

Sessions case No.80 of 12.

26.4.13. Accused Cheniram Bora is present.

Heard the submission advanced by the Ld.Addl.P.P and the Ld.counsel for the accused. Perused the documents submitted U/S.173 of Cr.P.C for consideration of charge.

The brief facts of this case is that on 20.11.07 S.I Bhuban Gohain, O/c of Garmur P.S lodged an F.I.R against the accused alleging, inter alia, that on a specific source of information regarding movement of banned ULFA organization at Birinabari, he along with SDPO Majuli along with a troop of CRPF, conducted search into the house of the accused, on 19.11.07 at around 9:30 p.m , recovered a big size gunny bag full of leaflet of banned ULFA organization. It is stated that these leaflet was kept conceal by the accused in his house to instigate people to wage war against Indian Territory by doing conspiracy. It is also stated in the F.I.R that the total numbers of leaflet were 1606 found in the gunny bag. O/C registered Garmur P.S case No.37/07 U/S.120(B)/121 of I.P.C , R/W.Sec.10/13 of U.A(P) Act and endorsed to S.I Biswajit Gogoi to investigate the case.

During the investigation, accused was arrested and on completion of investigation, I/O laid charge sheet against the accused under the abovementioned sections of law. Ld.S.D.J.M(M) took cognizance of the charge sheet and committed the case. As the offence U/S.120(B)/121 of I.P.C is exclusively triable by the court of Session, Ld.S.D.J.M(M) committed the case to the court of Session for trial. On such commitment, this session case is started. Subsequently, Ld.Sessions Judge,

Jorhat, transferred the case to this court for disposal.

Upon hearing both sides and going through the documents submitted U/S.173 of Cr.P.C, I find that at the time of search, accused was not present in his house. 1607 copies of SWADHINATA, the mouthpiece of the banned ULFA organization kept in a gunny bag, were recovered from the house of the accused. Except these, no materials were recovered from the accused that he acted of violence or incited people to imminent violence or does an act intended to create disorder.

In the case of “Indra Das versus State of Assam” reported in 2011 SAR (Criminal) 230 SC, relying the decision in Arup Bhuyan versus State of Assam , in Crl. Appeal No.889 of 2007 which was allowed on 3.2.11, the Hon’ble Apex court held that *“mere membership of a banned organization cannot incriminate a person unless he is proved to have resorted to acts of violence or incited people to imminent violence, or does an act intended to create disorder of public peace by resort to imminent violence. In the present case, even assuming that the appellant was a member of ULFA which is a banned organization, there is no evidence to show that he did acts of the nature above mentioned. Thus, even if he was a member of ULFA it has not been proved that he was an active member and not merely a passive member. Hence, the decision in Arup Bhuyan’s case(supra) squarely applies in this case.”*

In the said Judgment, the Hon’ble Apex court further held that *“Similarly, we are of the opinion that the provisions in various statutes , i.e., 3(5) of*

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

In the present case also, prima facie , there is no materials to show that accused acted of acts of violence or incited people to imminent violence, or does an act intended to create disorder of public peace by resort to imminent violence.

So, hearing both sides and going through the documents submitted U/S.173 of Cr.P.C as well as perusing the Judgment as aforesaid, I am of the view that there is no material for framing charge U/S.120(B)/121 of I.P.C , R/W.Sec.10/13 of U.A(P)Act. Accordingly, accused is discharged. His bail bond stands cancelled. Destroy the seized articles in due course.

Asstt.Sess.Judge,Jorhat.