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Crl.A.No.1147 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.1147 of 2023
and
Crl.M.P.No.16751 of 2023

Hameed Aspar @ Hameed Asfar @ Aspar

... Appellant

Vs.

Union of India Rep. by
The Inspector of Police,
National Investigation Agency, Chennai.
(R.C.No.01/2019/NIA/DLI)

... Respondent

Prayer :- The Criminal Appeal filed under Section 21(1) of National Investigation Agency Act, 2008, is filed to set aside the order passed in Crl.M.P.No.840 of 2023 dated 28.08.2023 on the file of the Hon'ble Special Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai as illegal.

For Appellant : Mr.I.Abdul Basith

For Respondents : Mr.R.Karthikeyan,
Special Public Prosecutor for NIA,
assisted by
Mr.G.S.Siddi Ramulu,



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Senior Public Prosecutor for NIA.

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JUDGMENT

(Order of the Court was delivered by S.M.Subramaniam J.)

Under assail is the judgment dated 28.08.2023, passed in Crl.M.P.No.840 of 2023 in Spl.S.C.No.25 of 2022 (C.C.No.1 of 2021)

2. The 7th accused is the petitioner before us. A discharge petition under Section 227 Cr.P.C. was instituted before the Special Court which was rejected, resulted in filing of the present criminal appeal before this Court.

3. The learned counsel for the petitioner Mr.I.Abdul Basith would mainly contend that no lethal weapons have been recovered during the course of investigation nor any prohibited materials were recovered from the petitioner. In the absence of any such recovery of weapons, the charge framed against the petitioner under Section 15 r/w 18 of the Unlawful Activities (Prevention) Act, 1967 is untenable.

4. Mr.I.Abdul Basith would further contend that there is no material available on record to implicate the petitioner (A-7). Usage of Whatsapp in



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the mobile phone, per se would not constitute an offence under the Unlawful Activities (Prevention) Act, 1967, and therefore, the petitioner was wrongly implicated in the criminal case and therefore, the Trial Court has committed an error in dismissing the discharge petition. The learned counsel for the petitioner would contend that charges are vague and not specific. Therefore, the Trial cannot be proceeded with and the petitioner is entitled to be discharged on the ground that the charges are vague.

5. Mr.R.Karthikeyan, learned Special Public Prosecutor, appearing on behalf of the respondent would strenuously oppose by stating that incriminating materials are available to implicate the petitioner in the case registered under the Unlawful Activities (Prevention) Act, 1967. Role of the petitioner/ A-7 in the charge sheet reads as under:

“Role of A-7 in Charge Sheet:

<i>A7-Hameed Aspar</i>	<i>Para 17.1, 17.3, 17.5, 18.7</i>	<i>120B, 153A, 121A & 122 IPC and 13 & 18 of UA(P) Act 1967</i>
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<i>Accused</i>	<i>List of Witness Speak</i>	<i>Documents</i>	<i>Mo's</i>
<i>A7-Hameed Aspar</i>	<i>LW-1 to 9, LW-35, LW-36, LW-48, LW-49, LW-61 and LW-64</i>	<i>D-95, D-99, D-100, D-118</i>	<i>MO-28, MO-29 and MO-42.</i>

The above said LWs, Documents and MOs reveal that the accused is involved in the conspiracy to the



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preparatory to terrorist act along with other accused

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Thus, it could be seen that there are prima facie materials against the appellant herein to frame charges and hence the averments to the contrary are hereby denied.”

6. The statement of LW1 under Section 161(3) Cr.P.C. would reveal about the active participation of the petitioner and his involvement in commission of crime under Unlawful Activities (Prevention) Act, 1967. The said statement reveals that the accused persons, in the house of Mr.Mohammed Rifas (A2), met frequently and attempted to make arrangements for collection of donation for waging war against India and to disrupt the communal harmony. When specific statements are available and materials are recovered from the accused persons, the petitioner has to face the trial and thus, the Trial Court has rightly rejected the discharge petition.

7. Section 15 of the Unlawful Activities (Prevention) Act, 1967 defines: **"Terrorist Act"**. Sub Section (1) of Section 15 of the Act indicates that *“whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or*



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with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,”— by using the modes stipulated in sub-clauses. Therefore, it would be sufficient that an element of likely to threaten the unity, integrity, security, sovereignty is established for the purpose of prosecuting a person.

8. Section 18 provides ***“Punishment for conspiracy, etc.”***— which states that *“Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”* Therefore, Section 18 also unambiguously stipulates that attempt to commit or advocates or preparatory to the commission of a terrorist act would be sufficient for the purpose of imposing punishment under Section 18.

9. Therefore, the contention of the petitioner that recovery of lethal weapon or fire-arm is to be made for invoking the provision of Unlawful Activities (Prevention) Act, 1967, is not in consonance with the spirit of the



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provisions as elaborated above and such a contention therefore, stands rejected.

10. The Trial Court has elaborately considered the materials collected during the investigation by the respondents and considered the scope of Section 227 of Cr.P.C. relying on the judgments of the Hon'ble Supreme Court of India in the case of *Union of India Vs. Prafulla Kumar Samal*¹ and the case of *Sajjan Kumar Vs. Central Bureau of Investigation*². The principles laid down by the Apex Court in *Sajjan Kumar's case* (supra) was also applied with reference to the grounds raised by the petitioner before the Trial Court. The Trial Court formed an opinion that there are sufficient grounds against the petitioner and there is no prima facie case to proceed with the accused.

11. We do not find any infirmity or perversity in respect of the findings made and the decision arrived at by the Special Court. Thus, the present Criminal Appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

1. (1979) 3 SCC 4

2. (2010) 9 SCC 368



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12. However the Trial Court shall proceed with the trial uninfluenced by the observations, if any made, with reference to the facts in the present order.

(S.M.S.J.,)

(V.S.G.,J.)

04.09.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

1. Special Court for Exclusive Trial for Bomb Blast Cases Chennai,
Poonamallee, Chennai.
2. The Inspector of Police,
National Investigation Agency,
Chennai.
3. The Public Prosecutor,
High Court of Madras.



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S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

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