

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

Criminal Appeal No.651 of 2019
and CrI.M.P.No.13864 of 2019

Khaja Moideen

..

Appellant/Petitioner/Accused No.1

Vs

State represented by
The Deputy Superintendent of Police.
National Investigation Agency,
Kochi

..

Respondent/Respondent/Complainant

Criminal Appeal filed under Section 21 of NIA Act 2008 r/w 482 of Criminal Procedure Code against the order of dismissal passed in CrI.M.P.No.298 of 2019 dated 12.09.2019 by the learned Judge, The National Investigating Agency Act, 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamalee in CC.No.2/18 on the file of the Special Court under the National Investigation Agency Act 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamalee.

For Appellant .. Mr.S.I.A.K. Bagadur Sha

For Respondent .. Mr.R. Prathap Kumar
Addl. Public Prosecutor

JUDGMENT

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

The appellant has been arrayed as an accused in C.C.No.2/2018 on the file of Special Court under the National

Investigation Agency.

2. Admittedly, the appellant was proceeded with after the Sanction Order was passed as well as the recommendation made by the Independent Authorities. During the pendency of the proceedings before the National Investigation Agency, the petitioner moved an application in CrI.M.P.No.298 of 2019 under Section 207 of Criminal Procedure Code, seeking to furnish him a copy of the Sanction Order passed by the competent authority and the report of the Independent Authority constituted under Section 45(2) of the Unlawful Activities (Prevention) Act, 1967.

3. The trial Court dismissed the petition, inter-alia holding that inasmuch as the said recommendation does not form part of the records of the prosecution and also the prosecution is not going to rely upon, there is no question of invoking Section 207 of Criminal Procedure Code. Challenging the same, the present appeal has been filed.

4. Learned counsel appearing for the appellant submits that Section 45 of the Unlawful Activities (Prevention) Act, 1967 contemplates an exhaustive procedure and though the said section speaks of the Report of the Independent Authority, the same has to be taken note of by the Sanctioning Authority before passing the order. What is the nature of the Report and what made in the mind of the Sanctioning Authority are the factors not known to the appellant.

5. The aforesaid provision came into force in pursuance of the observation made in the judgment of the Hon'ble Supreme Court in Shaheen Welfare Association vs Union of India and Others reported in (1996) 2 SCC 616, wherein the Apex Court has held as follows:

"4. It is in this context that we have to consider what relief can be granted to detentes under TADA. In the case of Kartar Singh v. State of Punjab (1994) (3) SCC 569 this Court while considering the validity of Section 20(8) of TADA, has observed that while liberty of a citizen must be zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases like the one under TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of

the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution. It also observed that the invocation of the provisions of TADA in cases, the facts of which do not warrant its invocation, is nothing but sheer misuse and abuse of the Act by the police.

5. Looking to the nature of the crime and the paramount interests of the society this Court held that the conditions imposed under Section 20(8) for the release of TADA undertrials on bail did not violate Articles 14 and 21 of the Constitution. It, however, gave directions for the constitution of Review/Screening committees in each State and at the Center to ensure that the provisions of TADA were correctly invoked in the cases pending before the Designated Courts. The purpose of constituting such committees was to ensure a higher level of scrutiny regarding applicability of the provisions of TADA to the case in point. The need for such committees is amply borne out by the results which have been annexed in the affidavits filed on behalf of the Union of India before us relating to the number of cases so reviewed by the Review Committees where it has been found that the provisions of TADA ought not to have been applied. We are, however, sorry to note that not a single case filed by C.B.I. has been so reviewed although the Review Committee, it is said, has examined all the cases. A more independent and objective scrutiny of these cases by a Committee headed by a retired judge is obviously necessary."

6. The learned counsel for the appellant submits that there is no indication as to when was the investigation document has been placed before the Review Committee and when was the recommendation made ready and when it has been considered to accord sanction. He further submits that the trial Court failed to appreciate the importance of Independent Committee and its

Report regarding sanction. Notwithstanding the fact that the Sanctioning Authority has already been examined, the order passed by the trial Court will have to be set aside and consequently, the appellant has to be given the Report of the Independent Authority.

7. Mr.Karthikeyan, learned counsel appearing for the respondent submits that the respondent itself is not relying upon the said communication, which is an internal communication between the Independent Authority and the Sanctioning Authority. There is no question of complying with the same. In fact, the respondent does not even have a copy of the said recommendation and the Report of the Independent Authority is purely an internal correspondence that took place between the Government and the Independent Authority. Hence the appellant is not entitled to invoke Section 207 of the Criminal Procedure Code as there is no reliance has been made on the said communication by the prosecution.

8. Heard both sides and perused the materials available on record.

9. Admittedly, the prosecution does not rely upon the said documents. It is an internal communication between the Independent Authority and the Sanction Authority. What is required is only the Sanction Order and admittedly, the Sanction Order has already been served on the appellant. Further more, the circumstances under which, the Sanction Order was passed is a matter for evidence. The evidence of Sanctioning Authority is also over and he has been put into cross-examination.

10. We find neither Section 45 of the Unlawful Activities (Prevention) Act, 1967, which merely speaks about the cognizance of the offence nor the observations of the Apex Court, would help the appellant.

11. In such view of the matter, we do not find any merit in the appeal. Therefore, the Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

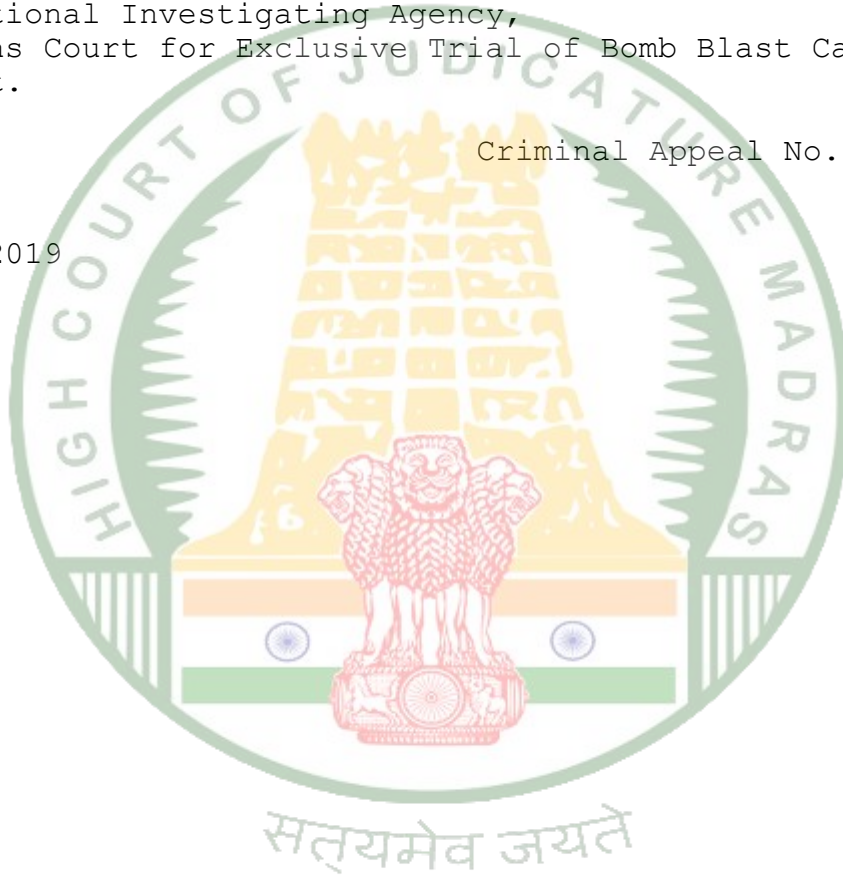
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To

1. The Deputy Superintendent of Police.
National Investigation Agency,
Kochi
2. The Public Prosecutor,
High Court, Madras
3. The National Investigating Agency,
Sessions Court for Exclusive Trial of Bomb Blast Cases,
Chennat.

Criminal Appeal No.651 of 2019

pvs (co)
nr 21/11/2019



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