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Crl.A.No.1599 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2024

PRONOUNCED ON : 13.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.1599 of 2023

and

Crl.M.P.No.19654 of 2023

1.Duraisingavel @ Velu @ Durai @ Maran @ Ramesh Kumar
@ Nathan @ Seeralan @ Gowtham

2.Bharathi @ Ragini ...Appellants/Respondents/A22 & A27

vs.

The State represented by the
Deputy Superintendent of Police,
'Q' Branch CID,
Dharmapuri

...Respondent/Petitioner/Complainant

Prayer: Criminal Appeal filed under Section 34 of POTA Act, to call for the



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records in Impugned Order Crl.M.P.No.1810 of 2023 in Spl.S.C.No.3 of 2022 dated 9.11.2023 on the file of Spl.Court under POTA Act 2002 (Sessions Court for the Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai – 600 056.

For Appellants : Mr.R.Sankarasubbu
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by
Mr.C.Aravind

JUDGMENT

The accused/A22 and A27 are facing trial before the Special Court under the Prevention of Terrorism Act (POTA), 2002 (Sessions Court for Exclusive Trial of Bomb Blast Cases) in Chennai at Poonamalle, Chennai, under Sections 148, 333, 307, 333 r/w 149 IPC, 307 r/w 149 IPC, 120(B) IPC r/w 3(2) (b) of the Prevention of Terrorism Act 2002, 25(1-B) (a) of the Arms Act 1959, 3 (3), 3 (5), 4(b), 22(1) of the Prevention of Terrorism Act, 2002.

2. The prosecution had filed Crl.M.P.No.1810 of 2023 in Spl.S.C.No.3 of 2022, stating that they had to examine nine additional witnesses and mark three documents in support of their case that were not part of the documents



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furnished to the accused under Section 207 of the Code of Criminal Procedure.

The accused, including the appellants, who are arrayed as A22 and A27, opposed the said petition, stating that the petition filed by the prosecution twenty years after the occurrence should not be entertained as it is vexatious and the defence of the accused would be prejudice.

3. The learned trial Judge found that the Court is empowered under Section 311 of the Code of Criminal Procedure, 1973, to summon any witness, and permit the prosecution to file additional documents, and allowed the petition.

4. Mr.R.Sankarasubbu, the learned counsel for the appellants, submitted that though this Court had specifically passed orders, the prosecution is proceeding to examine additional witnesses and the serious prejudice caused to the accused by the examination of additional witnesses and the marking of new documents, and hence, prayed for setting aside the order of the Trial Court.



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5(i). Mr.E.Raj Thilak, the learned Additional Public Prosecutor, *per contra*, submitted that out of the nine witnesses, two witnesses are no more; and that two witnesses were examined even before this Court had passed an order on 20.12.2023 and filed a counter stating the above facts.

(ii) The learned Additional Public Prosecutor appearing for the respondent/State, also submitted that only three witnesses have to be examined and no prejudice would be caused to the accused.

6. We have carefully considered the rival submissions on either side.

7. Section 311 of the Code of Criminal Procedure, 1973, permits any Court to summon any witness at any stage of the trial if it appears to the Court that it is essential for the just decision of the case. Section 311 of the Code of Criminal Procedure, 1973, reads as follows:



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“311. Power to summon material witness, or examine person present-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. Therefore, the Court has the power to summon any additional witnesses. The very fact that these witnesses are sought to be summoned twenty years after the occurrence cannot be the reason for rejecting the prayer of the prosecution. It is needless to say that the accused have the right to cross-examine these witnesses. No prejudice would be caused to the accused if additional witnesses are summoned. Further, we find that out of nine witnesses, two have already been examined, two are no more, and only three more witnesses have to be examined.

9. In these circumstances, we are of the view that the summoning of the additional witnesses is in accordance with the law, and no prejudice would be



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caused to the accused. In such a view of the matter, we find no merit in the instant appeal, and the same is liable to be dismissed.

10. Accordingly, this Crl.A.No.1599 of 2023 is dismissed. The order in Crl.M.P.No.1810 of 2023 in Spl.S.C.No.3 of 2002 on the file of the Special Court under the Prevention of Terrorism Act (POTA) 2002 (Sessions Court for Exclusive Trial of Bomb Blast cases) Chennai at Poonamallee, Chennai – 56, is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

(M.S.R.,J.) (S.M.,J.)
13.02.2024

Internet : yes

Neutral Citation : yes/no
dk

Copy to:

1. The Special Court under POTA Act 2002,
(Sessions Court for Exclusive Trial of Bomb Blast cases)
Poonamallee,
Chennai – 600 056.
2. The Deputy Superintendent of Police,
'Q' Branch CID,
Dharmapuri
3. The Public Prosecutor



High Court of Madras
Chennai – 600 104.



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**M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
dk**

Pre-delivery Judgment in
Crl.A.No.1599 of 2023
and
Crl.M.P.No.19654 of 2023



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