IN THE SPECIAL COURT FOR THE TRIAL OF CRIMINAL CASES INVOLVING ELECTED MEMBERS OF PARLIAMENT AND MEMBERS OF LEGISLATIVE ASSEMBLY OF TAMIL NADU, CHENNAI.

Present: Tmt. J. Shanthi, B.Sc., B.L.,
Sessions Judge

Friday the 5th day of July, 2019

Sessions Case No.120 of 2017

(Originally the case was filed before XIII Metropolitan Magistrate, Chennai and as P.R.C. No. 336 of 2010 and committed to Sessions Court numbered as S.C.No.120 of 2017. Since the accused is an Ex.M.P., as per the order of Honourable Supreme Court the case was transferred to the Special Court exclusively to try the offence relating to the Elected Members of MLAs and MPs)

P.R.C. No.336/2010 on the file of XIII Metropolitan Magistrate, Egmore, Chennai, Crime No.1366 of 2009.

Name of the Complainant	State, represented by The Inspector of police, F.4, Thousand Lights Police Station, Chennai – 600 006.
Name of the Accused	Thiru Vaiko, Male, S/o. Vaiyapuri, General Secretary, Marumalarchi Dravida Kazhagam, Egmore, Chennai – 600 008.
Charges Framed	Under Section 124 A IPC
Plea of the Accused	Not guilty
Finding of the Court	In the result, the accused is found guilty u/s. 124 A of IPC and convicted and sentenced to undergo imprisonment for a term of one year and also has to pay a fine of Rs.10,000/-, and in default to undergo one month simple imprisonment. The period of sentence already undergone by the accused is set off u/s 428 Cr.PC.
State by	Tmt. Rajendran Gayathri, Special Public Prosecutor (Full Additional Charge).
Counsel for the accused	M/s. G. Devadoss, G. Nanmaran, R. Priya Kumar and R. Senthil Selvan.

This Sessions Case came before this court on 19.6.2019 for final hearing in the presence of Tmt. Rajendran Gayathri, Special Public Prosecutor (Full Additional Charge) for the State and M/s. G. Devadoss, G. Nanmaran, R. Priya Kumar and R. Senthil Selvan counsel for accused.

Upon hearing the arguments of both sides, and perused the written arguments filed on both side, documents and evidence on record, this court delivered the following:

JUDGMENT

2. The case of the prosecution is that on 15.7.2009 at 19.00 hours to 22.10 hours in Anna Salai, Rani Seethai Mahal the book written by the accused as "குற்றம் சாட்டுகிறேன்" which was translated to Tamil from "I accuse" was released . The said function was headed by Dr. Masilamani. More than 700 people were gathered and the meeting was conducted with light and sound arrangements. In the meeting the leader of MDMK Mr. Vaiko delivered his speech and most of the words spoken by him were against the Indian Government. When any one listened to the message it will also create anguish and vengeance against the Indian Government. Since it will lead to create law and order problems among the public, the case was filed as against the accused u/s. 124A and 153 A (1)IPC.

3. After the case was registered u/s. 124A and 153A (1) IPC the case was taken on file as PRC No.336/2010 on the file of XIII Metropolitan Magistrate, Chennai . The learned Magistrate had furnished the free copies of the documents that are relied on by the prosecution under Sec.207 of Criminal Procedure Code.

4. Since the offence are sessions offence which are exclusively triable by the Court of Sessions, the Judicial Magistrate committed the case u/s. 209(a) of Criminal Procedure Code to the Principal District Sessions Court. This case was taken on file by the Principal District Sessions Court and made over to the V Additional Sessions Judge of Chennai and it was numbered as S.C.No.120 of 2017.

5. During the pendency of the case before the V Additional Sessions Judge of Chennai, since the Special court was constituted to try the case for elected and Ex.

members of MLA and MP and the accused is a Ex.MP this case was transferred to this court and the said case was assigned to this court. After the bundle was received by this court, court notice was issued to both the parties. The accused received the notice and he appeared through his counsels. After appearance of both the parties both side arguments were heard.

6. Heard both sides and perused the records. During the time of framing of charges before V Additional Sessions Judge of Chennai the accused filed a discharge petition in CMP No.9145/2017 and it was partly allowed for the offence u/s. 153A IPC and the petition was dismissed u/s. 124A IPC. Hence the charge was framed as against the accused u/s.124A IPC by the V Additional Sessions Judge of Chennai. The accused denied the charges. Then the case was adjourned for the examination of prosecution side witnesses and at that stage the case was transferred to this court.

7. After the case was received in this court, on the side of the prosecution PW1 to PW9 were examined and Ex.P1 to Ex.P9 marked.

8. <u>Gist of the prosecution case</u>:

The case of the prosecution is that the accused had spoken while releasing his book "குற்றம் சாட்டுகிறேன்" which was in the manner of sedition and also to destroy the harmony among the people of Tamil Nadu and therefore the case was registered as against him. Mr. Rahothaman from intelligence department who took notes on the book release function gave the report and based on the report the case was registered as Crime No.1366/2009 u/s. 124A, 153A(1) IPC.

9. The prosecution examined PW1 to PW9. P.W.1 who took shorthand notes/Ex.P1 of the speech by the accused in Rani Seethai Hall deposed that the accused had spoken as against the Indian Government. P.W.3 also deposed that on hearing the message people will develop hatred as against the Indian Government. P.W.4 is the Manager of the said Rani Seethai Hall in which the book was released. P.W.5 signed in the observation mahazar/Ex.P3 stated that Police came to the spot and prepared the observation mahazar in which he signed. P.W.6, who worked as Secretary to the Tamil Nadu Government during the time of occurrence stated that Government issued the G.O./Ex.P4 with respect to the speech delivered by the

accused. P.W.7/Sub Inspector of Police on pandobasth duty in the hall stated the words which was spoken by the accused. P.W.8/Head Constable who was also deputed on the occurrence day in Rani Seethai Hall stated the incidence and the words spoken by the accused. P.W.9, who was the Inspector of Police, registered the FIR/Ex.P6 based on the transcript which was taken on by P.W.1 in the meeting. After registering the FIR he examined the witness and recorded their statements and went to the spot prepared mahazar/Ex.P3 and sketch/Ex.P7. Further he recovered the pamphlets/Ex.P8 and photos/Ex.P9. After completing the investigation filed the final report.

10. Charge as against the accused:

The charge states that on 15.5.2009 at night 19 hours to 22.10 hours at Rani Seethai Hall the book "குற்றம் சாட்டுகிறேன்" written by you was released and the meeting was headed by Dr. Masilamani and more than 700 people gathered and the function was arranged with sound and light effect, in which you the accused delivered the message in which most of the words spoken by you was as against the Indian Government and the people who heard the message will developed anguish and vengeance against the Indian Government and they will develop hatred and vengeance as against the Indian Government and it will also lead to create law and order problems among the general public and so, the accused was charge u/s. 124A IPC.

Points for consideration:

11. The point to be decided is whether the prosecution has proved the charges framed as against the accused?

12. The case was registered based on the transcript of PW1. The said transcript is the speech delivered by the accused while releasing his book “குற்றம் சாட்டுகிறேன்" on 15.7.2009 at 19.00 hours to 22.10 hours in Anna Salai, Rani Seethai Hall. The said meeting was headed by Dr. Masilamani. According to the prosecution more than 700 people were gathered and the meeting was conducted with light and sound arrangements. Based on the alleged speech FIR was registered and final report was filed and then the said G.O was passed by the government.

Main points mentioned in the Government Order:

13. G.O No.1137, dt.10.12.2009 was issued u/s 124A IPC based on the following alleged speech:

1. விடுதலை புலிகள் மேற்கொண்ட ஈழ விடுதலை போர் முடியவில்லை அது தொடரும், அதற்கு தாய் தமிழகம் குரல் கொடுக்கும் .

2. இப்பவும் ஆயுதங்களை கொடுத்து, ராடர்களை கொடுத்து, ஏவுகணைகளை கொடுத்தும் multipurpose launchers, பீரங்கிகள், Howitzers Gun, போபர்ஸ் பிரச்சனையில் சிக்கிய அந்த பீரங்கிகள் உட்பட இத்தனை ஆயுதங்களை அள்ளி வழங்கி ஆயிரக்கணக்கான கோடி ரூபாய் பணத்தையும் அவர்களுக்கு கொடுத்தது அதன் மூலமாக இங்கே அண்ணன் நெடுமாறன் குறிப்பிட்டதை போல் உலகத்தின் பல தேசங்களிலிருந்த பாகிஸ்தானிலும், சீனாவிலும், ஈரானிலும் இஸ்ரேலிலும், கிழக்கு ஐரேப்பிய நாடுகளிலிருந்தும் ஆயுதங்களை பெருமளவில் வாங்கி குவித்து வைத்துக்கொண்டு விடுதலை புலிகள் மீதான போரை அவர்கள் நடத்தினார்கள்.

3. இந்த புத்தகத்திலே நான் மிகத் தெளிவாக குறிப்பிட்டு இருக்கிறேன் பிரதமரிடத்தில் தமிழன் சிந்துகின்ற ஒவ்வொரு சொட்டு இரத்தத்திற்கும் நீங்கள் பொறுப்பாளி. ஒவ்வொரு தமிழனின் சாவுக்கும் ஒவ்வொரு தமிழச்சியின் சாவுக்கும் உங்கள் அரசு பொறுப்பாளி என்று கூண்டில் நாங்கள் நிறுத்துவோம் என்று எழுதியிருக்கிறேன் என்றும், இந்திய அரசு செய்த துரோகத்தினால் இன்றைக்கு விடுதலை புலிகளுக்கு ஏற்பட்டு இருக்கும் பின் அடைவுக்கு இந்திய அரசு செய்த துரோகம் காரணம் இதற்கு என்ன நோக்கம்,

4. அன்றைக்கு அப்படி துரோகத்தை செய்து ஒப்பந்தத்தை கொண்டு போய் திணித்து திலீபனின் சாவுக்கு காரணமானது அன்றைய இந்திய அரசு என்றும், குமரப்பா, புலேந்திரன் உள்ளிட்ட 12 புலிப்படைத் தளபதிகளின் சாவுக்குக் காரணம் அன்றைய இந்திய அரசு

5. It is an atrocious act of the Indian Government இது ஒரு அயோக்கியத்தனமான நடவடிக்கை என்றும், நீ யார் கண்ணிவெடிகளை அகற்றுவதற்கு எங்கள் இளைஞர்களைத் தேடித் தேடி கொல்லுவதற்கா.

6. இந்திய அரசு வகுத்துக் கொடுத்த திட்டத்தின் விளைவாக பன்னாட்டு ஆயுத பலத்துடன் விடுதலைப் புலிகள் போர்க்களத்தில் தோற்கடிக்கப்பட்டார்கள்.

7. இந்த கொலைகாரனுக்குத் துணைபோன இந்திய அரசின் ஐ.நா. மன்றத்தில் ராசபக்சேவுக்கு ஆதரவாக வாக்கு அளித்தது என்றும், இன்றல்ல நேற்றல்ல 5 ஆண்டுகளாக இந்த அக்கிரமத்தை செய்து கொண்டு இருக்கிறது என்றும், ஆகவேதான் இந்த இந்திய அரசு செய்த துரோகங்களை மக்கள் மன்றத்திலே எடுத்துரைக்க வேண்டிய கடமை நமக்கு இருக்கிறது .

8. ஆகவே தமிழகத்திலே இருக்ககூடிய இளைஞர்கள் உள்ளம் தமிழ் ஈழம் அமைவதற்கு துணை செய்யட்டும்.

9. தமிழினம் தனித் தமிழ் தேசத்தை அமைக்கின்ற வகையிலே அவர்களுக்கு உறுதுணையாக நாம் குரல் கொடுக்க, மக்களின் ஆதரவை திரட்ட அனைத்து வழிகளிலும் ஈடுபடுவோம் என்று சூளுரை மேற்கொள்ளுவோம் என வைகோ அவரது உரையில் குறிப்பிட்டிருந்தார்.

Since sanction order was issued the case was taken on file.

Initial stage:

14. The complainant Mr. Rahothaman, Junior Reporter who was working in the Intelligence Department of Chennai Police was deputed to take notes on 15.7.2009 at 19.00 hours in Rani Seethai Hall and he took notes where the accused Thiru Vaiko delivered his message and the book written by him was released. Since some of the words spoken by the accused was of nature of bringing hatred and attempts to excite disaffection towards the Government established by law, the charge was framed as against him u/s. 124A IPC by the V Additional City Civil Court.

After the Case transferred to Special Court

15. As per the Order of the Supreme Court in ***Writ Petition No. 699/2016 Aswini Kumar Upadhyaya Vs. Union of India*** this court was constituted to try the cases relating to the Elected Members of Parliament and Members of Legislative Assembly including former MP's and MLA's and the present case was assigned to this court since accused is a Ex.M.P. So the present case was taken on file by the Special Court and immediately the witnesses were examined and then arguments were heard on both side.

Gist of the evidence of P.W.1 to P.W8:

16. PW1/Mr. Rahothaman who took notes (transcript Ex.P.1) on 15.7.2009 at 7.o' clock at Rani Seethai Hall stated that the accused delivered the speech which amounts to sedition. P.W.1 stated in his evidence that about 700 people gathered in Rani Seethai Hall where sound and light service arrangements were made. The book “I Accuse” written by Mr. Vaiko was released. The said meeting was held between night 19 hours to 22.10 hours. P.W.1 further stated that Vaiko’s speech was in a way to raise anguish among the people. He spoke that in order to get Tamil Eezham the

Tamil people will give their voice and the entire Tamil people in the world will also raise their voice. The Indian Government continuously acting against the welfare of Tamil Eezham. The Indian Government is a traitor. The Indian Government gave crores of money to Srilankan Government to destroy the demands of Tamil Eezham and so they are traitors. He further stated that the Indian Government is responsible for the death of the leaders of the LTTE leader Pulendran, Johny and Kittu. The Indian Army made agreement and supplied weapons. So Tamil Eezham people were dead. By the act of Indian Government lead to drawback to the LTTE. The Indian Government is responsible for the death of each Tamil man and women. We will definitely bring Rajbaksha in to the accused stand at UNO. In order to form Tamil Eezham apart from politics all our people will raise our voice and support of the formation of Tamil Eezham. PW1 further stated that the way of speech delivered by the accused is in a way which would lead to vengeance against the Indian Government. His speech was in a way to lead law and order problem. The peace among our people will also be destroyed. Apart from Tamil Eezham the accused also spoken about the Indian Army and the agreement between the Indian Army. Vaiko further spoken that the weapons given to Sri Lanka were passed through Tamil Nadu and because of the act of criminal conspiracy of Sonia Gandhi and Manmohan Singh there was setback to LTTE.

17.P.W.2 Retired Head constable stated that he was deputed to Rani Seethai Hall for bandobasth duty on 15.7.2009 and the people coming out from the hall made a comment that the leaders nicely spoken as against the government. P.W.3/Sub Inspector of Police deputed to Rani Seethai Hall for bandobasth duty on 15.7.2009 along with him Nataraja, Perumal, Sampath, Kotteeswaran stated that the book "குற்றம் சாட்டுகிறேன்." written by Vaiko was released and in the meeting Vaiko, Pazha Nedumaran, Masilamani, Rajendran and Mahendran had participated. More than 700 people gathered in the hall. Vaiko spoken that the agitation of LTTE has not ended and it will continue. For which our Tamil people will also raise their voice. They received crores of money from Pakistan, Iran, Israel and East European countries and they bought weapons and used them against LTTE. The Indian Government is responsible for the death of each Tamil men and women. The accused spoken as against the Indian Government and State Government. His speech was in a way to create law and order problem. Further he spoke that since because the weapons were supplied,

LTTE gone back. He further stated that we have to raise our hands to form Tamil Eelam.

18. P.W.4/Manager of Rani Seethai Hall stated that Mr. David came and asked permission to conduct a meeting for the release of book written by Vaiko. Hence, he asked him to get permission from Commissioner of Police and so he got permission from the Police Commissioner and gave it to him. The said permission was marked as Ex.P.2. He further stated that on 15.7.2009 in the evening 7.o' clock he gave the hall to them. Most of the political leaders came there. Mr. Pazha Nedumaran, Mr. Inculab and Mr. Vaiko and others participated in the meeting. While delivering his speech Mr. Vaiko strongly condemned the act of Central Government and spoken in favour of LTTE. So, the Thousand Lights Inspector of Police enquired him. The Police also recorded audio. The hall capacity was to gather about 700 people.

19. P.W5 who was running a petty shop near Rani Seethai Hall at Thousand Lights area was signatory of observation mahazar/Ex.P.3 stated that near his shop Suresh Kumar was also having a petty shop and the Inspector of Police drew the sketch after seeing the occurrence place and prepared the observation magazer and got his signature and Suresh Kumar on 10.12.2009 at 10.00" in the morning. He further stated that Mr. Vaiko delivered his speech at Rani Seethai Hall and he spoke badly against the Indian leaders.

20. PW6, presently working as Director of Bharathidasan University (at the time of issuing the said G.O he worked as Secretary to the Government, Public (Law and Order-H) Department) signed in the G.O. No.1137/Ex.P4 stated that on 15.7.2009 at Rani Seethai Mahal the book written by Mr. Vaiko in Tamil "குற்றம் சாட்டுகிறேன்" was released. He further stated that while addressing the gathering the accused made accusation against the Indian Government and the persons who hear the speech will definitely develop vengeance against the Indian Government and the speech also developed vengeance against each other, which is punishable u/s. 124A and 153A (1) IPC. So, FIR was registered under crime No.1366 of 2009 dated 9.12.2009. To file the case in the letter No.607/BV/2009-1 dated 17.7.2009 the Commissioner of Police requested permission from the Government. After perusing the transcription in the case diary, the notes of the Rahothaman, FIR and Statement of witnesses PW6 stated

that he was satisfied and based on the documents the Governor of Tamil Nadu accorded sanction for prosecution against the accused u/s. 124A IPC on 10.12.2010 in G.O. No.1137.

21. PW6 also stated that Mr. Vaiko delivered his message that “Liberation of Eezham Tamilian war was not over and the people of Tamil Nadu will raise their voice. They gave radars, Missiles, Artillery, Howitzer Gun and also gave weapons and crores of rupees. As stated by Nedumaran they bought weapons from all over world, from Pakistan, China, Iran, Israel and East European countries and initiated the war against the LTTE. Mr. Vaiko stated that he had clearly mentioned in the book that the Prime Minister is responsible for every drop of Tamilians blood and the death of each Tamil men and women. They will bring them to the accused box. Because of the traitor act of the Indian Government the LTTE went back in the war. The Indian Government is also responsible for the death of Dilipan Kumarappa, Pulendran and 12 others. It is an atrocious act of the Indian Government and asked who are you to remove the land mine and to destroy the youth by way of search. Because of the plan drafted by the Indian Government and with the weapons from all over country the LTTE were defeated in the war. The Indian Government who colluded with the murderer voted in favour of Raja Bakshay in the UNO. For the past 5 years the same atrocity is going on. So, it is the bounden duty cast on us to put forth the traitor act of the Indian Government to the people forum. All the young people in Tamil Nadu will give their support to form the Tamil Eezham. In order to form Tamil Eezham we will all raise our voice and also give our support”.

22. P.W.7 deputed in Rani Seethai Hall where Mr. VAIKO released his book stated that in the hall for bundobusth duty along with him the Head Constable Sampath, Perumal, Gajapathy on15.7.2009 evening at 6.00' clock.Pw7 further stated that Mr. VAIKO, Pazha Nedumaran, Kavignar Inculab, Mahendran, Masilamani and others participated in the meeting and they had delivered their speech. While VAIKO addressing the speech stated that the war of Tamil Eezham by the LTTE was not come to an end and it will continue, and the people of Tamil Nadu will raise their voice in favour of LTTE. The Indian Government gave radders, Missile, Artillery, Howitzers Gun, weapons and also crores of rupees. So, they bought weapons all over from China, Eran, Isreal, and begin the war as against the LTTE. The Indian Government is

responsible for the death of each Tamil Eezham men and women. Because of the act of Indian Government the LTTE went back and so for the death of each LTTE and for the death of Dilipan, Kumarappa, Pulendran and other 12 LTTE the Indian Government is responsible. It is an atrocious act of Indian Government. The Indian Government has also extended their support to Raj Bakshay. In order to form Tamil Eezham each person in Tamil Nadu will give their full co-operation. According to PW7 in order to create hatred against the Indian Government, Mr.Vaiko delivered his message. The people who hear the message will definitely hate the Government and it will also lead to law and order problem.

23. The Head Constable/P.W.8 who was deputed on bundobusth duty in Rani Seethai Hall, along with Sub Inspector of Police and Natarajan, Gajapathy, Sampath stated that Vaiko released his book and the function began at 19.00 hours. In the function Vaiko, Nedumaran, Masilamani, Inculab, Rajendran, Mahendran have participated and delivered their speech. Mr. Vaiko in his message stated that the Tamil Eezaham war has not come to end and the Tamil Nadu people will raise their voice in order to form Tamil Eezham. Indian Government gave radars, Missile, Artillery, Howitzer Guns and other weapons and also gave crores of rupees. Further they bought weapons from Pakistan, China, Iran and Israel in order to harass LTTE. The Indian Government is responsible for the death of each men and women. It is an atrocious act of Indian Government and they gave weapons to Sri Lankan Government. The Indian Government also took sides in favour of Srilankan government in the UNO. The traitor act of Indian Government is not an excusable one. The people who gathered in the meeting raised their voice and accepted the speech of Mr. Vaiko. The said speech was in a way which would lead to law and order problem. Mr. Vaiko spoke in favour of LTTE.

24. P.W.9/Mr. Mohan, Inspector of Police stated that on 15.7.2009 at Rani Seethai Hall the book release function began. Mr. Vaiko released his book. To conduct the meeting, they gave written request to allow them to conduct the function. The Joint Commissioner of Police gave permission to conduct the meeting. The Sub Inspector of Police, Head Constable, Gajapthy. Natarajan, Perumal and Sampath were on bundobusth duty. More than 700 people gathered and they listened to the message of Vaiko. At that time Pazha Nedumaran, Masilamani, Inculab, Rajendran, Mahendran

and others also participated in the meeting. The Junior Assistant of Intelligence and the Stenographer Mr. Rahothaman were also there. The meeting concluded at night 10.00 'o clock. Mr. Rahothaman gave the report to the Joint Commissioner. On perusal of the report it was clear that Mr. Vaiko spoken in a way which would create hated against the Indian Government. He spoke in favour of LTTE. Hence after he received the transcript the FIR was registered as against the accused u/s. 124A and 153A(1). Then he went to the spot on 10.12.2009 at 10 'o' clock and prepared the Mahazar and drew the sketch.

25. PW9 examined the witness Sathasivam, Suresh Kumar and recorded the 161 statement. PW9 also examined the other witness and recorded the 161 statement. Further PW9 seized the pamphlets. photos. Alleging that Mr. Vaiko had spoken against the Indian Government in order to create law and order problem and so the case was registered u/s. 124A and 153A(1) IPC. After getting sanction order from Government, and from the Public Prosecutor the case was filed.

26. The incriminating circumstances appearing in the evidence against the accused were asked under Section 313(1)(b) of Cr.P.C. The accused denied the said evidence and said no witness on his side.

The issue that needs to be decided is whether the charge against accused under Sec.124A IPC is proved beyond reasonable doubt?

27. According to the prosecution the accused spoke in a way to bring hatred and attempts to excite disaffection towards the Government established by law in India and so the case was filed against him u/s 124A IPC. The charge was also framed by the Court against the accused under Sec.124A IPC.

Admissibility of Ex.P1/transcript:

28. According to the accused the Ex.P1 is an inadmissible document and it cannot be considered as a document. The counsel for the accused argued that P.W.1/Rahothaman took notes on 15.7.2009. But the said shorthand note was not filed as document and the transcript alone was filed as Ex.P.1. Since the original shorthand notes was not filed, Ex.P1 cannot be taken into account. But P.W.1 in his cross examination stated that

"நான் இரண்டு நோட் உபயோகித்தேன். அந்த நோட்டில்தான் வை.கோ பேசியதை நேரடியாக எழுதியுள்ளேன். பகர்ப்பு என்பது அதனுடைய நகல். சுருக்கெழுத்து நோட்டை புலன் விசாரணை அதிகாரியிடம் ஒப்படைத்தேனா என்றால் அது முது நிலை அதிகாரியிடம் இருக்கும். சுருக்கெழுத்து நோட்டை வைத்து தான் பகர்ப்பு செய்தேன்."

29. The counsel for the accused argued that the said shorthand note was not filed and hence Ex.P.1 is not an admissible document. But it was denied by the prosecution. The prosecution side has argued that Ex.P.1 is the transcript which was made by P.W.1. As he is the author of the transcript, the document was marked through P.W.1. Mr. Rahothaman/P.W.1 was deputed to the meeting for taking notes and the shorthand note was transcribed by him and then it was given to his higher officials. Further, the said Ex.P.1 was marked without objection. While cross examining the witness/P.W.1 it was not cross examined that the said Ex.P.1 is not a transcript made by P.W.1.

30. Further P.W.1 in his cross examination stated that he took notes on 15.7.2009 and then after transcription he gave the report to his higher official on 3.8.2009. P.W.1 was deputed to the meeting hall by the oral order of Senior reporter belonged to the Police Intelligence Department. Further P.W.1 clearly stated that the shorthand notes which was taken during the time of meeting was transcribed by him and the said document was marked as Ex.P.1. Further, it is pertinent to note that the counsel for the accused fully relied upon Ex.P1 and they have also not filed the disputed audio and video to falsify the case of the prosecution.

31. But it was argued that the shorthand version of the speech and the video & audio footings of the alleged offensive speech were not collected and produced by the Investigating Officer. Ex.P1 is the documentary evidence which contains the entire text of the alleged speech of the accused which was recorded by PW1 during the meeting and examination of other eye witnesses would clearly fortify the contents of the speech made by the accused. The Investigating Officer filed the valid materials collected during the investigation and laid the final report. The person who made the transcript and affixed his signature was examined as P.W.1. On perusal of Ex.P.1, it is found that P.W.1 affixed his signature and so this document cannot be treated as secondary document. It is a primary document. The person who took the notes had affixed his signature and also was examined as P.W.1 and proved that the document

which was transcribed by him and so Ex.P.1 cannot be ignored.

Admissibility of Ex.P4/sanction order:

32. The counsel for the accused argued that the document in Ex.P4 is also inadmissible one since the person who affixed his signature was not examined and the sanction order is not original one. On perusal of Ex.P.4 it is a sanction order dated 10.12.2010. The contention of the accused is that Ex.P4 is not original and the person who signed in the GO i.e. the Section Officer Thiru A. Subramaniam Pillai has not been examined. At this juncture it is pertinent to note that the said GO was issued under the name and designation of the Secretary to Government, Public (Law and Order-H) Department and the officer who held the said post at that time i.e. Thiru S. Karuthiah Pandian was examined to prove the said G.O. Ex.P4. It is also to be noted here that the author of the sanction order was examined in connection with the issuing of the said sanction order. Therefore, the contention of the accused that the person who signed in the GO has not been examined and the said document i.e. Ex.P1 is not original does not hold water.

33. Mr. Karuthiah Pandian was examined as P.W.6. He stated in his evidence that

> "9.12.2009 தேதியிட்ட குற்ற எண் 1366/2009 முதல் தகவல் அறிக்கை பதிவு செய்யப்பட்டதாகவும், குற்றவியல் நடைமுறைச் சட்டம் பிரிவு 196(A) (1) கீழ் வழக்கு தொடர அரசின் அனுமதி கோரி சென்னை மாநகர ஆணையர் கோரியிருந்தார். அவரின் கருத்துரையின் மீது பொதுத்துறை செயலாளராகிய நான் அந்த கேஸ் டைரியில் இருந்த அந்த நிகழ்ச்சியின் transcript மற்றும் திரு.ரகோத்தம்மன் அவர்கள் கொடுத்த பகர்ப்பையும், முதல் தகவல் அறிக்கையும், அந்த statement of witness ஆகியவற்றையும் நன்றாக படித்து பார்த்து பரிசீலனை செய்து மன நிறைவு அடைந்து 124A IPC ன் கீழ், இந்த ஆவணங்களின் அடிப்படையில், வழக்கு தொடர 10.12.2010 தேதியிட்ட பொது துறை அரசாணை எண். 1137 ஆணை வழங்கினேன்."

34. In his evidence he clearly stated that the G.O.Ms.No.1137 was passed by the Government on 10.12.2010. The FIR was registered on 9.12.2009. Immediately the sanction order was not given by the Government in a hurried manner. The said G.O. No.1137 was issued on 10.12.2010. For which the prosecution argued that after getting the opinion from the Public Prosecutor the sanction order was issued after one year of registering the FIR. P.W.6 also in his evidence stated that பேக்ட்ஸை புரிந்து

கொண்டு தான் சாங்ஷன் கொடுத்தேன். வை.கோ. அவர்களின் மொத்த பேச்சையும் புரிந்து கொண்டு தான் சாங்ஷன் கொடுத்தேன். வை.கோ. அவர்களின் மொத்த பேச்சுமே இந்திய அரசின் போக்கை மாற்றிக் கொள்ள வேண்டுமென்று இருந்ததா என்றால் சரியல்ல. From his evidence it is clear that after scrutinizing the transcript the sanction order was issued by the Government after one year.

35. P.W.9 in his evidence stated that என்னிடம் காண்பிக்கப்படும் அ.சா.ஆ.4 நகலா அல்லது அசலா என்றால் இது தான் அசல். கருப்பு இங்கில் கையெழுத்து போட்டுள்ளார். Commissioner office-ல் இருந்து வந்தது அசல். அ.சா.ஆ.4 மேலெழுந்தவாரியாக பார்க்கிற போது நகலாக தெரிகிறது. The said document was filed through the Secretary to the Government Thiru Karuthiah Pandian and at that time on the side of accused there was no objection to mark the document. Further, with regard to the admissibility of the same document it was not shown to PW.9 and the originality was not challenged at that time. As far as this case is concerned before filing the case, sanction was obtained from the Government.

36. The counsel for the accused also argued that the said sanction was given based on the draft charge sheet and the draft charge sheet was not filed as a document. But P.W.6 in his cross examination stated that

> "புலன் விசாரணை முடிந்த பிறகு draft charge sheet படித்தேன். Draft charge sheet-ல் நான் கூறிய குறிப்புகளை கூறியிருந்தார்களா என்றால் ஆம். Draft charge sheet-ல் இருந்ததை தான் final charge sheet-ல் போட்டார்களா என்றால் எல்லாம் முடித்த பிறகு எங்களுக்கு ஒரு காப்பி வரும். அதில் நான் கூறிய குறிப்பிட்ட காரணங்கள் இருந்தது. முக்கியமான காரணங்கள் எல்லாம் இருந்தது. Draft charge sheet-ல் உள்ள காரணங்களை charge sheet-ல் "E" என்ற காலத்தில் குறிப்பிட்டுள்ளார்களா என்றால் Draft charge sheet ல் உள்ளதை முழுவதுமாக final charge sheet ல் கொடுக்க வேண்டிய அவசியம் இல்லை. எங்களை பொறுத்தவரை intention இருந்தால் போதும்.

In the draft charge sheet, they have mentioned the points which were reflected in the Government Order.

37. The counsel for the accused relied upon the judgment relating to sanction and argued that the sanction was not properly obtained.

I. ***State of Rajasthan Vs. Tarachand Jain {(1974) 3 SCC 72)}*** the Hon'ble Supreme Court in paragraph 17 held as follows:

17. ..... We find that the position of law is that the burden of proof that the

requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was also to be based. These facts might appear on face of the sanction order or it might be proved by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

II. In ***Vaiko Vs. State of Tamil Nadu*** represented by Inspector of Police and another (unreported judgment in Crl.O.P.No.20417 of 2018 dated 26.11.2018) in para 10 held that

"the cognizance taken without a valid sanction would not confer jurisdiction on the trial court.

III. While holding so the Honourable Madras High Court referred to the Judgment ***Subhashree Das @ Mill Panda and others Vs. State of Orissa (2011 SCC on line Orissa 61)*** and relied on the ***(AIR 1997 SC 3475)*** quoted the para 9 as follows:

"As the provisions of TADA are more rigorous and the penalty, provided is more stringent and the procedure for trial is summary and compendious, the process mentioned in Section 20-A(2) and must have been adopted more seriously and exhaustively the sanction contemplated in other penal statues. If there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of an offence without valid sanction. If the designated court has taken cognizance of the offence without valid sanction, such action is without jurisdiction and any proceedings thereunder will also be without jurisdiction."

IV. In ***Manoranjan Prasad Vs. State of Bihar [(2005) 30 OCR (SC)-370)]*** in which it is held that

"It is well settled proposition of law that where there is no sanction by the competent authority the proceedings itself stands vitiated. It submitted that the prosecution has produced the unsigned and photo-set copy of the G.O.Ms. No.1137 [Public (Law-H)] Department dated 10.12.2010 and marked the same through P.W.4 as Ex.P.4 to prove the sanction."

38. In all the relied judgments it was held that if there was no sanction by the competent authority or if there is no valid sanction, the proceedings itself stand vitiated. But, as far as this case is concerned, it is to be noted here that the Government had applied their mind to the contents of the speech and have considered nine parts of the verses referred in Ex.P4 as seditious discourse and they characterized the same as one calculated to bring in hatred and contempt and disaffection towards the Government established by law. Therefore, it is incorrect that the Government did not apply their mind in issuing the sanction order more particularly

when sanction was given only for the offence u/s 124A IPC.

Sanction u/s 196 (1)(a) of Cr.P.C:

39. The counsel for the accused argued that the prosecution examined one Karuthiah Pandian claiming that he was the Secretary to Government in the Public (Law and Order-H) Department and through him marked a document as the Ex.P.4 claiming to be the sanction order. According to the accused the said document is inadmissible as the same being a Photostat copy and the said document do not contain the signature of the person/official competent to represent the Government of Tamil Nadu. Therefore, no valid sanction order as mandated under section 196(1)(a) of Cr.P.C. has been produced by the prosecution as a valid sanction is condition precedent for taking cognizance and sanction is mandatory to file the case under Chapter VI of Indian Penal Code and relied upon the judgment in

I. ***State of Rajasthan Vs. Tarachand Jain (1974) 3 SCC 72 para 17)*** in which it is held that

> "The burden of proof that the requisite sanction has been obtained rest upon the prosecution in reference to the facts on which the proposed prosecution was to be based".

II. In ***Soman @ Somasundram Vs. State by the Inspector of Police, B-12, Tallakulam Police Station (2017 online Madras 1222)*** in which it is held that

> "The petitioner has charge sheeted for the offence u/s. 13(2) of the Unlawful Activities Prevention Act, 1967. Section 45 of the said Act specifically provides that cognizance of any offence under the Act in Chapter III shall be taken by the court only with the previous sanction of the Central Government. Offences charged as against the petitioner is under section 13(2) of the Act, which comes under chapter III of the Act. Therefore, the previous sanction of the Central Government is a pre-requisite condition to take cognizance of the offence. But in this case, without prior sanction of the Government, the Judicial Magistrate took cognizance of the offence and preceded the case in C.C.No.559 of 2005. Though some of the witnesses have been examined in this case by the trial court, the petitioner need not be put under ordeal, when the entire proceeding is against the law as already stated."

40. On perusal of the provision 196 Cr.P.C it is found that no court shall take cognizance of any offence punishable under chapter VI or under section 153A of Indian Penal Code except with the previous sanction of the Central Government or State Government.

41. Section 124A falls under Chapter VI. As far as this case is concerned the final report was filed in the court on 30.12.2010. The said G.O.No.1137 was passed on 10.12.2010. After the G.O. was passed the final charge sheet was filed in the Court along with the G.O. Further, Ex.P4 was proved through the evidence of PW6. Then, the case was taken on file as P.R.C. No.336/2010. The valid sanction order as mandated under section 196(1)(a) of the Cr.P.C. was produced by the prosecution. The case was taken on file as per the provision contemplated in Chapter VI of Indian Penal Code.

Admissibility of Ex.P8 and Ex.P9:

42. The counsel for the accused also argued that Ex.P.8 and Ex.P.9 are the pamphlet and photos which cannot be relied on since they are inadmissible documents. On perusal of these documents it is ascertained that Ex.P.8 is original pamphlet and Ex.P.9 are photographs relating to the cut-outs and posters. Ex.P.9/photographs are not filed along with the negative and so the documents cannot be taken into consideration. It was not denied by the accused that he had not delivered the message in the book releasing function at Rani Seethai Hall. Since the accused himself accepted the meeting which was held on 15.7.2009 and the message delivered by him and other co-participants, these two documents are not vital documents in this case.

43. On the side of accused it was argued that Ex.P.1, P.4, P.8 and P.9 are inadmissible evidence and it should be eschewed and relied upon the judgment in

1. ***Pappannanand others Vs. Kolandasamy (2012 (3) MWN (Civil) 536) t***he Honourable Madras High Court when holding that photocopy is inadmissible laid down the proposition of law that admissibility of document can be challenged at any time and that the mere marking of document would not amount to proof. For the proposition that admissibility of a document can be challenged at any stage.

2. ***Shalimar Chemicals Works Limited vs. Surendra Oil and Dall Mills (Refineries and others), 2010 (8) SCC 423,***

> 10..... An objection to the admissibility of the document can be raised before such endorsement is made and the court is obliged to from its opinion would depend, the document being endorsed, admitted or not in evidence.

3. ***Roman Catholic Mission Vs. State of Madras (AIR 1966 SC 1457)***

> "The objection as to the admissibility of documents in evidence may be classified into two classes (i) an objection that the document which is sought to be proved itself inadmissible in evidence (ii) where the objection does not dispute admissibility of the document in evidence but is directed towards the mode of proof alleging the same is irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the first case, acquiescence would be no bar to raise the objection in a superior court".

44. But, in the case on hand as decided above, Ex.P1/transcript and the sanction order/Ex.P4 and Ex.P8 are held to be admissible documents and Ex.P9 alone is not an admissible document.

First Information Report (FIR):

45. The counsel for the accused argued that the incident took place on 15.7.2009. The shorthand note transcript was dated 3.8.2009. The FIR was registered on 9.12.2009. The said FIR was received by the court on 11.12.2009. Hence argued that there was a delay in registering FIR and there was delay in sending the FIR to the court.

46. P.W.9/Investigation Officer in his evidence stated that நேரில் வந்து ரகோதம்மன் புகார் கொடுக்கவில்லை. கமிஷ்னர் மூலமாக வந்தது. பொதுவாக அரசியல் தலைவர் மீது வழக்கு பதிவு செய்ய வேண்டுமென்றால் அரசு வழக்கறிஞர்களிடம் ஆலோசனை பெறுவீர்களா என்றால் பெறுவோம். இந்த வழக்கில் ஆணையர் அலுவலகத்தில் வாங்கியிருப்பார்கள் என்பதால் நான் வாங்கவில்லை. எனக்கு கமிஷ்னர் அலுவலகத்திலிருந்து பகர்ச்சி கிடைத்தவுடன் முதல் தகவல் அறிக்கை பதிவு செய்தேன். முதல் தகவல் அறிக்கை பதிவு செய்த உடனேயே நீதிமன்றத்திற்கு அனுப்பப்பட்டது. The prosecution argued that after getting the transcript from the P.W.1 on 3.8.2009 the said transcript was scrutinized. Since the accused was a political person, action was not taken immediately. According to the Inspector of Police after getting the transcript from the Commissioner of Police he registered the FIR immediately on 9.12.2009.

47. The counsel for the accused argued that there was delay in registering FIR and relied upon the following judgments to drive home his points.

I. In ***Marudandal Augusti Vs. State of Kerala {(1980) 4 SCC 425})*** the Apex Court held that

> "if the FIR is brought into existence long after occurrence, any number of witnesses could be added without there being any check to the authenticity of their evidence and the prosecution case would collapse."

II. In ***Arjun Mark Vs. State of Bihar {(1994) Suppl. 2 SCC 372)} in para 24 an 25*** it was observed that

> "The FIR was sent to the Magistrate only on the third day of the occurrence. S. 157 of Cr.P.C. mandates that the FIR should be sent forthwith i.e., without any delay and immediately. A combined reading of sections 157 and 159 Cr.P.C would indicate that it has a dual purpose. Firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch in the progress of the investigation.

III. In ***Thulila Kali Vs. State of Tamil Nadu {(1972) 3 SCC 393)}, in para 12*** it was held that

> “It is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during trial. Delay in lodging FIR often results in embellishment which is a creature of afterthought. On account of such delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in the form of introduction of coloured version, exaggerated account or concocted story as a result of deliberation an consultation. Therefore the case of the prosecution has to be held vitiated an account of the delay in not only registering but also in its dispatch to the court."

48. For which the prosecution side relied upon the following judgments.

I. ***C. Muniappan and others Vs. state of Tamil Nadu, (2019) 9 SCC 567***

> "Para 40 - When there is positive evidence to the fact that the FIR was recorded without unreasonable delay and investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then in the absence of any prejudice to the accused, it cannot be concluded that the investigation was tainted and the prosecution story rendered unsupportable.

II. ***Rattiram and others Vs. State of M.P through Inspector of Police and another reported CDJ 2013 SC 326***

> "Criminal Procedure Code - Section 157 - When there is delayed despatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. The purpose behind sending a copy of the FIR to the concerned Magistrate is to avoid any kind of suspicion being attached to the FIR. Such a suspicion may compel the court to record a finding that there was possibility of the FIR being ante-timed or ante-dated. The court may draw adverse inferences against the prosecution. However, if the court is convinced as

> regards to the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. "

III. ***Gangabhavani Vs. Rayapati Venkat Reddy & others reported in CDJ 2013 SC 753***

> Para 15 - The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR. The court has to examine the explanation furnished by the prosecution for explaining the delay. There may be various circumstances particularly the number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of the incident that has taken place. If the prosecution explains delay, the court should not reject the case of the prosecution solely on this ground. Therefore, the entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into consideration whether it can be termed as abnormal."

49. Taking cue from the judgment relied on by both sides, the Honourable Supreme Court held that FIR has to be registered without delay and it should be dispatched to the court immediately. It was held that when there is delayed despatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. The purpose behind sending a copy of the FIR to the concerned Magistrate is to avoid any kind of suspicion being attached to the FIR. If the prosecution explains delay, the court should not reject the case of the prosecution solely on this ground. The purpose behind sending a copy of the FIR to the concerned Magistrate is to avoid any kind of suspicion being attached to the FIR.

50. It is absolutely clear that immediately on receiving Ex.P1 on 9.12.2009, the FIR was registered on 9.12.2009 and the same was received by the Court on 11.12.2009.

51. According to the prosecution since the accused is having political background and he is an Ex.MP and in order to avoid problem action was not taken in a hurried manner. In order to maintain law and order problem they registered the FIR immediately after getting the transcript and filed the final report after thorough investigation.

52. The counsel for the accused argued that Ex.P1 is not a complaint. But PW1/Rahothaman in his cross examination deposed that the same is construed as a

complaint only. The Special Public Prosecutor argued that the offence alleged is against the State and no case could be hurriedly filed without legal basis since the guidelines given in ***Kedarnath Singh*** case has to be followed. Hence, only after ascertaining the prima facie grounds to initiate legal action, the case was registered. That apart, it is settled proposition of law that every delay is not fatal to the prosecution. The Court has to examine the explanation offered by the prosecution for the delay. If the prosecution case is based on true set of facts and if the Court is convinced as regards the truthfulness of the prosecution version, the same is not detrimental. It would depend on facts and circumstances of each case. As regards the objection by the accused for delay of 2 days in dispatching FIR to the jurisdictional Court this is not a case where the accused is not known or case of mistaken identity and hence not prejudiced by the delay of said 2 days. Further the FIR was registered on 9.12.2009 at 21.00 hrs and it was received by the concerned court on 11.12.2009 at 7 am. On this sole ground alone the prosecution case cannot be rejected.

53. The counsel for the accused argued that all the alleged averments were not mentioned in the charge and so the charge was defective. But, In ***Krishnaswami In re 9 Cr.LJ 456*** it was held that "It is enough if the charge gives such description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged, i.e., if it states words with substantial though not absolute accuracy"

54. The Special Public Prosecutor also replied to the averment that the Court has framed the charge u/s 228 Cr.P.C. and the same was received by the accused. Having received the same and duly contested the case fully knowing the nature of the charge against him, at this stage, defect in framing of charge or similar findings relating to such charge cannot be considered. Even otherwise, such defects would generally be procedural lapses and not fatal to the prosecution in toto. That apart the contents of the charge are made clear to the accused by this Court during the 313 Cr.P.C. questioning wherein the accused has given his explanations in detail.

Evidence relating to Police officials:

55. The counsel for the accused argued that even though 700 people had gathered in the occurrence place, except Police officials no independent eye witnesses

were examined. But, apart from the police officials who were present there, some other witnesses were also examined. Further, the prosecution relied on the following judgments to strengthen their argument.

I. In ***Girija Prasad (dead) by Lrs. Vs. State of Madhya Pradesh*** - ***Para 24,*** in which it is held that

> "24. No infirmity attaches to the testimony of Police Officials merely because they belong to Police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence. "

II. In Tahir ***Vs. State (Delhi), 1996 (3) SCC 338,*** dealing with a similar question, the Hon'ble Supreme Court held that

> "Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

56. From the above ruling it is clear that if the evidence of the Police officials inspires confidence and is found to be trustworthy their evidence can be relied. Also, in this case, apart from police officials some other witnesses were also examined to prove the case.

Minor description:

57. According to the counsel for the accused that I.O admitted the speech of the accused was video as well audio graphed. But the I.O. did not seize and produce those vital documents which would be the best evidence. The I.O. not even seized the Shorthand Note Books said to have been used to directly record the speech of the accused.

58. But in the present case the accused accepted that the said meeting was conducted for releasing the book and message was delivered by him. The alleged message delivered by him was proved through the document Ex.P1 and also the evidence of PW.1, PW.7, PW8 and PW9. The prosecution relied upon the following judgments to establish that minor discrepancies will not affect the case

I. In ***Yogesh Singh vs. Mahabeer Singh an Others reported in CDJ 2016 SC 953*** it was held that

"Para 29:- It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence.

II. ***C. Muniappan and others Vs. state of Tamil Nadu (2019) 9 SCC 567.***

"The law on this issue is well settled that the defect in the investigation by cannot be a ground for acquittal. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial."

III. In ***V.K. Mishra & others Vs. State of Uttarakhand and Another reported in 2010 3 MLJ Crl. Page. 120*** it is held that

Para 32:- " Refuting the contention of the appellants on the lapses in the Investigation and contending that any lapse in the investigation does not affect the core of the prosecution case, the respondents have placed reliance upon the judgment of this court in State of Karnataka Vs. K. Yarappa Reddy, (1999) 8 SCC 715, wherein this court held as under

> "The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in th case..."

59. Even though the video and audio was not placed before this court , Ex.P1 transcript was filed and marked without objection through the person who took notes in the hall and it was also proved through the evidence of PW.1. It is not denied by the accused that he did not make the alleged speech.

Appreciation of evidence:

60. From the evidence of P.W.1 it was evident that **"**ஒவ்வொரு தமிழனின் தமிழச்சியின் சாவுக்கு இந்திய அரசதான் பொறுப்பு ஏற்க வேண்டும். நாங்கள் இதை சொல்லி கூண்டில் நிறுத்துவோம்.**"** In his cross examination he stated that "I accuse" என்ற தலைப்பு வைப்பதற்கு காரணம் சொன்னாரா என்றால் இந்திய அரசு தொடர்ந்து துரோகம் செய்து இந்திய இலங்கை ஒப்பந்தத்தை

திணித்து திலிப்பன் சாவிற்கு காரணமாக இருந்தது. குமரப்பா மற்றும் புலேந்திரன் மற்றும் 12 புலிப்படை தளபதிகளின் சாவுக்குக் காரணமாக இருந்தது. இந்திய அரசு கண்ணி வெடிகளை அகற்ற இந்திய இராணுவத்தை அனுப்பியது அயோக்கியதனமான நடவடிக்கை. It is an atrocious act of Indian Government எங்கள் தமிழனித்தை, தமிழ் இளைஞர்களை கொல்வதற்கா? எந்த நோக்கத்திற்கு என்று பல்வேறு குற்றம் சாட்டியுள்ளார். விடுதலை புலிகளை ஒழிக்க வேண்டுமென்பதே இந்திய அரசின் நோக்கம். அதற்காகத்தான் அவ்வளவு உதவிகளையும் செய்தார்கள். இது மன்னிக்க முடியாத துரோகம், இந்த குற்றச்சாட்டுகளை தமிழக மக்களின் மனதில் **விதைத்துக் கொண்டே இருப்போம்"** the words which were spoken by the accused which led to develop hatred against the Indian Government.

61. On perusal of P.W.1 evidence the accused had spoken in a way to bring anguish and vengeance against the government among the people gathered there. His speech was also in a way to create Tamil Eezham. According to him the Indian Government continuously acting against the will of Tamil Eezham. The Indian Government is a traitor by way of giving crores of money to Srilankan Government to destroy the demands of Tamil Eezham. The accused also stated that the Indian Government is responsible for the death of the leaders of the LTTE Pulendran, Johny and Kittu and the Indian Army is responsible for the death of Ela-Tamil people. The Indian Government is responsible for the death of each Ela Tamil man and woman. PW1 further stated that the address made by the accused is in a way which would lead to vengeance against the Government. His speech was in a way to lead law and order problem. The peace among people will also be destroyed. He further spoken that because of the act of criminal conspiracy of Sonia Gandhi and Manmohan Singh there was set back to the LTTE.

62. P.W.3 who was present in the hall during the time of delivering the speech also stated in his chief examination that "ஈழத்தமிழர் சிந்தும் ஒவ்வொரு சொட்டு இரத்தத்திற்கும் ஒவ்வொரு தமிழர் சாவுக்கும் தமிழச்சி சாவுக்கும் இந்திய அரசு பொறுப்பாளி என்று கூண்டில் ஏற்றுவோம். இந்திய அரசையும் தமிழக அரசையும் கேவலமாக பேசி ஆரவாரமாக அரங்கத்தில் இருந்தவர்கள் கைத்தட்டினார்கள். இவ்வாறு சட்டம் ஒழுங்கு பிரச்சினை ஏற்படும் அபாயம் உண்டாக்கும் வகையில் பேசினார்." In his cross examination he stated that "தமிழ் இனத்தை ஈழ தமிழ் இனத்தை கருவறுக்க வேண்டும் என்றே திட்டமிட்ட கொடியவன் ராஜ்பக்சேவுக்கு இந்திய அரசு செய்து இருக்கக்

கூடிய மன்னிக்க முடியாத உதவிகளை இந்த இனத்தின் வருங்கால இளைஞர்களும் இன்றைய தலைமுறைக்கும் எடுத்துரைக்க வேண்டுமென்ற நோக்கத்தில் தான் நூல் வெளியிடப்பட்டுள்ளது என்று வை.கோ பேசினாரா என்றால் பேசினார். இந்திய அரசுக்கு எதிராக பேசியது விடுதலை புலிகளுக்கு ஆதரவாக பேசியது காதில் விழுந்தது.....

63. P.W.4 also stated in his chief examination that " திரு.வை.கோ. அவர்கள் பேசும் போது மத்திய அரசை வன்மையாக கண்டித்தும் தமிழ் ஈழ போராளிகளுக்கு ஆதரவாகவும் பேசினார்." The accused who spoken as against the Central Government and supported LTTE. P.W.6 clearly stated that in his chief examination that "இந்த புத்தகத்திலே நான் மிகத் தெளிவாக குறிப்பிட்டு இருக்கிறேன் பிரதமரிடத்தில் தமிழன் சிந்துகின்ற ஒவ்வொரு சொட்டு இரத்தத்திற்கும் நீங்கள் பொறுப்பாளி. ஒவ்வொரு தமிழனின் சாவிற்கும், ஒவ்வொரு தமிழச்சியின் சாவிற்கும் உங்கள் அரசு பொறுப்பாளி என்று கூண்டில் நாங்கள் நிறுத்துவோம் என்று எழுதியிருக்கிறேன். இந்திய அரசு செய்த துரோகத்தினால் இன்றைக்கு விடுதலை புலிகளுக்கு ஏற்பட்டு இருக்கும் பின்னடைவுக்கு இந்திய அரசு செய்த துரோகம் காரணம் இதற்கு என்ன நோக்கம்? அன்றைக்கு அப்படி ஒரு துரோகத்தை செய்து ஒப்பந்தத்தை கொண்டு போய் திணித்து திலிப்பனின் சாவுக்கு காரணமானது அன்றைய இந்திய அரசு. குமரப்பா, புலேந்திரன் உள்ளிட்ட 12 புலிப்படை தளபதிகளின் சாவுக்குக் காரணம் அன்றைய இந்திய அரசு. It is an atrocious act of the Indian Government இது ஒரு அயோக்கியத்தனமான நடவடிக்கை.... ஆகவேதான் இந்த இந்திய அரசு செய்த துரோகங்களை மக்கள் மன்றத்திலே எடுத்துரைக்க வேண்டிய கடமை நமக்கு இருக்கிறது."

64. P.W.6 also stated that பிரதமரிடம் தமிழன் சிந்துகின்ற ஒவ்வொரு சொட்டு இரத்தத்திற்கும் நீங்கள் பொறுப்பாளி. ஒவ்வொரு தமிழனின் சாவிற்க்கும், ஒவ்வொரு தமிழச்சியின் சாவிற்கும் உங்கள் அரசு பொறுப்பாளி என்று கூண்டில் நாங்கள் நிறுத்துவோம். அன்றைக்கு அப்படி துரோகத்தை செய்து ஒப்பந்தத்தை கொண்டு போய் திணித்து திலிப்பனின் சாவிற்கு காரணமானது இந்திய அரசு. குமரப்பா, புலேந்திரன் உள்ளிட்ட புலிப்படை தளபதிகளின் சாவிற்குக் காரணம் அன்றைய இந்திய அரசு. இந்த கொலைகாரனுக்கு துணை போன இந்திய அரசு ஐ.நா மன்றத்தில் ராஜ்பக்சேவுக்கு ஆதரவாக வாக்கு அளித்தது. ஆகவே இந்த இந்திய அரசு செய்த துரோகங்களை மக்கள் மன்றத்திலே எடுத்துரைக்க வேண்டிய கடமை நமக்கு இருக்கிறது. On perusal of these words which was spoken by the accused brings hatred and to excite disaffection towards the Government established by law in India.

65. P.W.7 stated in his chief examination that "பிரதமரிடத்தில் தமிழன் சிந்துகின்ற ஒவ்வொரு சொட்டு இரத்தத்திற்கும் நீங்களே பொறுப்பாளி, ஒவ்வொரு தமிழனின் சாவுக்கும், ஒவ்வொரு தமிழச்சியின் சாவுக்கும் உங்கள் அரசே பொறுப்பு என இந்திய அரசை சாடினார். உங்களை கூண்டிலே ஏற்றுவோம். இந்திய அரசு செய்த துரோகத்தினால் விடுதலை புலிகள் பின்னடைவு அடைந்துள்ளது. இந்திய சர்கார் வகுத்து கொடுத்த திட்டத்தின் விளைவாக விடுதலை புலி திலிப்பன் சாவுக்கும் இந்திய அரசு பொறுப்பாகும். குமரப்பா, புலேந்திரன் மற்றும் 12 விடுதலை புலிகள் தளபதி சாவுக்கும் காரணமாக இருந்தது இந்திய அரசு.

66. In his cross examination PW.7 stated that தமிழனத்தை ஈழத்தில் கருவறுக்க வேண்டுமென்று திட்டமிட்ட கொடியவன் ராஜ்பக்சேவுக்கு இந்திய அரசு செய்திருக்கக் கூடிய மன்னிக்க முடியாத உதவிகளான துரோகத்தை இந்த இனத்தின் வருங்கால இளைஞர்களுக்கும் இன்றைய தலைமுறைக்கும் எடுத்துரைக்க வேண்டுமென்ற நோக்கத்தில் தான் நூல் வெளியிடப்பட்டுள்ளது என்று வை.கோ. பேசினாரா என்றால் பேசினார். .... இந்த குற்றச்சாட்டுக்களை தமிழக மக்களின் மனதில் **விதைத்துக் கொண்டே இருப்போம்** நாட்டின் ஒருமைப்பாட்டிற்கு நாங்கள் எதிரானவர்கள் அல்ல என்று வை.கோ **பேசினாரா** என்றால் பேசினார்.

67. From this question put towards the witnesses PW.7 by the counsel for the accused it is clear that they accepted that the accused had spoken in a way to create vengeance towards Indian government.

68. P.W.8 stated in his chief examination that "இந்தியா செய்த துரோகத்தினால் விடுதலை புலிகள் ஏற்பட்ட பின்னடைவு இந்திய அரசு செய்த துரோகம் காரணம். இதன் நோக்கம் என்ன அன்றைக்கு அப்படி செய்த துரோகத்தினால் திலிப்பன் சாவிற்கு காரணம் இந்திய அரசே. குமரப்பா, புலேந்திரன் உட்பட 12 விடுதலைப்புலி தலைவர்கள் சாவிற்கு காரணம் அன்றைய இந்திய அரசு. It is an atrocious act of the Indian Government இந்த அயோக்கியதனமான நடவடிக்கைக்கு காரணம் இந்திய அரசு. .... இந்த இந்திய அரசு செய்கின்ற துரோகத்தை மக்கள் மன்றத்திலே முறையிடுவது நமது கடமை. ஆகவே தமிழகத்தில் உள்ள இளைஞர்கள் உள்ளம் தமிழ் ஈழம் அமைவதற்கு துணை போகட்டும்.

69. In his cross examination also PW8 stated that "விடுதலைப் புலிகளை ஒழித்து விட வேண்டும் என்பதை இந்திய அரசின் நோக்கம் அதற்காகத் தான் அவ்வளவு உதவிகளையும் செய்தார்கள்.

அது மன்னிக்க முடியாத துரோகம். இந்த குற்றச்சாட்டுக்களை தமிழக மக்களின் மனதில் விதைத்துக் கொண்டே இருப்போம். PW.9 IO also stated the same version as that of other witness.

70. It was not denied by the accused Mr. Vaiko that he has not delivered the massage in Rani Seethai Hall while releasing his book. According to the accused he never spoke as against the State and Central Governments. But from the evidence of P.W.1, P.W.3 to P.W.7 it is clear that Vaiko had spoken that the Indian Government is responsible for each drop of blood of Ela Tamilians and the Indian Government is responsible for the death of Dilipan, Kumarappa and Pulendran and 12 others. Further Vaiko had also spoken that it is an atrocious act on the part of Indian Government. He had spoken in a way to create law and order problem. Vaiko insisted that it is the bounden duty to put forth the traitor of the Indian Government to the people forum. Till then he will seed it in the heart of the Tamil people. All the witnesses deposed that on hearing these messages definitely each Tamil men and women will develop enmity towards the Indian Government.

Sedition u/s 124 A IPC

71. The counsel for the accused argued that the accused not committed the offence u/s 124A IPC and relied the judgment in

I. ***Queeen Empress vs. Balagangadhar Tilak in Indian Law Reporter 22 Bombay at Page 112.*** Balagangadhar Tilak, on conviction, applied under clause 41 of letter patent for leave to appeal to the Privy Council. This case is reported in Balagangadhar Tilak's Queen Empress in 25 I.A. (Privy Council). Section 124-A which contained only one Explanation, was amended by Amendment Act 4 of 1898 so as to have three explanations. The said section as it now stands in its present form as a result of constitutional changes, by the Government of India Act, 1935, by the Independence Act of 1947 and by the Indian Constitution, 1950. Section 124-A, as it has emerged after successive amendments by way of adoption. The Constitution of India, 1950 recognizes the freedom of speech and expression as one of the Fundamental Right under Article 19. Article 19 stood at the time of commencement of the constitution did not contain any restriction on the ground of Public Safety and Public Order as now containing. In the very first year of the coming into force of the Constitution, two cases involving consideration of the fundamental right of freedom of speech and expression and certain laws enacted by some of the States imposing restriction on that right came up for consideration before the Supreme Court".

II. ***Ramesh Thapper Vs. State of Madras (A.I.R.1950 Supreme Court 124) and Bry Bhushan Vs. State of Delhi (A.I.R. 1950 Supreme Court 129).***

In Ramesh Thapper's case the majority of the court held that "it is worthy to note

that the word "sedition" which occurred in Article 13(2) of the Draft constitution prepared by the Drafting Committee was deleted before the article was finally passed as Article 19(2). Deletion of word "Sedition" from draft Article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State.

III. In ***Kedar Nath Singh Vs. Bihar (AIR 1962 SC Page 955)*** the Honourable Supreme Court was directly concerned with question as to how the offences as defined in Section 124A of IPC was consistent with the fundamental right guaranteed by Article 19(1)(c) of the Constitution. While upholding the validity of Section 124-A IPC laid down that

"any written or spoken words etc., which have implication in them the idea of subverting 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 action of the Government would not be penal. Disloyalty to Government ex established by law is not the same thing as commending in strong terms upon the measures or acts of Government; or its agencies, so as to ameliorate the condition of the people or secure the cancellation or alteration of those acts or measures by lawful means.

In ***Kedar Nath Singh at page 967*** in which it was held that

"That is why 'sedition' as the offence in Section 124-A has been characterized, comes under Chapter VI relating to offences against the State. Hence any act within the meaning of Section 124-A which have the effect of subverting the Government by bringing the Government into contempt or hatred, or creating disaffection against it, would be within the penal statue because the feeling of disloyalty to the Government established by law or enmity to it imports the idea, tendency to public disorder by use of actual violence or incitement to violence. A mechanical order convicting a citizen for offences of such serious nature like sedition and promoting enmity and hatred etc., does harm to the cause. It is expected that the graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with."

In ***Kedar Nath Singh*** the Honourable Supreme Court was directly concerned with question how the offence as defined in Section 124-A IPC is consistent with fundamental right guaranteed by Article 19 (1)(c) of the Constitution of India while upholding the validity of Section 124A IPC.

IV. ***People Union for Civil Liberties and another vs. Union of India (2004) 9 SCC 580)***

held that it required mensrea :

> "Does the mere expression of sympathy for Tamils in Sri Lanka for whom the Liberation Tigers of Tamil Eelam has become the sole representative recognized by the International Community amount to support to a terrorist organization under the Prevention of Terrorism Act, 2002 thereby empowering the State to curtail personal liberty. Therefore, it is obvious that the offences under section 20, 21, and 22 needs positive inference that a person has acted with intent of furthering or encouraging terrorist activity or facilitating its commission. In other words, these sections are limited only those activities that have the intent of encouraging or furthering or promoting or facilitating the commission of terrorist activities. If these sections are understood in this way, there cannot be any misuse."

Therefore, it was held that the expression of sympathy to Eelam Tamils cannot be said to be an act of bringing hatred or disaffection towards the Government established by law and mensrea required in the commission of the act.

72. And so the counsel for the accused relied the recent decision a Division Bench of the Kerala High Court in ***Union of India through National Investigating Agency vs. Shammer and others (Judgment in Crl.P.No.12 of 2016 dated 12.04.2019)*** in paragraph 32 quoted the decision in ***Emporer Vs. Maniben Liladhar Kara (A.I.R. 1933 Bom.65)*** that

> "estimating the effect of the speech, the court should look at the speech as a whole, and not pay undue regard to say any particular sentence or phrase."

73. It is settled law in a criminal prosecution that it is the burden of the prosecution to prove the intention (mensrea) for committing the offence unless the section itself rules out the requirement of mensrea. Section 124-A does not rule out the proof of mensrea. In ***People's Union for Civil Liberties and another*** made it clear the intention is vital to establish the guilt.

74. According to the accused, P.W.1/Ragothaman, in his deposition has stated that the essence of the speech delivered by the accused was intended to bring a change in the approach of Indian Government and P.W.3 Gajapathi in his deposition to the question that as to whether the speech of the accused was in the manner of insisting to bring a change in the approach of the Government towards Eelam Tamils, the answer is "Yes" and P.W.7 Kodeeswaran, in his deposition admits that the intention of the accused's whole speech was to bring a change in the approach of Indian Government regarding Eelam Tamils and P.W.8 Perumal to the question that the accused spoke with the intention of

bringing a change in the stand of Indian Government evaded to answer by saying carefully spoke. Therefore argued that on merits the prosecution miserably failed to prove the case by legally tenable evidence either by document or oral and the accused is entitled to acquittal. But on perusal of entire evidence of witnesses they deposed that the accused spoken in way to bring hatred, and attempts to excite disaffection towards the Government established by law in India.

75. The counsel for the accused also argued that free speech is one of the most significant principles of democracy. The purpose of this freedom is to allow an individual to attain self-fulfillment, assist in discovery of truth, strengthen the capacity of a person to take decision facilitate a balance between stability and social change. The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as kit makes the life meaningful. The freedom is termed as essence of free society. The Universal Declaration of Human Rights, 1948 in its Preamble an Article 19 declared freedom of speech as a basic fundamental right. Hence argued that the speech delivered by the accused is within the right of freedom of speech and expression and not in little violation of section 124A IPC.

76. But in the Judgment of the Supreme Court in ***Kedar Nath*** in which the scope of sedition as a penal offence was laid down and it was held that the gist of the offence of sedition is “incitement to violence” or the “tendency or the intention to create public disorder”.

77. In ***People Union for Civil Liberties and another*** the Honourable Supreme Court held that these sections are limited only to those activities that have the intent of encouraging or furthering or promoting or facilitating the commission of terrorist activities. In the present case, on a whole reading of Ex.P1 and the entire evidence of all the witnesses it is clear that the accused had not spoken words 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.

78. Hence any act within the meaning of Section 124-A which have the effect of subverting the Government by bringing the Government into contempt or hatred, or creating disaffection against it, would be within the penal statue because the feeling of disloyalty to the Government established by law or enmity to it imports the idea, tendency to public disorder by use of actual violence or incitement to violence. In other words, these words spoken by the accused are with the intent of encouraging and furthering and promoting and facilitating the commission of terrorist activities.

Section 124A of IPC – Sedition:

79. 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 may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of 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.

The main points requiring proof in a case under section 124A IPC are:

1. Spoke the words or made the signs or representation or did some other act complained of.

2. Thereby brings or attempts to bring into hatred or contempt or excites disaffection towards the Government established by law in India.

80. As far as this case is concerned on perusal of the evidence of PW1 to PW8, clearly stated that the accused had delivered the alleged offensive speech. It is

pertinent to point out that there is no dispute at any point of time in the cross examination that the contents found in Ex.P1 is not at all spoken by the accused. It is admitted fact that the accused participated in the meeting and released the book and delivered the alleged offensive speech. Hence, it is proved that the accused had spoken the alleged speech in the meeting where about 700 people gathered.

81. The section 124A has also got three explanations says "disaffection" includes disloyalty and all feelings of enmity. According to the prosecution Explanation 1 is very much relevant to the facts of this case and also key for arriving just decision of this case. The expression disaffection has been explained not only to include disloyalty but also includes all feelings of enmity.

82. From PW1 P.W.3 to PW9 evidence and from Ex.P1, Ex.P4 it is clear that the incriminating words and speech which squarely falls within the expression of disaffection which includes disloyalty and all ill feelings of enmity. Ex.P4 the sanction to file case also given based on the words spoken by the accused.

83. That apart, the accused cannot take a plea that the speech would fall under the exception provided under Explanation 2 and 3. In Explanation 2 mere expressive comments disapprobation of the measures of the Government with a view to obtain their alternation by lawful means, is not covered under the purview of Sec.124A IPC. Likewise, in Explanation 3 clearly rules out that comments expressing disapprobation of the administrative or other action of the Government without exciting or attempt to excite hatred, contempt or disaffection do not constitute an offence under Sec.124A IPC.

84. A cogent reading of the aforesaid two explanations would disclose that comments expressing disapprobation of measures by lawful means will not fall under the purview of Sec.124A IPC. But if the comments are of such a nature which excites or attempts to excite hatred, contempt or disaffection would certainly attract Sec.124A of IPC. From all the evidence prosecution has clearly established that the comments were made only with intention to cause hatred, contempt and disaffection towards the Government. Hence the accused cannot take a plea of exception that his speech would fall under Explanation 2 and 3 of the Section.

85. To appreciate the entire evidence in detail it is necessary to read the entire speech in full, not in isolation nor in bits and pieces. The speech has been made in the year 2009 in the presence of about 700 persons. These exciting words cannot be construed as mere comments against the measures of the Government made with a view to obtain their alteration by lawful means. The comments in the form of exciting hatred and disaffection or feeling of enmity against the Government established by law in India and alleging that the Government is supporting another Government of foreign Country for killing of Tamil group in that country.

86. From the evidence of P.W.1, P.W.3 to P.W.9 and from the documents it is clear that accused spoken by words, and attempts to bring into hatred, and attempts to excite disaffection towards the Government established by law in India, and so the charge as against him is proved.

87. But the counsel for the accused argued that after the release of the book, no law and order problem arose and so he argued that u/s. 124A IPC the offence was not made out as against the accused. For which the prosecution argued that it is not the case that law and order problem arose or not by the speech delivered by the accused. It is the case of the prosecution that the person who gathered and heard the speech will definitely develop enmity against the government and the person who heard the speech will develop hatred against the Indian Government.

88. It is clearly established by the evidence of PW1 P.W3 to PW9 and Ex.P1, Ex.P4 that the alleged offensive speech made by the accused was against the then Government of India and the then State Government. The expression “Government established by law” includes the executive power in action and does not mean merely the constitutional frame work. That apart the evidence of PW1 P.W.3 to PW9 would also clearly prove that the speech made by the accused brings hatred, contempt and excite disaffection towards mainly the then Government of India. His speech involves tendency to create disorder or disturbance of law and order or incitement to violence.

89. Further on the side of prosecution argued that the principles and guide lines as laid down by the Apex Court in ***Kedar Nath Singh & Another Vs. State of Bihar 1962 AIR (SC) 955*** that

“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 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 creation 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. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation its purpose and the mischief it seeks to suppress..... Viewed in the light, we have no hesitation in so construing the provisions of these sections in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order or incitement to violence.

90. On the side of prosecution it was argued that the dictum as enunciated in the ***Kedarnath Singh*** case could be briefed as follows:

> The explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government without exciting those feeling which generate the inclination to cause public disorder by acts of violence will not be penal and would be within reasonable limits and would be consistent with fundamental right of freedom of speech and expression. Only when the words, written or spoken etc., which have the pernicious tendency or intention of creation public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. Acts involving (i) intention to create disorder or tendency to create disorder (ii) disturbance of law and order (iii) incitement to violence.

91. Sec.124A of IPC is attracted in two situations (i) when there is sedition with violence and (ii) when sedition with acts involving intention or tendency to create disorder or disturbance to law and order or incitement to violence. According to the prosecution this case falls under the second limb i.e. acts involving intention or tendency to create disorder or disturbance to law and order or incitement to violence. whoever tries to excite, attempts to excite is held to come within this section. Whether that excited content has resulted in violence is immaterial. The fact that it has not resulted in violence will be no justification for the accused.

92. From Ex.P1 the court can see the veracity of the speech made by the accused.

இந்துமாக் கடலில் கிட்டுவின் மரணத்திற்கு காரணமானது இந்திய அரசு. அந்த துரோகத்தின் புணர்வாகத்தான் கடைசிக் கட்டத்தில் 2004 ஆம் ஆண்டுக்குப் பிறகு திட்டமிட்டு விடுதலைப் புலிகளை அழிக்க வேண்டுமென்று ராஜ்பக்சேவோடு சேர்ந்து சோனியா காந்தியின் ஆலோசனையின்படி இந்திய அரசு திட்டம் வகுத்தது. முடிந்துவிடவில்லை இந்தப் பிரச்சினை, அவர்கள் திட்டம் வகுத்ததன் விளைவாகவே இந்தப் போரை நடத்தியதற்குப் பிறகு தமிழீழ விடுதலைக் கோரிக்கையை அழித்து விட வேண்டுமென்பது இந்திய அரசின் நோக்கம். அதற்காகத்தான் இவ்வளவு உதவிகளையும் செய்தார்கள். இது மன்னிக்க முடியாத துரோகம். இந்தக் குற்றச்சாட்டுகளை தமிழக மக்கள் மனதிலே நாங்கள் விதைத்துக் கொண்டே இருப்போம்.

ஆயுதம் கொடுக்கிறது இந்திய அரசு தமிழர்களைக் கொல்ல என்கிற போது துடிக்காதா தமிழர்களின் இரத்தம். எங்கள் சொந்த சகோதரர்கள் வெட்டிச் சாய்க்கப்படுகிறபோது, கொன்று குவிக்கப்படுகிறபோது அவர்களுடைய உள்ளம் வேதனைத் தணலிலே விழுந்து துடிக்காதா? அப்படித் துடித்ததன் விளைவுதானே இதோ வீரத் தியாகி முத்துக்குமார். அவனோடு சேர்ந்து தமிழ்நாட்டிலே பலர் தீக்குளித்து மடிந்தார்கள். அந்தத் தணல் எங்கள் நெஞ்சில் அணையவில்லையே. அப்படிப்பட்ட உணர்வோடு இந்திய அரசு செய்த துரோகத்தைக் கண்டு மனம் கொதித்துப்போன நிலையில், அங்குள்ள தமிழர்கள், எங்களுடைய சொந்த சகோதரிகள் நாசமாக்கப்பட்டு, கொன்று குவிக்குப்பட்டு தமிழர்களின் இரத்தம் ஆறாக ஓடிக் கொண்டிருந்த நிலையில், இவ்வளவும் செய்துவிட்டு இந்திய அரசு கடைசி நிமிடம் வரையில் அவர்கள் போரை நிறுத்து என்று சொல்லவில்லை.

நான் பிரதமருக்கு சொல்லுவேன். இந்திய அரசுக்குச் சொல்லுவேன். நீங்கள் மறைமுகமாக பல உதவிகளைச் செய்தீர்கள். ஆயுதங்கள் வழங்கினீர்கள். அப்படி ஆயுதங்கள் வழங்குகிற போது தமிழனைக் கொல்வதற்கு இந்தியா ஆயுதங்கள் தருகிறது என்கிற போது தமிழன் தடுப்பதற்கு முயற்சிக்க மாட்டானா. அது எங்கள் நாட்டு வீதிகளிலே, தமிழ்நாட்டின் வீதிகளில் செல்கிறது ஆயுதங்களைத் தாங்கிய வண்டிகள். ஆயுதங்கள் இந்த வாகனங்களிலே போகின்றன என்ற செய்திகள் பரவுகின்ற போது அவர்களுடைய உள்ளம் தணலாக மாறாதா? துடிக்காதா?

93. These words are not mere statement. The aforesaid portion of the speech read as a whole has certainly got the tendency to create disorder or disturbance to law and order. Hence there can never be a contention that Sec.124A IPC will be attracted only if there is sedition with violence which is totally unfounded and against the dictum laid down in Kedarnath Case.

94. **Questioning of accused u/s 313 Cr.P.C**: -

While questioned the accused u/s 313 Cr.P.C the accused answered as ஒவ்வொரு தமிழனின் சாவுக்கும் ஒவ்வொரு தமிழச்சியின் சாவுக்கும் சிங்கள அரசு பொறுப்பாளி. And also replied that he never intended to bring hatred, contempt and disaffection towards the Government of India and that his speech was only with intent to bring a change in

the approach of the Government of India towards the Tamil Elam issue. He also answered that in another trial case of alleged offensive speech of similar nature made by the accused on the event of release of his book "I accuse" at Raja Annamalai Mandram on 21st October 2008 before the III Additional Sessions Court u/s 124A IPC and 13(1) (b) of Unlawful Activities Prevention Act has ended in acquittal mainly on the ground of the findings given by the Hon'ble Supreme Court and the POTA Review Committee that speech which is made rendering support to LTTE a banned organization is not an offence under the provisions POTA.

Further answer to 313 question the accused answered that he will support the LTTE yesterday, today and tomorrow. But, as per the recent notification No.S.O.1730(E), dated 14th May, 2019 issued by the Central Government under sub-section (1) and (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) declared the Liberation Tigers of Tamil Eelam (LTTE) as an unlawful association.

95. The accused admits that he has made the impugned speech on the particular point of time, place and date. Only at the time of 313 question the accused answered that the said portion of the speech was meant to be Sri Lankan Government. But on perusal of EX.P1 and from the evidence of PW1, PW3 to PW9 it was not stated so. That apart continued reading from Ex.P1 that the accused has clearly spoken that only Government in the Center was responsible for the death of Tamilians in Sri Lanka.

96. As decided above the speech need not necessarily result in violence to attract Sec.124A IPC and it is not the essence of the crime. Mere tendency to incite violence is suffice to attract this section. The speech made should be assessed by the Court with regard to time place and the surrounding circumstances that prevailed during the relevant period i.e. the date on which the alleged speech was made. The said speech cannot be assessed on the basis of the explanation given by the accused now after a period of 9 years. On 19.5.2009 LTTE leader Prabakaran died. After 2 months on 13.7.2009 the accused spoken this hatred speech. So it cannot be taken in a light way.

97. As stated by the accused in the argument and in the answer to 313 question for a similar speech made by the accused the III Additional City Civil Court acquitted him cannot be taken as a binding precedent in this case. Each case has to be appreciated based on facts and circumstance of its own and the evidence let in by the prosecution. Even the correlating facts of another case and justifying the impugned speech is also not permissible in law as each case has to be decided on its' own merits and demerits.

Material Evidence of all the witnesses:

98. P.W.1, PW3, PW4, PW7 and PW8 who heard the message deposed as "ஒவ்வொரு தமிழனின் தமிழச்சியின் சாவுக்கு இந்திய அரசுதான் பொறுப்பு ஏற்க வேண்டும். நாங்கள் இதை சொல்லி கூண்டில் நிறுத்துவோம். இந்திய அரசு தொடர்ந்து துரோகம் செய்து இந்திய இலங்கை ஒப்பந்தத்தை திணித்து திலிப்பன் சாவிற்கு காரணமாக இருந்தது. குமரப்பா மற்றும் புலேந்திரன் மற்றும் 12 புலிப்படை தளபதிகளின் சாவுக்குக் காரணமாக இருந்தது. இந்திய அரசு கண்ணி வெடிகளை அகற்ற இந்திய இராணுவத்தை அனுப்பியது அயோக்கியதனமான நடவடிக்கை. It is an atrocious act of Indian Government எங்கள் தமிழனித்தை, தமிழ் இளைஞர்களை கொல்வதற்கா. இது மன்னிக்க முடியாத துரோகம், இந்த குற்றச்சாட்டுகளை தமிழக மக்களின் மனதில் **விதைத்துக் கொண்டே இருப்போம்.** ஆகவேதான் இந்த இந்திய அரசு செய்த துரோகங்களை மக்கள் மன்றத்திலே எடுத்துரைக்க வேண்டிய கடமை நமக்கு இருக்கிறது."

99. While in cross examination of PW.7 he was questioned that தமிழனத்தை ஈழத்தில் கருவறுக்க வேண்டுமென்று திட்டமிட்ட கொடியவன் ராஜ்பக்சேவுக்கு இந்திய அரசு செய்திருக்கக் கூடிய மன்னிக்க முடியாத உதவிகளான துரோகத்தை இந்த இனத்தின் வருங்கால இளைஞர்களுக்கும் இன்றைய தலைமுறைக்கும் எடுத்துரைக்க வேண்டுமென்ற நோக்கத்தில் தான் நூல் வெளியிடப்பட்டுள்ளது என்று வை.கோ. பேசினாரா என்றால் பேசினார். .... இந்த குற்றச்சாட்டுக்களை தமிழக மக்களின் மனதில் **விதைத்துக் கொண்டே இருப்போம்** நாட்டின் ஒருமைப்பாட்டிற்கு நாங்கள் எதிரானவர்கள் அல்ல என்று வை.கோ **பேசினாரா** என்றால் பேசினார்.

Conclusion:

100. From the evidence of all the witnesses the prosecution has proved charge made against the accused beyond all reasonable doubt and established the guilt of the

accused. According to him the Indian Government is responsible for the death of each Tamil Eezhams like Dilipan, Kumarappa, Pulendran and other 12 LTTE. Because of the traitor act of Indian Government, the LTTE were defeated in the war and he will seed it in the heart of the young person and so the persons who hear the speech will definitely develop hatred against the Indian Government and the speech also develop vengeance against each other. No overt act is required for the commission of the crime. Mere advocacy alone which is likely to incite is the essence of the crime.

101. Further from Ex.P1document it is evident that இந்துமாக் கடலில் கிட்டுவின் மரணத்திற்கு காரணமானது இந்திய அரசு. தமிழீழ விடுதலைக் கோரிக்கையை அழித்து விட வேண்டுமென்பது இந்திய அரசின் நோக்கம். இந்தக் குற்றச்சாட்டுகளை தமிழக மக்கள் மனதிலே நாங்கள் விதைத்துக் கொண்டே இருப்போம். ஆயுதம் கொடுக்கிறது இந்திய அரசு தமிழர்களைக் கொல்ல என்கிற போது துடிக்காதா தமிழர்களின் இரத்தம். அப்படித் துடித்ததன் விளைவுதானே இதோ வீரத் தியாகி முத்துக்குமார். அவனோடு சேர்ந்து தமிழ்நாட்டிலே பலர் தீக்குளித்து மடிந்தார்கள். நான் பிரதமருக்கு சொல்லுவேன். இந்திய அரசுக்குச் சொல்லுவேன்.

102. As decided above the speech made by the accused is in a way to bring anguish against the Indian Government and the person hear the massage will develop hatred and vengeance against the Indian Government and it will also in a way to create law and order problem among the general public.

103. The speech of the accused certainly has a tendency to incite violence by unlawful means and the speech made by the accused clearly express disapprobation of the measures of the Government. Most of the version of the speech has a tendency to excite disloyalty and feelings of enmity against the Government. They bring or attempt to bring into hatred and contempt the Government established by law. So, the accused is liable to be punished for the offence under Section 124-A of the I.P.C.

104. Further, this is the time to mention that if a person of no influence or character may speak anything and it would only be a cry in the wilderness for no one will pay attention to such things. If, the same words come out of a person who is a popular or to whom people are bound by ties of social intimacy, there is every possibility that they would produce a very different effect.

105. In view of the above discussions, the charge as against the accused u/s 124 A stands proved.

106. When the accused was questioned with regard to the punishment to be imposed u/s. 124 A of IPC, the accused stated as follows:

தண்டனையை இன்றே வழங்கி விட்டால் நல்லது.

107. ~~Questioned and the accused sought for lenient punishment~~.

108. But every speaker presumably knows the effect of his words that are likely to produce on his audience, the fact is as material to establish his intention as it is in determining the effect of his utterance which is likely to be produced. Then in such cases he will surely be in a position to know what effect such speech would probably produce in the mind of the people.

The word spoken by Mr. Vaiko as "பிரதமரிடத்தில் தமிழன் சிந்துகின்ற ஒவ்வொரு சொட்டு இரத்தத்திற்கும் நீங்கள் பொறுப்பாளி. ஒவ்வொரு தமிழனின் சாவுக்கும் ஒவ்வொரு தமிழச்சியின் சாவுக்கும் உங்கள் அரசு பொறுப்பாளி என்று கூண்டில் நாங்கள் நிறுத்துவோம் என்றும், இந்திய அரசு செய்த துரோகத்தினால் இன்றைக்கு விடுதலை புலிகளுக்கு ஏற்பட்டு இருக்கும் பின் அடைவுக்கு இந்திய அரசு செய்த துரோகம் காரணம் இதற்கு என்ன நோக்கம், அன்றைக்கு அப்படி துரோகத்தை செய்து ஒப்பந்தத்தை கொண்டு போய் திணித்து திலீபனின் சாவுக்கு காரணமானது அன்றைய இந்திய அரசு என்றும், குமரப்பா, புலேந்திரன் உள்ளிட்ட 12 புலிப்படைத் தளபதிகளின் சாவுக்குக் காரணம் அன்றைய இந்திய அரசு .. It is an atrocious act of the Indian Government இது ஒரு அயோக்கியத்தனமான நடவடிக்கை என்றும், நீ யார் கண்ணிவெடிகளை அகற்றுவதற்கு எங்களை இளைஞர்களைத் தேடித் தேடி கொல்லுவதற்கா. இந்துமாக் கடலில் கிட்டுவின் மரணத்திற்கு காரணமானது இந்திய அரசு. இது மன்னிக்க முடியாத துரோகம், இந்த குற்றச்சாட்டுகளை தமிழக மக்களின் மனதில் **விதைத்துக் கொண்டே இருப்போம் .** ஆகவேதான் இந்த இந்திய அரசு செய்த துரோகங்களை மக்கள் மன்றத்திலே எடுத்துரைக்க வேண்டிய கடமை நமக்கு இருக்கிறது."

109. Thus the position of the accused in the society and his speech made would have a tendency to create major impact on the mind of public and the consequential effect which the accused would surely be aware to be produced in the mind of the people. The book was released and the hatred massage was delivered on 13.7.2009 just two months (19.5.2009) after the death of LTTE leader Prabakaran. Judging by that standard, at that time there was danger to the security of the State and Central and the mood of the people of the State were in a boiling situation.

110. Sec.124A IPC is attracted the acts involving intention or tendency to create disorder or disturbance to law and order or incitement to violence. Whoever tries to excite, attempts to excite is held to come within this section. Whether that act has resulted in violence is immaterial. The accused cannot escape if his act do fall within the ambit of the above explanation with regard to disaffection. Hence as decided above as against the accused the charge u/s. 124A IPC stands proved.

In the result, the accused is found guilty u/s. 124 A of IPC and convicted and sentenced to undergo imprisonment for a term of one year and also has to pay a fine of Rs.10,000/-, in default to undergo one month simple imprisonment. The period of sentence already undergone by the accused is set off u/s 428 Cr.PC.

Dictated by me to the Steno-Typist, directly typed by her in the computer, corrected and pronounced by me in the open Court this the 5th day of July 2019.

Sessions Judge.
Special Court for Trial of
M.P.s and M.L.A.s,
Chennai.

Prosecution side Witness:-

P.W.1 Thiru. Rahothaman, Chief Reporter, Intelligence Bureau.

P.W.2 Thiru. Natarajan, Rtd. Head Constable, F.4 Thousand Light Police Station

P.W.3 Thiru. Gajapathy, Rtd. Sub Inspector of Police

P.W.4	Thiru. K.N. Somasundaram, Manager, Rani Seethai Hall, Chennai.
P.W.5	Thiru. Sadasivam,
P.W.6	Thiru. Karuthiahpandian, Secretary to the Tamil Nadu Government, Secretariat, Chennai.
P.W.7	Thiru. Kotteeswaran,, Sub Inspector, F.4 Thousand Light Police Station
P.W.8	Thiru. Perumal, Head Constable, F.4 Thousand Light Police Station
P.W.9	Thiru. Mohan, Investigating Officer, F.4 Thousand Light Police Station

Prosecution side Exhibits:

Ex.P.1	15.07.2009	Shorthand translation (பகுச்சி)
Ex.P.2	14.07.2009	Licence No.ந.க.எண். கு.உ.CZ/PRL/342/11434/2009 issued by the Joint Commisioner of police, Central Zone, Chennai.
Ex.P.3	10.12.2009	Observation Mahazar
Ex.P.4	10.12.2010	G.O.Ms.No.1137 issued by Public (Law and Order-H) Department
Ex.P.5	13.07.2009	Petition given by M.Tamilarasan,Organiser, MDMK to the Inspector of Police, Thousand Light, Chennai .
Ex.P.6	09.12.2009	First Information Report
Ex.P.7	10.12.2009	Sketch
Ex.P.8	-	Pamphlet
Ex.P.9	-	Photos (Series).

Defence side witness:

NIL

Defence side Exhibits.

NIL

Material Objects:

Nil

Sessions Judge.
Special Court for Trial of
M.P.s and M.L.A.s,
Chennai.

Note:- After given the copy of the Judgment to the accused he stated that he never asked for lenient punishment. So the para in 107 struck off.

Fair/Draft/ Copy of
Judgment
in
S.S.No. 120/2017
DT: 05.07.2019
Special Court for trial of
M.P.s and M.L.A. Cases.