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CRL.A.No.280 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL.A.No.280 of 2024

and

CRL.M.P.No.4219 of 2024

J.Vivek @ Vivekanandhan

... Appellant

Vs.

State of Tamil Nadu,
Rep. by The Inspector of Police,
CCB, Veppery, Chennai.
Cr.No.369/2017

... Respondent

Prayer: Criminal Appeal filed under Section 21 of National Investigation Agency Act, 2008, to call for the records in CrI.M.P.No.2875 of 2022 in S.C.No.3 of 2022 dated 14.12.2023 on the file of the Principal Sessions Judge of Kancheepuram District at Chengalpattu and set aside same.

For Appellant

: Mr.R.Sankarasubbu

For Respondent

: Mr.S.Raja Kumar
Additional Public Prosecutor



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J U D G M E N T

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[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 14th December, 2023 passed in Crl.M.P.No.2875 of 2023 in S.C.No.3 of 2022.

2. The appellant is the accused in S.C.No.3 of 2022. He moved an application under Section 227 of Criminal Procedure Code seeking discharge. Since the Trial Court rejected the petition, the present criminal appeal came to be instituted before this Court.

3. Mr.R.Sankarasubbu, learned counsel for the appellant would mainly contend that mere speech not resulting into an immediate violence does not attract any of the provisions of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred as 'UA(P) Act']. It is an interview given by the appellant in a private television channel and he answered the questions asked by the anchor during the programme. Since he was answering the questions, he has not committed any offence under any of the provisions registered against the appellant.



4. In order to substantiate the said ground, Mr.R.Sankarasubbu, learned counsel would rely on the judgment of the Hon'ble Supreme Court of India in the case of *S.G.Vombatkere vs. Union of India*¹, wherein, the Apex Court issued directions in realm that "All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of Indian Penal Code (IPC) be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the Courts of the opinion that no prejudice would be caused to the accused".

5. In the present case, mere speech in a television program, more specially, in response to questions posed by an anchor, cannot not be a ground to register a case under UA(P) Act. Therefore, by applying the said principles, the Trial Court ought to have discharged the appellant.

6. The learned counsel for the appellant would submit that the case was registered after a lapse of about three and half months from the date of broadcast of the interview to the private television channel i.e., on 16.07.2014. However, the case was registered on 30.10.2017. He would rely on the judgment of the Constitution Bench of the Hon'ble Supreme Court of

1. W.P.(C).No.688 of 2021 dated 11.05.2022



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India in the case of *Kedar Nath Singh vs. State of Bihar*². Relying on the above judgment, the learned counsel for the appellant would submit that the Trial Court has not considered any of the principles laid down and therefore, the present appeal is to be considered.

7. Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing on behalf of the respondent / Police would strenuously oppose by stating that the speech made by the appellant on a private television channel would attract the provisions of the UA(P) Act. The judgments relied upon by the appellant have no application with reference to the facts. Since the appellant/accused has not denied making the televised statements, he cannot seek discharge but must face trial.

8. That apart, Section 124A and the directions in realm issued by the Apex Court cannot be applied in the facts of the present case, since the case has been registered under UA(P) Act. This position has been clarified by the Hon'ble Supreme Court in the case of *Arup Bhuyan vs. State of Assam and Another*³. That being the factum, the present appeal is to be rejected.

2. 1962 AIR 955

3. (2023) 8 S.C.R. 496



9. We have considered the rival submissions made between to the parties to the *lis* on hand.

10. The Trial Court considered the counter affidavit filed by the prosecution side, which alleged that the appellant / accused is a cadre of the banned CPI (Maoist) Organisation. In his televised interview on Sathyam Television's 'Porali' program on July 16, 2017, at 10:30 hours, the appellant / accused responded to 31 questions from the channel anchor. His responses deliberately and intentionally conveyed hateful and malignant speech against the lawfully established Government. The entire speech in the said interview was in support of the banned organisation CPI (Maoist) and he has instigated the general public to take law into their own hands, and his speech shows his intention to induce the people to disobey law and to cause rioting, public disorder and cause fear amongst general public. The act of the accused would induce any individual to commit offences against the State or Public tranquility or likely to insight any class or community or individual.

11. In the context of the above findings of the Trial Court made based on the counter filed by the prosecution, this Court has to examine, whether speech not resulting in immediate violence is sufficient to invoke the



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provisions of the Unlawful Activities (Prevention) Act, 1967 or not.

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12. Let us examine the provisions of the UA(P) Act. Section 2(o) of UA(P) Act defines “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)”.

13. Section 13 provides “Punishment for unlawful activities” and Sub Section (a) states that “Whoever takes part in or commits or advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine”.

14. With reference to definition under Section 2(o) and the punishment under Section 13(1) it is necessary to consider for this Court, what amounts to “terrorist act”. The terrorist act has been enumerated under Section 15. Sub Section (1) to Section 15 stipulates that “Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror



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in the people or any section of the people in India or in any foreign country”.

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15. Conjoint reading of Sections 13 and 15 would project that likely to threaten the unity, integrity and security would be sufficient for the purpose of invoking the provisions of UA(P) Act. Even the definition to the term “unlawful activity” under Section 2(o) states that an individual or association committing an act or by words, either spoken or written or by signs or by visible representation or otherwise. Thus, the scope of the provisions of the UA(P) Act is wider enough to cover the hate speeches made against the unity, integrity, security, economic security or sovereignty of India with intend to strike to terror or likely to strike terror in the people. Even hate speeches or sign or writings likely to strike terror would be sufficient to prosecute a person.

16. The judgments relied on by the appellant are not only distinguishable with reference to the facts of the present case and have no application, as the appellant has not denied the television interview given to a private channel. Moreover, the counter affidavit filed by the respondents even before this Court would reveal that the speeches led to prosecution.



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17. The Trial Court has rightly considered the scope of discharge petition under Section 227 of Criminal Procedure Code. It is amply made clear that if there is no sufficient ground for proceedings against the accused, then alone he can be discharged, but not otherwise. The case on hand cannot be construed as one that of no sufficient ground, but there are materials available for the purpose of conducting trial.

18. That being so, we do not find any infirmity in respect of the findings arrived by the Trial Court in the impugned order. However, we made it clear that Trial Court may proceed with the trial uninfluenced by the observations made by this Court, if any relating to facts and conclude the trial as expeditiously as possible on merits and by following procedures as contemplated.

19. With these observations, the impugned order dated 14th December, 2023 passed in Crl.M.P.No.2875 of 2023 in S.C.No.3 of 2022 stands confirmed and the Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.]

[M.J.R., J.]



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Index : Yes

Speaking order / Non-speaking order

Neutral Citation : Yes

To

1.The Principal Sessions Judge of Kancheepuram District
Chengalpattu.

2.The Inspector of Police,
State of Tamil Nadu,
CCB, Veppery, Chennai.

3.The Additional Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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