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CRL.A.No.425 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.A.No.425 of 2023

and

CRL.M.P.Nos.9114 of 2023

Suresh Rajan

... Appellant

Vs.

Union of India,
Represented by
The Inspector of Police,
National Investigation Agency,
Chennai.
(RC.No.7/2021/NIA/DLI)

... Respondent

Prayer: Criminal Appeal filed under Section 21 of National Investigation Agency Act, 2008, to set aside the order in Crl.M.P.No.715 of 2022 in Spl.S.C.No.27 of 2022 dated 27.01.2023 on the file of Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai – 56.

For Appellant

: Mr.R.Sankarasubbu



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For Respondent : Mr.R.Karthikeyan
Special Public Prosecutor
[For NIA] Assisted by
Mr.G.Siddi Ramulu
Senior Public Prosecutor [For NIA]

J U D G M E N T

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

Under assail is the judgment dated 27.01.2023 in Crl.M.P.No.715 of 2022 in Spl.S.C.No.27 of 2022 (CC.No.3 of 2021).

2. The petitioner is arrayed as Accused No.2 in Spl.S.C.No.27 of 2022. He moved an application under Section 227 of Criminal Procedure Code to discharge from the charges levelled against him in the chargesheet. The petitioner has allegedly involved in the offences punishable under Sections 120B, 124A, 201 and 505(1)(b) of Indian Penal Code (IPC) and Sections 13(1)(b), 38 and 39 of the Unlawful Activities Act, 1967.

3. Mr.R.Sankarasubbu, learned counsel for the petitioner would strenuously contend that the appellant is no way connected the offences and



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A1 / Mr.Vivek @ Vivekanandan posted some prohibited comments in his Facebook, which resulted in criminal case against the petitioner. The posting in the Facebook had been withdrawn subsequently. Therefore, the appellant is innocent of the allegation and to be exonerated.

4. In support of his contention, he urged by stating that the judgment of the Hon'ble Supreme Court of India in the case of ***S.G.Vombatkere vs. Union of India***¹, is to be taken into consideration, since in the present case the action permissible is only under Section 120A. Thus, the petitioner is to be discharged from the allegations set out in the chargesheet.

5. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing on behalf of the National Investigation Agency would oppose by stating that it is not only a post in the Facebook, which was taken into account. But the petitioner was found to be a member of a terrorist organisation. He was charged for the alleged offence, under Sections 13(1)(b), 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred as “UA(P) Act”]. The Trial Court itself has taken note of the judgment of the Hon'ble Supreme Court in ***S.G.Vombatkere*** case cited *supra* and accordingly made a

1. (2022) 7 SCC 433



finding that no prejudice would be caused to the accused in the event of conducting trial. Therefore, the present appeal is to be rejected.

6. Scope of discharge petition under Section 227 of Criminal Procedure Code cannot be entertained for purpose of appreciation of evidence. The probate value of the evidences are to be taken into consideration by the Trial Court during the course of Trial. Only if no *prima facie* case against the accused is made out, then only the Court will invoke the powers conferred under Section 227 of Criminal Procedure Code.

7. In the present case, the Trial Court elaborately considered the submission of the appellant and made a finding, which reads as under;

“10. (C.W.20), (C.W.21), (C.W.22), (C.W.23), (C.W.24) and (C.W.25) these witnesses speak about the close association of accused A1 Vivek, petitioner / Accused No.2 and Accused No.A3. From the location based analysis it is found that location of accused Vivek, Suresh and Mohan was at B.B.Kulam Kovil Street, Madurai (Lat-9-944444, Long-78.12334 on 14.08.2020 22:00 hours to 15.08.2020 06:00 hours which clearly prove the presence of accused Vivek, Suresh and Mohan at the time of uploading of objectionable post in face book. This had knowingly



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and intentionally uploaded the post in the face book to propagate the Maoist ideology amongst his close friends with the intention of radicalizing recruiting them into the proscribed terrorist organisation CPI (Maoist). He used to post containing the ideology of Maoism to attract youths.”

8. The antecedents of the appellant / A2 has been set out in paragraph 13 of the objections filed by the respondent as under;

<i>Sl.No</i>	<i>Case No.</i>	<i>Remarks</i>
1	Uthangarai Cr.No.1005/2002 U/s 120(B), 147, 148, 332, 307, IPC R/W 25(1)(A) Indian Arms Act Sec 4&5 of Indian Explosive Substances Act and Sec 174 Cr.P.C.	Total 34 accused were arrested, Suresh Rajan (A-4) prosecution trial under progress.
2	Madurai City Tallakulam PS Cr.No.486/13 u/s 110 Cr.P.C dated 13.05.2013	Convicted.
3	Cuddalore District Annamalai Nagar PS Cr.No.196/2018 U/s 124(A), 153(A)(1), 505(2), 120(B), 109 of IPC dated 11.10.2018	Total 3 accused. Suresh Rajan A3, under investigation
4	Coimbatore District, Kattoor PS Cr.No.431/2019, U/s 143, 341 of IPC dated 31.03.2019	Total 96 accused, under investigation
5	Madurai City, K.Pudur, PS Cr.No.33/2020, U/s. 143, 341, 283, 290 IPC dated 10.01.2020	under investigation
6	Madurai City, Tallakulam PS Cr.No.2123/20, u/s 143, 341, 270 of IPC dated 19.10.2020.	under investigation
7	Chennai CCB-I, Cr.No.02/2021 u/s 153(B), 505(1)(b), 505(1)(c), 505(2) of	Total 3 accused Suresh Rajan A-2, under investigation



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Sl.No	Case No.	Remarks
	IPC and 13(1)(b) UA(P) Act, 1967 dated 02.01.2021	
8	Salem District Thevattipatty PS Cr.No.14/2020 u/s 188, 120(B), 121-A, 124A of IPC r/w Sec 10, 13, 15 and 18 of UA(P) Act, 1967 dated 18.01.2020	Suresh Rajan arrested on 18.02.2021 logged into Salem Central Prison.
9	Salem City, Government Head Quarters Hospital PS Cr.No.22/2019 u/s 143, 341, 124(A) IPC	under investigation
10	Hasthampatti PS Cr.No.776/93 u/s 151 Cr.P.C r/w 7(1)(a) CLA Act.	under investigation

9. Regarding the Hon'ble Supreme Court judgment in ***S.G.Vombatkere*** case cited *supra*, the Trial Court found that further adjudication in respect of other sections, which would cause no prejudice to the accused person. Thus, the Trial Court has considered the directions issued by the Hon'ble Supreme Court.

10. The materials considered by the Trial Court in the impugned order would be sufficient for the purpose of proceeding with the trial.

11. Mr.R.Sankarasubbu, learned counsel for the petitioner would submit that the appellant filed an affidavit stating that he will not involve in such activities in future. Such an affidavit *per se* cannot be considered in a



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discharge petition by the High Court. It is for the appellant to participate in the trial and establish his innocence or bona fide with reference to his conduct.

12. In view of the facts and circumstances, we do not find any infirmity or perversity in respect of the findings made in the judgement impugned. Therefore, the same stands confirmed and consequently, the Criminal Appeal is dismissed. Connected Miscellaneous Petition is closed.

[S.M.S., J.] [V.S.G., J.]
02.09.2024

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Index : Yes
Speaking order / Non-speaking order
Neutral Citation : Yes

To

- 1.The District and Sessions Judge,
Special Court under the National Investigation Agency Act, 2008,
Sessions Court for Exclusive Trial of Bomb Blast/POTA Cases,
Poonamallee, Chennai.
- 2.The Inspector of Police,
Union of India,
National Investigation Agency,
Chennai Branch.
- 3.The Special Public Prosecutor,
High Court of Madras,



Chennai – 600 104.

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