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## Asit Kumar Sen Gupta Vs State of Chhattisgarh

### Criminal Appeal No. 86 of 2011

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**Court:** Chhattisgarh High Court

**Date of Decision:** Dec. 16, 2011

**Acts Referred:**

Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 "Section 2(e), 2(f), 3, 3(1), 8(1)#Constitution of India, 1950 "Article 1, 10, 100, 101, 102#Criminal Procedure Code, 1973 (CrPC) "Section 313#Penal Code, 1860 (IPC) "Section 120B, 123, 124A, 505#Unlawful Activities (Prevention) Act, 1967 "Section 10(a), 15, 18, 2(k), 2(m)

**Citation:** (2012) 1 CGBCLJ 310

**Hon'ble Judges:** Prashant Kumar Mishra, J

**Bench:** Division Bench

**Advocate:** Mahendra Dubey, for the Appellant; Kishore Bhaduri, Additional Advocate General with Shri Sudhir Bajpai, Deputy Govt. Advocate, for the Respondent

**Final Decision:** Dismissed

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### Judgement

Prashant Kumar Mishra, J.

In this criminal appeal, the appellant has called in question his conviction and sentence u/s 124-A of the IPC;

under Sections 8(1), 8(3) & 8(5) of the Chhattisgarh Vishesh Jansuraksha Adhiniyam, 2005 (for short "the Act of 2005") and u/s 18 & 39(2) of

the Unlawful Activities (Prevention) Act, 1967 (for short "the Act of 1967") as amended by the Act of 2004. For offence u/s 124-A of the IPC.

he has been sentenced to undergo R.I. for 3 years & to pay a fine of Rs. 500/-, in default of payment of fine to further undergo additional R.I. for 3

months; for offence under Sections 8(1), 8(3) & 8(5) of the Act of, 2005, he has been sentenced to undergo R.I. for 3 years & to pay a fine of

Rs. 500/-, in default of payment of fine to further undergo R.I. for 3 months for each of the offence; for offence under Sections 18 & 39(2) of the

Act of 1967, as amended by the Act of 2004, he has been sentenced to undergo R.I. for 8 years & to pay a fine of Rs. 500/-, in default of

payment of fine to further undergo R.I. for 3 months for each of the offence. Case of the prosecution, in short, is that the appellant was residing in a

rented premises belonging to one Ashwini Kumar Sharma at Gabrapara, Raipur. While residing therein, the appellant, in conspiracy with the

members of Communist Party of India (Maoist) used to spread hatred and contempt and excited/ attempted to excite disaffection towards the

Government established by law in India either by speaking or writing against the Government. He was possessed of Maoist literature in conspiracy

with persons belonging to Community Party of India (Maoist), a banned organization and used to incite the people to become member of the said

banned organization by involving in terrorist act as defined under the Act of 1967. He was also alleged of supporting terrorist organization to

further his activity by encouraging support for the said banned organization. He was also alleged of being a member of an unlawful organization or

taken part in meetings or activities of such organization or contributed or received or solicited contribution for the purpose of such organization as

also managed or assisted in the management of an unlawful organization or promoted or assisted in promoting a meeting of such organization or

any member thereof, or in any way indulged in unlawful activity of such organization in any manner or through whatever medium or device and also

committed or abetted or attempted to commit or planned to commit any unlawful activity in any specified area, which is punishable under the Act

of 2005.

2. According to the prosecution, several suspicious persons frequently used to visit the appellant's house. The father of one Santosh Paul was

known to the appellant and Maksudan Paul, cousin of Santosh Paul, was studying while residing in the house of Santosh Paul at New Subhash

Nagar, Tikrapara, Raipur. The appellant used to visit these two persons and used to incite and provoke them to join Communist Party of India

(Maoist) to bring a Government headed by Maoist by throwing out the present capitalist Government by armed rebellion. He used to brief them

about the naxal activities while opposing the Government established by law. One Ramesh Dewangan is an office bearer of one Churches Vikas

Evam Rahat Samiti, a social organization, with whom the appellant conducted survey of child labours and while conducting the said survey, the

appellant used to incite and provoke Ramesh Dewangan by saying that to eliminate the corrupt capitalist Government, we have to unite the youths

under the Maoist Organization namely, the Communist Party of India (Marxist Leninist) People War Group. He suggested Ramesh Dewangan to

obtain one post box number because he has no proof of address to obtain post box number and thereafter on the appellant's suggestion, Ramesh

obtained one post box number in which correspondences addressed to the appellant were received frequently.

3. On receiving secret information, the appellant's premises was raided on 22-1-2008 and in the search, huge volumes of naxal literatures were

recovered. Apart from printed literatures, one computer, CPU was also seized, which was sent for forensic examination to the Central Forensic

Science Laboratory, Hyderabad and the report received from FSL Hyderabad whose print out is part of the record, contained huge volumes of

naxal literatures.

4. After obtaining sanction from the District Magistrate, Raipur and the State Government, charge sheet was filed. Literatures of one instance of

naxal violence at Errabor wherein huge quantity of arms were looted by the naxals were also seized and in many literatures seized from the

appellant, provoking and exciting/encouraging contents were available. The appellant was thus working for terrorist/naxal organization and was

part of its urban network to encourage and excite the people of urban areas to join Maoist organization. It is said that the appellant was conspiring

against the Government established by law for armed rebellion and was guilty of committing sedition.

5. On these allegations, charges for committing offence under Sections 121-A, 123, 124-A and in alternative, 124-A /120B IPC; under Sections

10(a), 18, 20, 21, 38(2), 39 (2) of the Act of 1967 and under Sections 8(1), (2), (3) & (5) and in alternative u/s 8(1), (2), (3), (5) of the Act of

2005 read with Section 120-B of the IPC were framed against the appellant, however, the appellant has been acquitted of the charges under

Sections 121-A and 123 of the IPC (para-30 of the judgment), section 10(a), 20, 21, 38(2) of the Act of 1967 (para 31 & 32 of the judgment)

and section 8(2) of the Act of 2005 (para-33 of the judgment) and has been convicted for the offences mentioned in para-1 of this judgment.

6. To bring home the charges, the prosecution has examined PW-1 Ashwini Kumar Sharma, PW-2 Ramesh Dewangan, PW-3 Manoj Verma,

PW-4 Akash Mishra, PW-5 Ratan Dewangan, PW-6 Santosh Paul, PW-7 Maksudan Paul, PW-8 Anil Baghel, PW-9 Devsharan Sahu, PW-10

Shiv Kumar Yadu, PW-11 Narendra Kumar Bhoi, PW-12 J.K. Matelkar, PW-13 D.R. Dhruv, PW-14 Mukti Tirki, PW-15 Jairam Mandavi,

PW-16. I.H. Khan.

7. PW-1 Ashwini Kumar Sharma is the owner of the house wherein the appellant was residing as tenant. He has proved that the appellant was his

tenant at Gabrapara, Raipur. PW-2 Ramesh Dewangan is an office bearer of a social organization namely, Raipur Churches Vikas Evam Rahat

Samiti. He says that the appellant is known to him as his services were hired for tabulation of survey of child labour. He says that the appellant is a

writer and used to write articles concerning child labour and women. In para-4 of his examination-in-chief, he admits that he was interrogated by

the police on 26th January, 2008 and his statement was recorded thereafter. This witness categorically says that there was no pressure of police

upon him and he had given statement to the police out of his own free will. However, in the next paragraph, this witness says that he had told to the

police only such things about the appellant which he had stated before the Court and on this statement, he was declared hostile and cross-

examined. In his cross-examination, after being declared hostile, he has denied that the appellant used to excite him to create

disaffection/disloyalty/feeling of enmity and hatred towards the Government established by law. He also denied that the appellant excited him for

throwing out the Government by armed rebellion or that the youth should be united and encouraged to join naxal organization for the said armed

rebellion and he should join Maoist activities.

8. PW-3 Manoj Verma is the Corporator of the Ward No. 56 of the Raipur Municipal Corporation in which the appellant's premises falls. He is a

witness to Ex. -P/2, P/3 P/4 & P/5. These are the documents by which consent was obtained from the appellant for search of his house, seizure of

naxal literature, computer, CPU, inquest of opening and closing the house. He has proved seizure of articles 1 to 193 and has further proved that

articles 194 to 221 were also seized in his presence. There is nothing in his cross-examination so as to impeach credibility of this witness or to hold

that he is not speaking truth and his signatures were obtained subsequently after recovery of the articles.

9. PW-4 Akash Mishra has also proved Ex. -P/2, P/3, P/4, P/5 & P/5 by admitting his signatures over the documents and by supporting the

prosecution by saying that the recoveries have been made in his presence. This witness also says that the police has enquired from him as to

whether he intends to be a witness to the recoveries of naxal literatures and after receiving his answer in affirmative, his signatures were taken. He

has denied the suggestion that the articles 1 to 221 were not recovered from the house of the appellant. Similar is the evidence of PW-5 Ratan

Dewangan, who is a witness to Ex. -P/2, P/4 and P/5.

10. PW-6 Santosh Paul is the person to whom the appellant used to excite, encourage and provoke for joining Maoist organization, however, he

has resiled from his case diary statement and has not supported the prosecution, therefore, he has been declared hostile. However, he admits that

he was interrogated by the police on 26-1-2008.

11. PW-7 Maksudan Paul is also a witness to whom the appellant used to excite, encourage and provoke for joining Maoist organization for

throwing out the Government established by law by armed rebellion. He has also turned hostile as he resiled from his case diary statement.

However, while being cross-examined by the prosecution, he has admitted that he was interrogated by the police and his photograph was also

obtained for pasting over his statement and he had stated everything which he disclosed to the police.

12. PW-8 Anil Baghel is a witness who was part of the crowd gathered in front of the house of the appellant at the time when raid was

conducted. PW-9 Devsharan Sahu is a Constable, who had taken one sealed envelope to FSL, Hyderabad. PW-10 Shiv Kumar Yadu is a Head

Constable and was part of the police team who conducted raid.

13. PW-12 J.K. Matelkar is the prosecution clerk in the office of the District Magistrate, Raipur and has proved the sanction granted by the

District Magistrate for trial under the provisions of the Act of 2005. PW-13 D.R. Dhruv is a witness to the file wherein sanction was granted for

prosecution under the Act of 2005.

14. PW-14 Mukti Tirki is the then SHO of PS Tikarapara, Raipur. This witness has conducted raid in the night of 22-1-2008 and thereafter made

recoveries on 23-1-2008 and 24-1-2008.

15. PW-16 I.H. Khan conducted the subsequent investigation when case diary was handed over to him for investigation under the orders from the

Superintendent of Police, Raipur. He also made recoveries from the house of the appellant on 26-1-2008.

16. In his examination u/s 313 of the Cr.P.C. while answering question No. 10, the appellant admits that he was using post box No. 47 belonging

to PW-2 Ramesh and in this post box, he used to receive letters from Italy. While answering question No. 19, he admits that PW-14 Mukti Tirki

wanted to make a search of his house and he agreed for search in presence of the respectable members. He also admits giving consent and his

signatures in Ex. -P/2 and the signatures of PW- 3 Manoj, PW-4 Akash & PW-5 Ratan on the said documents while answering question No. 20.

He admits that the search was carried in the presence of respectable citizens and his advocate Mr. Shadik Ali, while answering question No. 21.

Further, while answering question Nos. 22 & 23, he admits that when the search was not possible because of late night, his house was sealed and

thereafter it was opened on 23-1-2008 vide opening inquest Ex. -P/4, however, while answering question Nos. 24 to 35, he denies the seizure of

documents/ literatures Articles 1 to 193 which also includes seizure of CPU vide Ex. -P/3. It is further pertinent to mention that while answering

question No. 46, he admits the sealing of the house after completion of seizure, but at the same time he denies the seizure of the documents. At the

end, he says that the police has framed the case and later on examined himself as a witness as DW-1.

17. In substance, the appellant, in his examination-in-chief as a witness has raised a defence that he is a writer and follower of Leftist Ideology and

for that he has collected various literatures from the books, magazines and internet. He produced Ex. -D/3, a magazine by name ""A World to

Win"", claiming that he is the Editor and Publisher of the said magazine. However, he admits that none of the articles printed in the magazine carries

his name as its author. He also admits that in Article 225, application to obtain import export licence mentions his address as U-57, Shakarpur,

Delhi, and similar address is mentioned in Article 226 carrying his PAN number issued by the Income Tax Department. In Articles 227 and 227-

A, he admits his address as 10/370, Lalita Park, Laxmi Nagar, Delhi and the same address is mentioned in Article 228, which is the certificate of

import export. He admits seizure of computer and CPU and also that only one volume of the magazine Ex. -D/3 was printed in its life time.

According to the appellant, he is the member of CPI (ML) (Naxalwadi) and is not the member of CPI (Maoist). However, he admits that his party

CPI (ML) (Naxalwadi) is not a registered national or regional party and further that he has not produced any receipt or certificate of being a

member of the said CPI (ML) (Naxalwadi) political party. In para-24 of his evidence, he admits the seizure of documents Ex. -P/23 to Ex. -P/26,

which are letters issued by the Central Committee Member of CPI (Maoist) to its comrades regarding Peru War, activities of Maoist in Nepal and

Bangladesh, which were saved by him after downloading from the internet.

18. To appreciate the submissions made by learned counsel for the appellant and to test the legality, validity and correctness of the impugned

conviction and sentence, it is necessary to keep in mind the provisions and its ingredients of which the prosecution alleges that the appellant has

been charged with and then to marshal the evidence on the anvil of requirement of law to bring home the charges.

19. Section 124-A of the IPC reads thus:-

124A. Sedition - Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring

into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with

imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine 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.

20. Necessary ingredient to attract punishment u/s 124-A IPC appears to be the effort of bringing or attempting to bring into hatred or contempt

or excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by

visible representation or otherwise.

21. What would actually constitute or which of the act would amount to sedition has been dealt with by the Constitution Bench Judgment of the

Hon"ble Supreme Court in the matter of Kedar Nath Singh Vs. State of Bihar, . In the said case, Cr.A. No. 169/1957, filed by Kedar Nath Singh

who was convicted by the trial Magistrate u/s 124-A of IPC, had been dismissed and conviction was upheld by the High Court. In the said case,

accused Kedar Nath Singh criticized the then incumbent Government and excited the people for a revolution to throw out the Government

managed by the Capitalists, Zamindars and the Congress Party, the then Ruling Party of India and exhorted the people to reduce them to ashes.

He called Vinoba Bhave as an agent of Congress Party and criticized the Congress Party by saying that they are just like Britishers and only the

colour of the body has changed. The High Court, while upholding the judgment of conviction rendered by the trial Magistrate, observed that Kedar

Nath Singh indulged in vilification of the Government and it was full of incitement to revolution and that the speech taken as a whole was certainly

sedition. It is not a speech criticising any particular policy of the Government or criticizing any of its measures. The accused filed SLP and while

challenging the conviction also challenged the constitutional validity of Section 124-A of IPC. While deciding the constitutional validity, the Hon<sup>ble</sup>

Supreme Court has observed in paragraphs 24, 25 & 26 of the report thus (only relevant part extracted):-

24...Now the expression ""the Government established by law"" has to be distinguished from the persons for the time being engaged in carrying on

the administration. ""Government established by law"" is the visible symbol of the State. The very existence of the State will be in jeopardy if the

Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the

stability of the State. That is why "sedition", as the offence in S. 124A has been characterized, comes, under Chapter VI relating to offences

against the State. Hence, any acts within the meaning of S. 124A which have the effect of subverting the Government by bringing that Government

into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government

established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other

words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are

compendiously included in the term ""revolution"", have been made penal by the section in question. But the section has taken care to indicate clearly

that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means

would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government,

without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words,

disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its

agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that

is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which

unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against

becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to

create public disorder. A citizen has a right to say or write whatever he likes about the Government or its measures, by way of criticism or

comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public

disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right

guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the

interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Ss. 124A and 505 of the Indian Penal

Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the

case of 1942 F.C.R. 38 (Federal Court), that the gist of the offence of "sedition is incitement to violence or the tendency or the intention to create

public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or

contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England,

as was the intention of the legislators when they introduced S. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the

permissible limits laid down in cl. (2) of Art. 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section,

divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial

Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in cl. (2)

aforesaid.

26....If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the

use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete,

then such an interpretation of the sections would make them unconstitutional in view of Art. 19(1)(a) read with cl. (2). It is well settled that if

certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them

unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the

explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to

create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the

section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable

limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc.

which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such

activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights

and the interest of public order. 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 vide

(1) The Bengal Immunity Company Limited Vs. The State of Bihar and Others, AND (2) R.M.D. Chamarbaugwalla Vs. The Union of India

(UOI), Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned 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.

22. After thus declaring that Section 124A IPC is intra vires the Constitution, the Hon"ble Supreme Court in concluding para- 30 of the report

held thus:-

30. It has not been contended before us on behalf of the appellant in Cr.A. No. 169 of 1957 or on behalf of the respondents in the appeals (Nos.

124-126 of 1958) that the words used by them did not come within the purview of the definition of sedition as interpreted by us. No arguments

were advanced before us to show that even on the interpretation given by us their cases did not come within the mischief of the one or the other

section, as the case may be. It follows, therefore, that the Criminal Appeal 169 of 1957 has to be dismissed. Criminal Appeals 124-126 of 1958

will be remanded to the High Court to pass such order as it thinks fit and proper in the light of the interpretation given by us.

23. It is thus apparent that conviction of (Cedar Nath Singh was upheld by the Hon"ble Supreme Court because even on the interpretation of

Section 124A IPC while striking the balance between the fundamental right of freedom of speech and expression and the interest of public order,

the act or commission of Kedar Nath Singh of exhorting/exciting members of public to indulge in revolution and to reduce the capitalists,

Zamindars and the Congress Leaders to ashes and to establish the Government of poor and down trodden people of India on their ashes was

considered sufficient by the Hon"ble Supreme Court to attract and constitute offence u/s 124A IPC. Kedar Nath Singh"s case (supra) has been

referred and followed in various decisions of the Hon"ble Supreme Court at subsequent point of time.

24. In the matter of Raghubir Singh and Others Vs. State of Bihar, while dealing with a case under Sections 121-A and 124-A of the IPC, the

Hon"ble Supreme Court has held in para-17 thus:-

17. Shri Jethmalani urged that in the case of the accused persons other than Simranjit Singh Mann, there was nothing whatever to connect them

with the offences under Sections 121-A 124-A, etc. It was said that they were not even the authors of any of the letters which were found in the

case of the search. We do not want to express any opinion except to say that authorship of seditious material alone is not the gist of any of the

offences. Distribution or circulation of seditious material may also be sufficient on the facts and circumstances of a case. To act as a courier is

sometimes enough in a case of conspiracy. It is also not necessary that a person should be a participant in a conspiracy from start to finish.

Conspirators may appear and disappear from stage to stage in the course of conspiracy. We wish to say no more on the submission of the learned

counsel. Whether such evidence as may now be available in the record to justify the framing of charges is a matter of the trial court and not for us.

We refrain from expression any opinion.

Thus, in the above referred case of Raghbir Singh (supra), it has been held that for establishing the charge of sedition, it is not necessary that the

accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and

circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a

person should be the participant in the conspiracy from start to finish.

25. In the matter of Nazir Khan and Others Vs. State of Delhi, , the Hon"ble Supreme Court has once again dissected the meaning and purport of

the charge u/s 124-A of IPC i.e. ""Sedition"". It has been held in para-37 of the said judgment thus:-

37. Section 124-A deals with ""sedition"". Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a

short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are

calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The

objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of

justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. ""Sedition"" has been described as

disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create

public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm,

and generally all endeavours to promote public disorder.

26. It is apt to underline that in the above referred judgment, the Hon"ble Supreme Court has said that the very tendency of sedition is to incite the

people to insurrection and rebellion and the objects of sedition generally are to induce discontent and stir up opposition to the Government and to

bring administration of justice into contempt.

27. This Court shall, therefore, consider the evidence available in the present case on the touchstone of law laid down by the Constitution Bench

judgment of the Hon"ble Supreme Court in the matter of Kedar Nath Singh (Supra) for considering the legality of conviction u/s 124A of IPC.

28. PW-2 Ramesh Dewangan has stated that there was no pressure of the prosecution agency on him when he had given statement to the police

and the said statement was given out of his own free will. In his police case diary statement (Ex. - P/1), he has stated that the appellant always used

to incite him by saying that we have to end the capitalist system, remove corruption and bring equality and for that the youths shall have to be

united to help naxal organization like Communist Party of India (Marxist Leninist) People War Group and Maoist Communist Centre and we have

to help them. The appellant also used to praise the naxalites and that the previous Congress Government as well as the present Government is

controlled by the capitalists and we have to throw out this Government by armed rebellion and to bring Maoist Communist Government otherwise

poor people will not get any relief. He also used to say that the youths are to be prepared for armed rebellion (1"KL= dzkafr) for advancing war of

Maoist. Similar is the case diary statement (Ex. -P/7) of witness Santosh Paul (PW-6) and that of case diary statement (Ex. -P/8) of Maksudan

Paul (PW-7). Though these witnesses have turned hostile, however, they have clearly stated that there was no pressure of the police at the time of

recording their statements.

29. In Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, , it has been held in para-19 that there is no

general rule that the evidence of Investigating Officer who conducts search cannot be relied on unless it is corroborated and that all depends on the

facts of each case.

30. In Nathusingh Vs. The State of Madhya Pradesh, , it has been held that the mere fact that the witnesses are the police officers was not enough

to discard their evidence as no reason was shown for their hostility to the accused.

31. In Karamjit Singh Vs. State (Delhi Administration), it has been held in para-8 that the testimony of police personnel should be treated in the

same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony

cannot be relied upon. It has also been held that the presumption that a person acts honestly applies as much in favour of a police personnel as of

other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. Similar is the law laid down by the

Hon"ble Supreme Court in the matter of Ram Kumar Vs. State (NCT) of Delhi,

32. In Bhagwan Singh Vs. The State of Haryana, the Hon"ble Supreme Court has held that the fact that a witness has been declared hostile does

not completely efface his evidence and that the evidence remains admissible in trial and there is no legal bar to base a conviction upon his testimony

if corroborated by other reliable evidence.

33. In Lella Srinivasa Rao Vs. State of Andhra Pradesh, , the Hon"ble Supreme Court in para-14 has held that merely because a witness has been

declared hostile, it does not result in automatic rejection of his evidence and that even the evidence of a hostile witness if it finds corroboration from

the facts of the case may be taken into account while judging the guilt of an accused. Similar is the law laid down by the Hon"ble Supreme Court in

The State of Uttar Pradesh Vs. Het Ram and Others,

34. In Gurpreet Singh Vs. State of Haryana, , it has been held in para-19 that such portion of the statement of a hostile witness which stands in

favour of the prosecution or the accused may be accepted but the same shall be subjected to close scrutiny. This law was earlier also reiterated in

the matter of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh,

35. Relying on the evidence of witnesses who have proved the seizure of articles from the appellant and the police officers, this Court finds that

there is enough corroboration available on record to hold that the appellant was exciting and encouraging the people to wage war against the

Government established by law by armed rebellion , which is clearly covered within the mischief of Section 124A of IPC as held by the

Constitution Bench Judgment of the Supreme Court in the matter of Kedar Nath Singh (supra).

36. There is other corroborative material to support the finding recorded above inasmuch as the loads and loads of naxal literatures seized from the

possession of the appellant contains writing, text of speech etc.. of naxal leaders/activists exhorting violence and revolution against the Government

established by law by means of armed rebellion. One such document is titled as , to mean ""letter by the Company Commander from the war field"".

It is written by some "Hidmal" and addressed to comrade "Jangudada" and starts with "red salute". It gives graphic description of an incident

which took place at Errabore camp in the naxal affected area of Dantewada in Chhattisgarh in the morning of 9th July, 2007. It louts killing of

policemen which is a symbol at that level of the Government established by law. It also gives the details of arms and ammunitions looted from the

police. There is another letter on record written by one Ganpati, General Secretary of the Communist Party of India (Maoist) addressed to

comrade Hidmal and Singla. This letter appears to be a reply to the letter written by Hidmal to Jangudada on 11th July, 2007, contents of which

have been mentioned above. It also praises/louts killing of policemen at Errabore by referring to the incident which has taken place in different

parts of the country like Kalinga Nagar, Singoore and Nandigram etc. The other literatures in the name of "Lal Pataka", "Lal Chingari" etc. have

also been seized from the possession of the appellant. One book issued by the CPI (Marxist Leninist) has also been seized which gives history of

the organization, its goal and the constitution of party. From these documents also, it clearly emerges that the appellant, who was inciting the

witnesses to join naxal forces for waging war against the Government established by law by means of armed rebellion was also in possession of

huge volumes of naxal literatures in which such articles louding naxal violence are contained. In view of this, it cannot be said that present is a

simple case of a person found to be in possession of some naxal literature or literature advocating leftist ideology as claimed by the appellant.

37. Learned counsel for the appellant has relied on judgment of the Hon<sup>ble</sup> Supreme Court in the matters of Arup Bhuyan Vs. State of Assam

{Criminal Appeal No. 889/2007} and Sri Indra Das Vs. State of Assam {Criminal Appeal No. 1383/2007} to argue that merely being a member

of a banned organization will not incriminate the person and, therefore, even if it is found that the appellant was a member of a banned CPI

(Marxist) and/or CPI (Marxist Leninist) People's War, he cannot be held guilty of committing an offence u/s 124A of IPC or for committing

offences under the Act of 2005 and the Act of 1967.

38. In the matter of Arup Bhuyan (Supra), allegation against him was that he was a member of ULFA and the only material against him was his

alleged confessional statement made before the Superintendent of Police in which he is said to have identified the house of the deceased. After

referring to its earlier decision in the matter of State of Kerala Vs. Raneef, wherein the Hon<sup>ble</sup> Supreme Court agreeing with the US Supreme

Court's decision in Elfbrandt Vs. Russell, 384 U.S. 17 (1966) which has rejected the doctrine of "guilt by association", the Hon<sup>ble</sup> Supreme

Court held thus:-

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act

intended to create disorder or disturbance of public peace by resort to violence.

Emphasis supplied

39. Further reliance was placed on a judgment in the matter of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969)

40. The Constitution Bench of our Supreme Court in the matter of Kameshwar Prasad and Others Vs. The State of Bihar and Another, has held in

para-8 thus:-

8. As regards these decisions of the American Court's it should be borne in mind that though the First Amendment to the Constitution of the

United States reading "Congress shall make no law....abridging the freedom of speech...." appears to confer no power on the Congress to impose

any restriction on the exercise of the guaranteed right, still it has always been understood that the freedom guaranteed is subject to the police

power - the scope of which however has not been defined with precision or uniformly. It is on the basis of the police power to abridge that

freedom that the constitutional validity of laws penalizing libels, and those relating to sedition, or to obscene publications etc. has been sustained.

The resultant flexibility of the restrictions that could be validly imposed renders the American decisions inapplicable to and without much use for

resolving the questions arising under Art. 19(1)(a) or (b) of our Constitution wherein the grounds on which limitations might be placed on the

guaranteed right are set out with definiteness and precision.

41. In view of what has been held by the Hon"ble Supreme Court in Kameshwar Prasad (supra) holding "American decisions to be inapplicable to

and without much use for resolving the questions arising under Art. 19 (1)(a) or (b) of our constitution wherein the grounds on which limitations

might be placed on the guaranteed right are set out with definiteness and precision" and particularly when the Hon"ble Supreme Court in yet

another Constitution Bench Judgment in the case of Kedar Nath Singh (supra), has already laid down the law as to what are the requirements in

given set of facts to hold a person guilty of committing offence u/s 124A IPC, and at the same time, with complete respect at my command to the

judgments in the case of Arup Bhyan and Sri Indra Das (supra), I would hold that the said judgments are not applicable in the facts of the present

case.

42. Learned counsel for the appellant also relied on Full Bench judgment of the Gujarat High Court in the matter of Manubhai Tribhovandas Patel

and Others Vs. State of Gujarat and Another, wherein the accused was found to be in possession of book titled as ""extracts from Mao Tse Tung

and the said book was forfeited u/s 99-A of the IPC 1860, to argue that even if seizure of offending seditious material is found to be proved to

have been made from the appellant, he cannot be held guilty u/s 124A IPC.

43. Here again, the Gujarat High Court relied on judgment of the Hon"ble Supreme Court in the matter of Kedar Nath Singh (supra). This Court

has elaborately dealt with the said judgment in the preceding paragraphs. Therefore, this Court has no hesitation in holding that the said Full Bench

judgment of the Gujarat High Court has no application in the facts of the present case.

44. On the basis of above discussion, this Court has again no hesitation in holding that the trial Court was fully justified on the basis of evidence on

record to convict the appellant for commission of offence u/s 124A of the IPC.

45. The appellant has also been convicted u/s 8(1), 8(3) and 8(5) of the Act of 2005. The said provisions read as under:-

8. Penalties. - (1) Whoever is a member of an unlawful organization or takes part in meetings or activities of any such organization or contributes or

receives or solicits any contribution for the purpose of any such organization shall be punished with imprisonment for a term which may extend to

three years and shall also be liable to fine.

(3) Whoever manages or assists in the management of an unlawful organization or promotes or assists in promoting a meeting of any such

organization or any member thereof, or in any way indulges in any unlawful activity of such organization in any manner or through whatever medium

or device shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(5) Whoever commits or abets or attempts to commit or plans to commit any unlawful activity in any specified area shall be punished with

imprisonment for a term which may extend to seven years and also be liable to fine.

46. Section 8(1) of the Act of 2005 prohibits participation and membership of an unlawful organization whereas Section 8(3) prohibits and makes

punishable management or assistance in the management of an unlawful organization as well as in any way indulging in any unlawful activity of such

organization. Section 8(5) makes punishable commission, abetment or attempts to commit any unlawful activity. Section 2(e) of the Act of 2005

defines unlawful activity whereas Section 2(f) defines unlawful organization. u/s 3, the Government has been clothed with the power to declare any

organization as unlawful.

47. By notification issued u/s 3(1) of the Act of 2005, the following organizations have been declared unlawful organizations:-

48. The appellant has also been convicted under Sections 18 and 39 (2) of the Act of 1967, which reads thus:-

18. Punishment for conspiracy, etc.-Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly

facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a

term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18A. Punishment for organizing of terrorist camps.- Whoever organizes or causes to be organized any camp or camps for imparting training in

terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and

shall also be liable to fine.

18B. Punishment for recruiting of any person or persons for terrorist act. - Whoever recruits or causes to be recruited any person or persons for

commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to

imprisonment for life, and shall also be liable to fine.

39. Offence relating to support given to a terrorist organization.- (1) A person commits the offence relating to support given to a terrorist

organization, -

(a) who, with intention to further the activity of a terrorist organization,-

(i) invites support for the terrorist organization, and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organization, arranges, manages or assists in arranging or managing a meeting which he

knows is-

(i) to support the terrorist organization, or

(ii) to further the activity of the terrorist organization, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organization; or

(c) who, with intention to further the activity of a terrorist organization, addresses a meeting for the purpose of encouraging support for the terrorist

organization or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organization under sub-section (1), shall be punishable with

imprisonment for a term not exceeding ten years, or with fine, or with both.

49. The Act of 1967 contains Schedule containing list of terrorists organizations and Section 35 empowers the Central Government to make an

order to amend the Schedule to include or remove any organization or to amend Schedule in some other way. Section 2(k) defines the word

terrorist act"" and Section 2(m) defines the word ""terrorist organization"" whereas Section 2(o) defines the word ""unlawful activity"" Section 15 of

the Act of 1967 further makes a provision as to what is a terrorist act. The said provisions are quoted hereunder for ready reference:-

2(k). ""terrorist act"" has the meaning assigned to it in section 15, and the expressions ""terrorism"" and ""terrorist"" shall be construed accordingly. 2(m)

terrorist organization"" means an organization listed in the Schedule or an organization operating under the same name as an organization so listed.

2(o) ""unlawful activity"", in relation to an individual or association, means any action taken by such individual or association (whether by committing

an act or by words, either spoken or written, or by signs or by visible, representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India of the

secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or

secession; or

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

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

15. Terrorist act.-Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with

intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,-

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or

noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any

other means of whatever nature to cause or likely to cause -

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection

with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or cause death of any public functionary or attempts to

cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of

India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist

act.

Explanation.- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official

Gazette by the Central Government as a public functionary.

50. On a reading of the above quoted provisions, it would appear that to prove the charges under Sections 18 and 39 (2) of the Act of 1967, the

prosecution is required to prove that the accused has conspired or attempted to commit or advocates, abets, advises or incites, directs or

knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, would commit an offence u/s 18

of the Act of 1967 and the support given to the terrorist organization is likewise punishable u/s 39 of the Act of 1967. Under the said section

39(1), a person commits the offence relating to support given to a terrorist organization, who invites support for the terrorist organization which is

not restricted only to provide money or other property and inviting such support is punishable under sub-section (2) of Section 39 of the Act of

1967.

51. Since the offence under Sections 8(1), 8(3) & 8(5) of the Act of 2005 and under Sections 18 & 39(2) of the Act of 1967 relates to a banned

organization or terrorist organization and the nature of evidence required to prove the said charges are similar, this Court shall deal with and

consider the sustainability of the conviction for the said offences analogously.

52. While dealing with the issue as to whether the accused is the member of any banned or prohibited or Scheduled organization, the Court has to

look at evidence as a whole because such organizations are neither registered nor they publish any list of their members nor one would expect

issuance of receipt of membership to the members of such organizations.

53. PW-2 Ramesh Dewangan has turned hostile, yet he has stated in the Court that there was no pressure of the prosecution agency on him at the

time of recording of statement, that the appellant always invited support for the CPI (Marxist Leninist) People War and Maoist Communist Centre

(MCC) by asking them to join the said organization or to help them in waging war against the Government established by law, which is

spearheaded by the naxalites. He also used to invite this witness for armed rebellion against the Government established by law. Similar is the

statements of PW-6 Santosh Paul and PW-7 Maksudan Paul in their case diary statements and these witnesses have also said that there was no

pressure on them while making such statements to the police. All these witnesses have turned hostile later on, but as already discussed, statement

of a hostile witness cannot be discarded at the threshold.

The appellant in his statement u/s 313 Cr.P.C. has admitted seizure of CPU of the computer system which was sent for forensic examination and

the transcript of the materials stored in the CPU of the computer is available on record, the extract of which shall be discussed infra. The appellant

also examined himself as a defence witness as DW-1 and admits that the name of his party is Communist Party of India (Marxist Leninist)

(Naxalvadi) and has no relation with the CPI (ML) People War or Maoist Communist Centre (MCC) or CPI Maoist. He refers to these banned

organizations as political parties and also refers the name of his political party as CPI (ML) (Naxalvadi) as a political party. None of these

organizations are registered political parties, in fact, CPI (ML) People War and Maoist Communist Centre and CPI (Maoist) are either banned

organizations under the Act of 2005 or have been included in the Schedule under the Act of 1967.

54. The appellant has not produced any document that his party/ organization CPI (ML) (Naxalvadi) is registered either as National or Regional

party at the central level or at the regional level within the Indian dominion, though he says that the said party is in existence in the State of Kerala,

but there is no evidence that it has been registered under any law. In paras-24 & 25 of his deposition, the appellant says that the documents stored

in his computer whose transcript is part of record and other documents contained letter written by the Central Committee Member of CPI

(Maoist) to its comrades and other letters regarding Maoist" activities in Nepal, Bangladesh, Peru, etc. have been found which he had saved from

the internet. He also admits that in document (Ex. -P/24), information regarding special conference of CPI (Marxist Leninist) is provided. He also

admits that after downloading the materials from the internet, he used to save only those materials which were useful for him and others used to be

deleted and his computer was operated by him only.

55. In Volume III of the paper books which have been prepared from the material stored in the CPU of the computer belonging to the appellant,

minutes of special conference of CPI (ML) People"s War is available. The document contains views of the delegates and formation of new Central

Committee. It speaks of military strategy or path of the Indian Revolution which is the path of protracted people"s war i.e. liberating the

countryside first through area wise seizure of power, establishing guerrilla zones and base areas and then encircling the cities and finally capturing

power throughout the country. The document further declares ""It should be pointed out that destruction of the enemy is the primary object of war

and self-preservation the secondary, because only by destroying the enemy in large numbers can one effectively preserve oneself. Therefore

attack, the chief means of destroying the enemy, is primary, while defence, a supplementary means of destroying the enemy and a means of self-

preservation, is secondary. In actual warfare the chief role is played by defence much of the time and by attack for the rest of the time, but if war is

taken as a whole, attack remains primary."" This document is at page 706 of Volume-III of the paper books. At page 716, list of martyrs of the

people's war of Nepal is provided. Elsewhere in the volume, support provided by the CPI (ML) People's War and MCC from India has been

greeted by the banned Nepali Maoist.

56. Volume-V of the paper books is transcript of the material by the Central Forensic Laboratory stored in the CPU found from the possession of

the appellant which contains the documents regarding building and development of People's Guerilla Army in India at page 1102. The press

release issued by the CPI (Maoist) on 4-12-2004 is available at page 1138. This press release has been issued by ""Ganapati, General Secretary,

Central Committee (Provisional) of CPI (Maoist). The name of this Ganapati is found in two other letters which this Court has already discussed in

the preceding part of this judgment. At page 1141 of Volume V of the paper books, the details of meeting of the Joint Central Committee held in

September, 2004 is provided and the points of differences for the debate in the forth coming Congress of the CPI (Maoist) have been highlighted.

This document is dated 10-10-2005. Elsewhere also, the activities, minutes, points of debate etc. of the meeting of CPI (Maoist), a terrorist

organization as also a banned organization are contained in this volume. In most of the documents, the revolutionary path undertaken by the Maoist

which are popularly known as Naxalites waging Guerrilla war in the interior forest areas of the State has been appreciated and louded. The

appellant claims himself to be a writer and has also published a book namely "A World to Win", the only issue of which was published probably in

the year 2006, though the entire book is conspicuously silent as to the date of publication or the date of printing etc. Neither before nor after this

issue, any other issue of the magazine has ever seen the light of the day and this fact is candidly admitted by the appellant in his examination.

57. To sum up the evidence discussed above, witnesses PW-2 Ramesh Dewangan, PW-6 Santosh Paul and PW-7 Maksudan Paul have admitted

in their case diary statements which they have given without any pressure from the police and this Court has found corroboration from other

witnesses that the appellant used to incite and invite them to join CPI (ML) People's War and CPI (Maoist) Organizations. The volumes of

documents concerning the activities of such organizations have been found in the CPU, transcript of which has been made available by the Central

Forensic Science Laboratory, Hyderabad as discussed above. The documents contain minutes of meeting, points of debate in meeting, letters by

the General Secretary to its comrades, lauding of Terrorist/Naxal/Maoist activities in India, the ultimate goal of Maoist/Naxal of wresting powers

by revolutionary means in India and then the appellant admits that he is a member of CPI (ML) (Naxalvadi), which is not a registered organization

anywhere in India and in fact, he is a member of CPI (ML) People's War and/or CPI (Maoist).

58. This Court cannot restrain itself to make an attempt to consider the issue from different angle. It is true that the appellant was charged for

committing certain offences and the correctness of the judgment is to be tested on the touchstone of the law declared by the Hon<sup>ble</sup> Supreme

Court and the facts of the present case, however, when the offence concerns the Government established by law and a citizen of the country is

accused of committing such offence wherein he is found to have spread hatred and contempt and excited the people to disaffection towards the

Government established by law in India and was possessed of literature wherein the people have been exhorted to engage in armed rebellion and

has also been found to be member of unlawful organization and has assisted the said banned organization in furtherance of their unlawful/terrorist

activity as defined under the Act of 1967, it becomes duty of this Court to peep into the Constitution to find out as to whether after the people of

the country having enacted a constitution for itself no other duty is left and while criticizing the Government, what are the boundaries or limitations

under the constitution which are not guaranteed under Article 19(1)(a) and to find out what other provisions in the Constitution have expectations

from its citizens about their duty for the country.

59. Article 51A inserted by 42nd Constitutional Amendment Act, 1976 defines fundamental duties of the citizen. Clauses (a), (b), (c) (i) of Article

51A of the Constitution provide thus:-

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India; and

(i) to safeguard public property and to abjure violence.

Therefore, it is the duty of every citizen to uphold the sovereignty, unity and integrity of India and safeguard the public property and to abjure

violence and to follow the noble ideals which inspired our national for freedom and respect ideals and institutions, the National Flag and the

National Anthem.

60. In the matter of A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, it has been held by the Hon<sup>ble</sup> Supreme Court that the provisions of

Article 51A, though not enforceable, yet provide a valuable guidance and aid to interpretation and resolution of the constitutional and legal issue. In

a case of doubt, people's wish as expressed through Article 51A can serve as a guide not only for resolving the issues but also for constructing or

moulding the relief to be given by the Courts.

61. In Hon"ble Shri Rangnath Mishra Vs. Union of India (UOI) and Others, while considering the report of Justice J.S. Verma Committee on

operationalization of fundamental duties of citizens"", the Hon"ble Supreme Court has referred to the observations of the Committee in para-4 of its

judgment which says ""Duties are observed by individuals as a result of dictates of the social system and the environment in which one lives, under

the influence of role models, or on account of punitive provisions of law. It may be necessary to enact suitable legislation wherever necessary to

require obedience of obligations by the citizens. If the existing laws are inadequate to enforce the needed discipline, the legislative vacuum needs to

be filled. If legislation and judicial directions are available and still there are violations of fundamental duties by the citizens, this would call for other

strategies for making them operational.

62. This Court sees the provisions of Section 124A IPC, the Act of 2005 and the Act of 1967 have an element of commanding to deter the

citizens of this country to refrain from indulging in sedition and doing or assisting any act of terrorism or by assisting such organizations in their act of

terrorism, as these penal provisions have the effect of upholding and protecting the sovereignty, unity and integrity of India, to safeguard public

property and to abjure violence. Unfortunately, directive principles of State Policy and for that matter even Article 51A is more often pressed into

service by the groups only for protection of environment and like and not for infusing passion or to remind the citizens to uphold and protect the

sovereignty, unity and integrity of India or to defend the country or to safeguard public property and to abjure violence. The rights of a citizen or

for that matter human rights or right of freedom of speech and expression have to be upheld and while enforcing the said rights, valuable guidance

can be sought and our Courts have been doing so, but foreign judgments are based on their own set of laws and their own socio economic and

political situation as well as the level of discipline and patriotism/nationalism of the subjects living in the country. Each nation has its own peculiarity

and demographic composition and its own areas" specific problems. No other country in the world is facing naxal violence of the magnitude which

our country is facing. Promoting an ideology and advocating for different form of Government is always acceptable as it is a valid means of

criticizing the policy of the incumbent Government, however, exciting the people to armed rebellion, promoting contempt and disrespect for the

Government, supporting banned organizations in the act of terrorism is never acceptable in our constitutional set up. Naxal/Maoist"s violence is

spreading in semi urban areas with the help of people who are providing umbrella protection as also encouraging the people to take arms in their

hands and at times by criminally intimidating them, instead of discharging their fundamental duties under Article 51A of the Constitution of India.

The sympathizers of Naxal/Maoist's violence are providing assistance which ultimately strengthens and promotes violence wherein public property

is destroyed and innocent citizens are killed. True it is that the desired developmental activity has not taken place in tribal areas, but at the same

time wherever any large project is contemplated by the Central Government or the Provincial Government, it is attacked by the groups on the

ground that it will finish the identity and culture of tribals or it will have the effect of causing harm to flora and fauna of the area and at the same

time, the Government established by law through democratic means at both levels are being criticized that no development is taking place in tribal

or naxal affected areas. It is common knowledge that the Naxalites are not allowing the roads and bridges to be built in remote areas probably with

a design that it will help in movement of security forces. Even if present is a criminal appeal, yet while testing validity of the appellant's conviction,

consideration has to be in the prevailing condition and context and not merely in abstract terms.

63. The evidence available on record clearly suggest that the appellant was a member of CPI (Maoist) and/ or CPI (ML) People's War and that is

why he was in possession of minutes of the meetings, debates, letters written by the General Secretary etc. and was inviting the witnesses to join

the said organization and was also inciting them to wage armed rebellion/ against the Government established by law. Such act of the appellant is

clearly punishable under Sections 8(1), 8(3) & 8(5) of the Act of 2005 and Sections 18 and 39 (2) of the Act of 1967.

64. On the basis of evidence available on record, this Court has no hesitation in holding that the conviction and sentence passed against the

appellant by the trial Court needs no interference. In the result, the appeal fails and is hereby dismissed.