

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

Crl.A.Nos.475 and 478 of 2019
and
Crl.M.P.Nos.10399 and 10422 of 2019

1.Sadham @ Sadham Hussain
2.Subair ... Appellants/Petitioner in
Crl.A.No.475 of 2019

Abu @ Syed Abuthahir ... Appellant in
Crl.A.No.478 of 2019

Vs

The Superintendent of Police,
National Investigation Agency,
MHA Government of India,
New Delhi/Cochin. ... Respondent/Complainant in
both the appeals

Appeals filed under Section 21 of N.I.A. Act, 2008 against the order passed by the Special Judge for National Investigation Agency Act, 2008, Poonamallee (Special Court for Exclusive Trial of Bomb Blast Cases, Chennai) in Crl.M.P.Nos.320 and 477 of 2018 in C.C.Nos.3 and 5 of 2018 dated 12.07.2019 and may please to pass an order to furnish the statements of L.W.10 to L.W.25 in C.C.No.3 of 2018 to the Appellants in Crl.A.No.475/19 and in CC.No.5/2018 to the Appellant in Crl.A.478/19 after hiding the identity of the said witnesses, pending investigation before the Respondent respectively.

For Appellant .. Mr.A.Raja Mohamed
in both the appeals

For Respondent .. Mr.R.Karthikeyan,
Spl. Public Prosecutor
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

In view of the commonality of the issues involved, both the appeals are taken up together and disposed of by a common judgment.

2.The appellants filed petitions seeking copies of the statements given by L.Ws.10 to 25 invoking Section 207 Cr.P.C. The petitions filed were dismissed on the sole ground that at the earlier point of time, the prosecution filed a petition in CrI.M.P.No.154 of 2018 which was allowed on 26.04.2018 and therefore, in view of the said order having attained finality, the present petitions filed by the appellants are not maintainable. Accordingly, both the petitions were dismissed. Challenging the same, the present appeals are before us.

3.Learned counsel appearing for the appellants would submit that the orders passed are not in conformity with Section 207 Cr.P.C read with Section 17 of the National Investigation Agency Act and Section 44 of the Unlawful Activities (Prevention) Act (UAP Act). The earlier order was passed at the instance of the prosecution and without hearing the appellants. Therefore, the aforesaid orders passed cannot be put against the appellants and instead the trial Court ought to have decided the petitions on merit.

4.Learned Special Public Prosecutor appearing for the respondent would submit that inasmuch as the earlier order was passed by the trial Court which has attained finality, no interference is required.

5.Noting the submissions made, we ask the counsel to produce the copy of the earlier order passed. Accordingly, the order dated 26.04.2018 was produced. On a perusal of the order, we find that the said petition was filed by the complainant and it was ordered without hearing the appellants. In such view of the matter, we are of the view that the subsequent orders on the petitions filed by the appellants on the sole ground that the earlier order having attained finality, merits cannot be gone into and therefore liable to be dismissed cannot be sustained in the eye of law.

6.It is trite any decision of the Court can only be made after affording an opportunity to the other side especially

which has got certain consequences. In such view of the matter, we are of the view that the orders passed by the trial Court cannot be sustained in the eye of law. Accordingly, the same stand set aside and the learned trial Judge is directed to decide the petitions once again on their own merits and in accordance with law, without being influenced by the order dated 26.04.2018. We make it clear that we have not expressed anything on the merits of the case and the learned trial Judge is directed to dispose of the petitions within a period of two weeks from the date of receipt of a copy of this order.

7. In view of the above, both the appeals stand allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Judge,
Special Court under the National investigation Agency Act 2008,
Poonamallee
(Special Court for Exclusive Trial of Bomb Blast Cases)
Chennai.
2. The Superintendent of Police,
National Investigation Agency,
MHA Government of India,
New Delhi/Cochin.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.R.Karthikeyan, Advocate sr.72630, 72631

+4cc to Mr.A.Raja Mohamed, Advocate sr.723079, 72380

CRL.A.Nos.475 and 478 of 2019

rsy(co)
nr 27/08/2019