reveals that accused Narayandas Sanyal is senior member of politburo, his name is Comrade

Narayandas Sanyal @ Naveen Prasad @ Vijay Da and after his arrest Dandkaranya Special Zonal Committee has shown its grievance and issued press note to its members for opposing the same. In this bulletin, certain comrades have been shown as active members of South Bastar Division, they were members of Jan Mukti Gorilla Sena. This bulletin further reveals that on 6th February, 2006 members of PLGA have destroyed the vehicle of Naga Battalion by land mine and have killed nine members of Naga Armed Force. On same day PLGA has also attacked upon Aara Police Outpost of Jashpur and killed two members of armed force while causing serious injuries to twelve persons and have taken all arms from the police outpost. It further reveals that on 10th February, 2006 they have taken upon Beladila Gunpowder Depot and killed members of armed force including injuries to nine persons and they have also taken arms & ammunition from the said gunpowder depot. Another Article A2 seized from appellant Piyush Guha reveals that Special Zonal Committee भाकण (मा-ले) (Peoples War) Dandkaranya has organized Jan Yudh. Article A19 seized from the house of appellant Binayak Sen is a booklet of Peoples March Visheshank, it is related with Krantikari Gorilla Yudh and Lok Yudh. Article A36 recovered from the house of appellant Binayak Sen also reveals that on 3-9-2005 PLGA members have succeeded in destroying the mine proof vehicle of police, hence succeeded in killing twenty-four members of CRPF and they have also taken arms & ammunition of the aforesaid members of armed force. On 16th April, 2005 they have also succeeded in killing seven SPOs and have further succeeded in taking 49 arms. Members of PLGA were thousand in number. On 10th January, 2006 while police was dismantling the statute of alleged Shaheed comrades, with the use of special bomb they have succeeded in killing one member of CRPF. In Daibhaguda






explosion, active member of Salwa Judum has been killed, but they have not killed the persons who have surrendered before them. This book is full of action of PLGA, members of PLGA & other organizations, their success in killing members of armed forces deployed in that area and their success in getting arms & ammunition from armed forces. It also reveals that members of armed forces have committed atrocities and cruelty and have mercilessly killed innocent peoples of the villages.

37. Evidence of Abhijit Roy (PW-5), Deepak Choubey (PW-7), Manish Dhaga (PW-8), Meena Shivpuri (PW-10), Shyam Sundar Rao (PW-12), C.L. Kal (PW-15), Niranjana Singh (PW-17), Shankar Prasad Mishra (PW-18), A.R. Kunjam (PW-19), T.S. Balachandran (PW-20), Kumari Kakuli Das (PW-21), P. Ramakrishna Rao (PW-23), S.K. Mishra (PW-25), Albert Kujur (PW-27), R.S. Yadav (PW-28), K.L. Deshmukh (PW-29), N.K. Sikkewal (PW-30) – Additional Government Document Examiner, Rajendra Gaikwad (PW-31) – Jail Superintendent, Ravindra Upadhyay (PW-36) – SDO (P), Vikas Sheel (PW-39) – District Magistrate, Vipendra Ram Yadav (PW-40) – Sub Inspector, Vijay Thakur (PW-41) – Inspector, S.R. Thakur (PW-43) – Sub Jail Superintendent, Ramswaroop Sahu (PW-44), R.K. Singh Kesar (PW-46) – Jailor, Sher Singh Bande (PW-49) – Police Inspector, Vijay Kumar Lad (PW-50) – Manager Central Bank of India, P.K.S. Chauhan (PW-51) – Retired Jailor, C.L. Sirdar (PW-52) – the then Police Inspector Police Station Madded Dist. Bijapur, Uday Chand Jain (PW-53), Ambadas Rajaram Wankhede (PW-54), Vivek Dubey (PW-57), B. Ashok Kumar (PW-58) – Circle Inspector of Police Kottagudem Town Khammam District (Andhra Pradesh), Ch. Deva Reddy (PW-59) – Sub Inspector of Police CID Hyderabad (Andhra Pradesh), H.C. Jadhav (PW-62) – ASI, Soma Sen (PW-63) – Lecturer, Ramesh Kumar Mal (PW-64) – Police Inspector (Bihar), Arun Kumar

Dubey (PW-65) – Deputy Manager Central Bank of India, B.S. Kerketta (PW-66), B.S. Marawi (PW-69) – the then Senior Superintendent of Police Raipur, I.H. Khan (PW-71) – City Superintendent of Police Raipur, Pravir Das (PW-72) – the then Superintendent of Police Dantewada, K.R. Pisda (PW-73) – the then District Magistrate/Collector Dantewada, A.A. Ansari (PW-77) – the then Sub Inspector Police Station Dindayal Upadhyay Nagar Raipur, Parmeshwar Shukla (PW-79) – Inspector Giridih (Jharkhand), K.B. Khatri (PW-85) – City Superintendent of Police Mana, Naresh Kumar Patel (PW-92) – Inspector Crime Branch Raipur, Sadhan Kumar Pathak (PW-93) – Sub Inspector (West Bengal), B.S. Jagrat (PW-95) – Inspector Police Station Pandri, reveal that Shankar Singh, Amita Shrivastava & Malli @ K.S. Priya are members of hardcore naxalite group and they were in close contact with appellant Binayak Sen. In different attacks by banned organizations or unlawful organizations, members of armed force have been killed and their arms have been looted by the aforesaid members of unlawful organizations. Amita Shrivastava & Shankar Singh are members of Roopantar, they are closely associated with appellant Binayak Sen and their names find place in the computer of appellant Binayak Sen along with the name of another accused Praful Jha.

38. Appellant Piyush Guha was found in possession of Articles A1 – printed booklet 'Prabhat', A2, A3 and three letters Articles A8, A9 & A10 which have been proved by the expert that same have been written by accused Narayan Sanyal. As per defence of Piyush Guha, he is a bidi leaf merchant and he used to visit Raipur (Chhattisgarh) in connection with his business from West Bengal. On 6-5-2007 he was found in possession of Articles A8, A9 & A10 which have been written by Narayan Sanyal who was in custody and in Central Jail Raipur on 6-5-2007.





Normally it was not possible for Piyush Guha to be in possession of such documents. But the fact remains that he was found in possession of the alleged handwritten letters written by Narayan Sanyal. Appellant Piyush Guha has not offered any explanation that how the said letters were found in his possession, likewise, what was the propriety for possessing Articles A1, A2 & A3 which contain material sufficient to attempt to excite disaffection towards the Government established by law and to bring into hatred and disaffection towards the Government established by law.

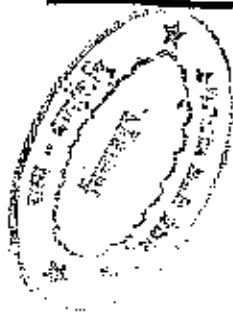
39. Appellant Binayak Sen is member and General Secretary of Chhattisgarh Lok Swatantrya Sangathan. As per evidence of aforesaid witnesses, Narayan Sanyal is also a hardcore naxalite involved in different crimes and offences in which arms and ammunition of police force have been looted and members of armed force have been killed. The appellant was closely associated with Narayan Sanyal, he frequently visited jail 33 times to meet Narayan Sanyal. The appellant offered explanation that for health care and other general discussion he visited Narayan Sanyal in the jail. The appellant is expert of pediatrics i.e. child care. Article A129 – hard copy taken from the computer of the appellant, reveals the list of organizations with sign 'P' in which thirteen organizations have been shown as organizations of Chhattisgarh. Names of Prafull Jha & other accused of same offences also find place in the said hard copy of the computer of the appellant. It further reveals that Roopantar had worked with Chhattisgarh Mines Shramik Sangh (CMSS). Code name of this appellant is shown as Rana which also reveals Krantikari Adivasi Mahila Mukti Manch and its activities.

40. As per evidence of Vipendra Ram Yadav (PW-40) & Vijay Thakur (PW-41), accused Narayan Sanyal is accused in Crime No.9/2005 registered at Police Station Konta. As per evidence of Sher Singh Bande (PW-49),

on 21-5-2007 at Vijay Jhadi Khedi forest, naxalites were convening meetings and dangerous arms & ammunition including bombs were found. On 1-6-2007 naxalites were found in possession of dangerous explosives within Police Station Farsegarh area. Even as per Article A36, book of Salwa Judum, after constitution of the alleged Salwa Judum, murder by members of maoists has substantially increased and they have killed about 70 persons.

41. Men in uniform are also human beings and citizens of this country. In a loose sense they personify and represent the law and order enforcement as well as coercive arm of the Government. In the context of present case, they are members of armed forces belonging to the State police force as well as the troops/battalions of paramilitary and other forces under the control of Government of India such as Naga Battalion and CRPF. They work in the remote disturbed forest areas of the State of Chhattisgarh for restoration of peace and law & order. Aforesaid documentary evidence reveal that these unlawful organizations have been indiscriminately targeting the armed forces in the name of spreading awareness and countering atrocities by men in uniform, thereby the attempt has been to excite disaffection and feeling of disloyalty and enmity towards the Government established by law, particularly because the movement is neither confined to any particular atrocity by men in uniform nor is against any identified group. It appears to be a general rebellion movement targeting any and every men in uniform just because they wield State's legitimate power of coercion, thereby exposing the emphasis of the movement to be of having and spreading disloyalty and enmity towards the Government established by law.





42. As held by the Supreme Court in the matter of **Kedar Nath** (supra), every man has fundamental right of freedom of speech and expression under Article 19 of the Constitution of India, but citizen has no right to create public disorder or disturbance of law and order. such fundamental right is required to be exercised within reasonable limit. The organizations have right to oppose the public policy and the Government in lawful manner, even they may oppose to the extent of their condemnation but they are not authorized to excite or attempt to excite disaffection towards the Government established by law or to excite disorder.

43. As per evidence adduced on behalf of the prosecution, appellant Piyush Guha & accused Narayan Sanyal are members of maoist group and involved in naxalite activities, they have created disloyalty and enticed public against the State machinery resulting into huge deaths of members of armed forces and robbery of arms & ammunition from police, even from the police stations. Appellant Binayak Sen is closely associated with Narayan Sanyal and other alleged hardcore naxalites namely Shankar Singh, Amita Shrivastava & Malti @ K.S. Priya who are absconding after arrest of the appellants herein.

44. In case of conspiracy, normally no direct evidence and direct connection of the accused with other conspirators would be possible. Conspiracy is required to be considered in the light of entire circumstances and results of circumstances. At this stage, defect in framing of charge or distinct findings relating to such charge cannot be considered. Even otherwise, such defects would generally be procedural lapses curable as per Section 464 of the Code.

45. Hard copy of the computer record found in possession of appellant Binayak Sen reveals the names of Shankar Singh, Malti @ K.S. Priya & Prafull Jha against whom cases like aforesaid nature are pending. As per written defence of appellant Binayak Sen, he is State level President of PUCL and in Chhattisgarh, PUCL has been in the forefront of exposing atrocities of police and atrocities by men in uniform against vulnerable sections. The appellant has worked in remote rural and forest areas relating to the aforesaid work i.e. exposing atrocities of police and also atrocities by men in uniform against vulnerable sections.

46. As per evidence collected on behalf of the prosecution, these remote areas and forest areas are mostly affected by naxalite problem where most members of armed force have been killed in incidents by local groups who have looted arms & ammunition from police/armed forces deployed in those areas. As per evidence of I.H. Khan (PW-71) on 21-2-2006 naxalite literature and CD have been distributed in the MLA rest house situate at Raipur and he has registered FIR as Ex.P-233 in which Comrade Dandkaranya Makapa Pravakta Gutsa Sendi has requested and threatened the public, in that case Malti @ K.S. Priya whose name finds place in hard copy of the computer entry of appellant Binayak Sen is accused. As per evidence of Pravir Das (PW-72) in 2006 aforesaid groups have looted explosive material from NMDC explosive godown.

47. Evidence and hard copy of computer material of the appellant further reveals that on different occasions when armed forces have committed atrocities, PUCL has investigated the matter and has demanded from the Government for withdrawal of armed forces and regularization of normal life, but no demand is made by members of PUCL or by the appellant to the said groups who have committed mass killings of members of armed force and have looted arms & ammunition from police stations and from



armed forces, and also used land mines and destroyed ante land mine vehicles and killed the persons of local police as well as armed forces called from outside for deployment.

48. Appellant Binayak Sen was found in possession of naxalite pamphlets, booklets and letters, viz., Articles A19 & A36. Article A19 reveals constitution of PLGA which is an organization (criminal force) and Jan Sena Gorilla Zone Krantikari Samyukta Morcha for direct fight with the Government and its machineries by use of force. They have spread their forces from forest area to city area. Article A19 and Articles A1, A2 & A3 seized from appellant Piyush Guha further clearly reveal that by these documents clear attempt has been made to excite disaffection towards the Government established by law and to bring into hatred and disaffection towards the Government established by law. Article A36 is more comprehensive relating to bringing into hatred and disaffection towards the Government established by law which reveals the act of alleged organizations and their success in killing members of armed force, destructing mine proof vehicle of police, use of pressure bomb, robbery of arms & ammunitions from police and armed forces which has been shown as 'janta ka shandar pratirodhi'. These documents themselves show that they are the documents prepared to excite disaffection towards the Government established by law and to bring into hatred towards the Government established by law. The appellant has been found in possession of the aforesaid documents. The prosecution has not proved its authorship, but as held in the matter of **Raghubir Singh and others v. State of Bihar**¹⁴ it is not necessary that accused should be author of documents or seditious material found in his

¹⁴ AIR 1987 SC 149

possession. The Supreme Court has observed in para 17 of the said judgment thus,

"Where charges of conspiracy and sedition were framed on basis of letters recovered in the search of accused, it could not be said that the charges were not justified as the accused were not the authors of the letters.

Authorship of seditious material alone is not the gist of any of the offences. Distribution, circulation of seditious material may also be sufficient on the facts and circumstances of a case. To act as a courier is some times enough in a case of conspiracy. It is also not necessary that a person should be a participant in a conspiracy from start to finish. Conspirators may appear and disappear from stage to stage in the course of a conspiracy."

49. Articles A1, A-2 & A-3 seized from appellant Piyush Guha also reveal that same are complete seditious articles.

50. As held by the Supreme Court in **Arup Bhuyan's** case (supra), mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. However, in the present case, evidence adduced on behalf of the prosecution shows substantive involvement of the appellants in seditious activities. The case of **Arup Bhuyan** (supra) is distinguishable on facts to that of the present case.

51. As per written defence and defence taken by appellant Binayak Sen, he is President of Chhattisgarh State PUCL unit. PUCL is in the forefront of exposing atrocities of police and atrocities by men in uniform against vulnerable sections. Aforesaid articles reveal that rural and forest areas where the appellant has worked are affected by naxalite problem and





also by the unlawful organizations working in those areas. Innocent people residing in those areas are being killed along with members of armed force/police and robbery of arms & ammunitions has become routine and frequent phenomenon. By using land mines, members of unlawful organizations are destroying anti-land mine vehicles of armed forces. Appellant Binayak Sen has not made any demand to these organizations whom he has made aware from police atrocities to refrain from violence. Contention of Mr. Surendra Singh that the organizations in question were declared to be unlawful with effect from 12-4-2009 for a period of one year does not appear to be sound in view of earlier notification No.14/2006 dated 12-4-2007 available on record.

52. In case of conspiracy direct evidence would not be possible and the Court is required to consider circumstantial evidence and the circumstances exist in this case which lead to irresistible inference that the appellants along with unlawful organizations were at *consensus ad idem* with respect to their aforesaid acts shown to have been done against the Government established by law in the name of spreading awareness and opposing atrocities of men in uniform. Men in uniform are not only local police men from this State but also are those members of Union of India's armed forces who are domiciles of other States and had to loose their lives for the sake of maintaining peace and order in remote areas of Chhattisgarh.

53. Documentary and oral evidence adduced on behalf of both the parties, explanation given by appellants Binayak Sen & Piyush Guha in their examination under Section 313 of the Code and written defence submitted by appellant Binayak Sen are sufficient for drawing inference that conviction of the appellants under Sections 124A read with Section 120B of the IPC; 8 (1), 8 (2), 8 (3), 8 (5) of the Act, 2005; and 39 (2) of

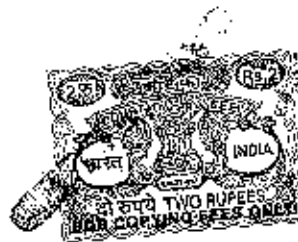
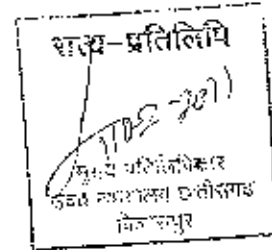
the Act, 1967, are prima facie legally sustainable. Considering nature and gravity of offence, especially the offence of sedition, we do not find any ground for suspension of sentences and grant of bail to appellant Binayak Sen in Cr.A.No.20/2011 and appellant Piyush Guha in Cr.A. No.54/2011, during the pendency of appeals.

54. Consequently, I.A.No.1 filed on behalf of Binayak Sen in Cr.A. No.20/2011 and I.A.No.1 filed on behalf of Piyush Guha in Cr.A. No.54/2011 are liable to be dismissed and they are hereby dismissed.

Sd/-
T.P. Sharma
Judge

Sd/-
R.L.Jhanwar
Judge

Soma





and 6056/11

(1) Application received on	(2) Applicant told to appear on	(3) Applicant appeared on	(4) Examination (with or without a further of former contributors) held in record-room	(5) Application made with a view to publication	(6) Application made with a view to publication	(7) Application made with a view to publication	(8) Copy ready to send on	(9) Copy delivered or sent on	(10) Copy delivered or sent on	(11) Court-fee realized
10/2/11	14/2/11	11/2/11	10/2/11	11/2/11			11/2/11	11/2/11		

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11/2/11
Comarer

11/2/11
Head Copyist

11/2/11