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CRL.A.No.1127 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL.A.No.1127 of 2023

and

CRL.M.P.No.16548 of 2023

A.Mohamed Irfan

... Appellant

Vs.

Union of India

Rep. by The Inspector of Police

National Investigation Agency

Chennai

(R.C.No.20/2022/NIA/DLI)

... Respondent

Prayer: Criminal Appeal filed under Section 21(1) of National Investigation Agency Act, 2008, to set aside the order passed in Criminal M.P. No. 717 of 2022 dated 07.07.2023 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai as illegal.

For Appellant : Mr.I.Abdul Basith

For Respondent : Mr.R.Karthikeyan - Special PP (NIA)



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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 7th July, 2023 passed in Crl.M.P.No.717 of 2022 in Special S.C. No. 2 of 2022 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamalee, Chennai.

2. The appellant is an accused No.3. On 21.02.2022, an FIR was registered by the State Police in Crime No. 165 of 2022 under Section 148, 506 (ii) of IPC read with Section 28 of the Arms Act, 1959. Thereafter, the Government of India, Ministry of Home Affairs, CTCR Division vide its order dated 29.04.2022 in exercise of the powers conferred under Section 6(5) read with Section 8 of the National Investigation Agency Act, 2008, directed the National Investigation Agency to take up the investigation. Accordingly, the case registered by the State Police was re-registered as FIR in RC No.20/2022/NIA/DLI dated 30.04.2022 under Section 148, 506 (ii) IPC read with Section 13, 38, 39 of Unlawful Activities (Prevention) Act, 1967 and Section 28 of Arms Act, 1959. Consequently, the appellant was



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arrested by the respondent Police. Investigation completed and charge sheet filed. The Trial Court took cognizances and the case was numbered as Special S.C. No. 2 of 2022. The appellant preferred Discharge Petition under Section 227 of Code of Criminal Procedure.

3. Mr.I.Abdul Basith, learned counsel for the appellant would mainly contend that there is no material available on record to charge the appellant under Sections 18 and 39 of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred as 'UA(P) Act']. The State Police originally registered an FIR which was subsequently transferred to National Investigation Agency. The National Investigation Agency in the absence of any material implicated the appellant as accused No.3 despite the fact that *prima facie* offence has been made only against the A1 and A2 in the criminal case. In order to substantiate the said arguments, the learned counsel for the appellant would solicit our attention with reference to Arms recovered, which is an Air gun and to possess the same no license is required under the Arms Act.

4. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing on behalf of the NIA would oppose by stating that sufficient evidences are



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collected so as to implicate A3 and A4 in the criminal case protected witnesses have given statements and the statements of the protected witness would reveal that *prima facie* case has been made against the appellant for conducting trial. The allegations in charge sheet has been relied on by the Prosecutor so as to establish that the appellant has involved in the commission of offence under UA(P) Act. Thus, the appeal is to be rejected.

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

6. It is not in dispute that the case was initially registered on the basis of the written complaint of G.Arivazhagan, Sub-Inspector of Mayiladuthurai Police Station, by P.Selvam, Inspector of Police, Mayiladuthurai Police Station. Crime No. 165 of 2022 was registered on 21.01.2022 against 5 accused persons viz., (A-1) Sathik Batcha, (A-2) Mohamed Ashiq, (A-3) Mohamed Irfan, (A-4) Jegabar Ali and (A-5) Rahamathullah under Sections 148, 506 (ii) of IPC read with 28 of Arms Act, 1959.

7. Subsequently, the Government of India issued an order and



consequently, National Investigation Agency launched their investigation.

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8. We have gone through the charge sheet filed in Special S.C. No. 2 of 2022 regarding the allegations against the appellant/A3. It is relevant to consider Para 17.22 of the charge sheet, which reads as under:-

“17.22 Investigation revealed that in continuation of their conspiracy, accused A-1 and A-2 along with other accused persons namely Mohamed Irfan (A-3) and Rahamathulla (A-5) were at Tamil Nadu Haj Services Society, No.3, Demellows Road, Choolai, Chennai-600112 (Latitude:13.09336738; Longitude: 80.26793649) during the period 23.01.2022 to 19.02.2022. During that period, the main conspirators accused A-1 and A-2 met with the co-conspirators, Mohamed Irfan (A-3) and Rahamathulla (A-4) and the room No.405 was booked in the name of Mohamed Ashiq (A-2) for conducting conspiracy meetings.”

In the context of the above allegations in the charge sheet, the learned Special Public Prosecutor furnished the statement of protected witness and we had at the benefit of reading the statement of the said protected witness.



The witness also speaks about the allegations and discussed how Khilafah Party of India name can be used in hood wing the police instead of ISIS. The moto of Khilafah Party of India was to establish Islamic Rule in India by over throwing the present Government set up. The idea for establishing an Islamic Rule were also discussed between the accused persons and spelled out in the statement of the protected witness.

9. This Court cannot appreciate the statement made by the protected witness or the allegations set out in the charge sheet. The scope of Section 227 of the Code of Criminal Procedure is limited and if upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Therefore, the Courts have to find out whether there is any *prima facie* material available on record to get along with the trial against the accused persons.

10. In the context of the facts revealed, the Special Court considered the



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nature of charges and formed an opinion that the respondent has obtained a sanction in order to prosecute under Section 120 B of IPC besides Sections 18 and 39 of UA(P) Act 1967.

11. Regarding the sufficiency of grounds to proceed with the trial, the trial Court made a findings that the final report goes to show that LW1 to LW8 speaks about the involvement of the appellant in the commission of the offence. LW50 speaks about the confession statement of the appellant and other accused No.2. LW60 speaks about the search at the residence of the appellant. LW62 speaks about the search and seizure, LW77 speaks about the social media extraction, LW78 speaks about the search, and LW99, 102 & 107 speaks about the role of A1 to A3. Document Nos. 2, 39, 45 and 47 speaks about the search and seizures of incriminating articles, Document Nos. 55 and 71 speaks about the conspiracy. Material objects 24 and 25 mobile phone was seized from the house of the appellant.

12. The trial Court rightly formed an opinion that charge under Section 120B of IPC would be proved only when all the witnesses have been examined by the prosecution with the available evidence against the



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appellant.

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13. In view of the above findings and having gone through the nature of materials available on record, we are satisfied that prosecutable materials are available against the accused person to get along with the trial.

14. Thus, we do not find any reason to interfere with the order of the Special Court, which is impugned in the present criminal appeal and accordingly, the same stands confirmed and this criminal appeal stands dismissed. However, the trial Court may proceed with the trial uninfluenced by the observations made in this order, if any relating to the facts. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [M.J.R., J.]
20.11.2024

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



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To

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1. The Special Court
under the National Investigation Agency
Act, 2008, Sessions Court for Exclusive
Trial for Bomb Blast Cases Chennai
Poonamallee.
2. The Inspector of Police,
National Investigation Agency,
Chennai.
3. The Special Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

Maya

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against
Criminal M.P. No. 717 of 2022
in Special S.C. No. 2 of 2022

Dated : 20.11.2024