



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.A(MD) .No.53 of 2010

State Represented by,
The Deputy Superintendent of Police,
Thanjavur Rural,
Papanasam, Thanjavur District.
(Crime No.110 of 2005)

: Appellant / Complainant

Vs.

1.Yogaraj @ Ayyavu

2.Saravanakumar

3.Ilangovan

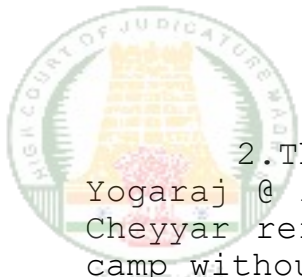
: Respondents / Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C, to set aside the Judgment of acquittal dated 25.05.2009 passed in S.C.No.466 of 2008, by the learned Additional District and Sessions Judge, Fast Track Court No.I, Thanjavur and convict the respondents/accused (A1 to A3) for the charges framed against them.

For Appellant : Mr.A.Robinson,
Government Advocate (Crl.Side)
For R1 : Mr.G.Bhagavath Singh
For R2 and R3 : Mr.T.A.Ebenezer

JUDGMENT

The respondents herein were tried in S.C.No.466 of 2008, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Thanjavur, for the offence under Section 3 of the Unlawful Activities (Prevention) Act, 1967. They were also charged with the offence under Section 3 r/w Sections 25(1A) and 25(1B) of the Indian Arms Act and they were also charged with the offence under Sections 399 and 400 IPC. As against the first accused, there was a further charge under Section 3(2) r/w Section 14 of the Foreigners Act 1946. The respondents pleaded not guilty and claimed to be tried. The prosecution examined as many as 10 witnesses and marked Exs.P.1 to P.19. M.O.1 to M.O.3 were also marked.



2.The case of the prosecution is that the first accused Yogaraj @ Ayyavu is coming from Srilanka and that he was housed in Cheyyar refugees camp. The first accused is said to have left the camp without intimating the camp in-charge. The accused belonged to a banned organisation known as Tamilaga Makkal Viduthalai Iyyakam. While so, on 08.06.2005, in the evening hours, in the New Bus stand in Thanjavur, the police arrested A-1 and A-2 and M.O.1 to M.O.3 were recovered from A-1. A Two-wheeler bearing Registration No.TN-55-F-3810 was recovered from A-2. Based on their confession, the involvement of the third accused came to light and he was also arrested after one year and some offending articles were also recovered from him.

3.The learned Trial Judge noted that even without obtaining the mandatory sanction under Section 45 of the Act, the prosecution came to be laid. In that view of the matter, the prosecution under the Unlawful Activities (Prevention) Act, 1967 was held to be not maintainable. It was also noted that Tamilaga Makkal Viduthalai Iyakkam is not a banned organisation. As regards A-3, recovery was not established. P.W.4 and P.W.5 who were examined to support certain recovery against A-3 turned hostile. As regards A-1, the learned Trial Judge disbelieved the prosecution case. This was because the expert had opined that M.O,1 country pistol was in an unusable condition. In this view of the matter, the learned Trial Judge chose to hold that the prosecution failed to establish the case beyond reasonable doubt and proceeded to acquit them.

4. It is not in dispute that A-2 and A-3 who are citizens of India and who are residing here have not come an adverse notice, subsequently. As regards the first accused, he appears to be Srilankan citizen and had fled to Srilanka.

5.I am of the view that the learned Trial Judge has given sound and convincing reasons for acquitting the respondents/accused. No case has been made out for interference. Accordingly, the Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court No.I, Thanjavur.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Record Keeper,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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sj i
JM/23.09.2019/3P/5C