



WEB COPY



Crl.A.No.1663 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1663 of 2023

Duraisingavel @ Velu @ Durai @
Maran @ Rameskumar @ Nathan @ Seeralan
@ Gowtham ... Appellant

vs.

The State represented by
Deputy Superintendent of Police,
'Q' Branch,
Dharmapuri, Dharmapuri District.
(Uthangarai PS.Cr.Nos.1004/2002,
1005/2002, 1006/2002 and
Kallavi PS.Crime No.434 of 2002) ... Respondent/complainant

Criminal Appeal filed under Section 34 of Prevention of Terrorism Act (POTA) 2002, to set aside the order in Crl.M.P.No.2260 of 2023 in Spl.S.C.No.3 of 2022 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, to secure the ends of justice.



Crl.A.No.1663 of 2023

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

This Criminal Appeal is preferred to set aside the order in Crl.M.P.No.2260 of 2023 in Spl.S.C.No.3 of 2022 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.

2. The petitioner is arrayed as Accused No.22 and facing trial in Spl.S.C.No.3 of 2022 for the following charges:

- (i) Section 3(5) of POTA Act, 2002;
- (ii) Section 120B of IPC r/w Section 3(2)(b) of POTA Act, 2002;
- (iii)Section 4(b) of POTA Act, 2002;
- (iv) Section 3(3) of POTA Act, 2002;
- (v) Section 22(1)(a) r/w Section 22(5) of POTA Act, 2002 or an alternative charge of Section 387 of IPC;
- (vi)Section 25(1-B)(a) of POTA Act, 2002 r/w Section 3 of Arms Act, 1959;
- (vii)Section 307 of IPC;



WEB COPY



Crl.A.No.1663 of 2023

- (viii) Section 333 of IPC;
- (ix) Section 148 of IPC;
- (x) Section 307 of IPC r/w Section 149 of IPC;
- (xi) Section 333 of IPC r/w Section 149 of IPC;
- (xii) Section 353 of IPC r/w Section 149 of IPC; and
- (xiii) Section 148 of IPC.

3. The prosecution filed a petition under Section 285 of Cr.P.C., to appoint a Commission to visit the house of a witness i.e., LW218, who had accorded sanction for the prosecution of the accused on the ground that he was suffering from motor neuron disease and unable to walk and travel and that he had lost his speech.

4. The accused filed counter opposing the said petition stating that the witness had only produced a private Doctor's certificate which cannot be the basis to hold that he is suffering from any serious disease warranting appointment of a Commission.

5. The trial court found that the prosecution had shown that the witness is suffering from loss of speech, unable to walk and he is aged 73



Crl.A.No.1663 of 2023

years. The trial Court further held that the witness had only accorded sanction on the basis of records and there is no necessity to identify the accused by the witness. Hence, the trial Court issued warrant of Commission to the Chief Metropolitan Magistrate, Egmore.

6. The learned counsel for the appellant/A22 reiterated the averments made in the counter filed before the trial Court and submitted that the certificate of a private doctor ought not to have been accepted by the trial Court.

7. Therefore, when the case came up for hearing on an earlier occasion, we directed the respondent to obtain a certificate from medical practitioner attached to Government Hospital, certifying the medical ailment of the witness LW218.

8. Today, the respondent has filed an affidavit enclosing the certificate issued by a doctor attached to Institute of Cardiology, Rajiv Gandhi Government General Hospital and Madras Medical College,



Crl.A.No.1663 of 2023

Chennai. The certificate reads as follows:

“This is to certify that Mr.Munir Hoda IAS 73 years old male, has been suffering from Motor Neuro Disease, as per his records and clinical observation.

He is unable to walk without support and he has also lost his speech as the disease has progressed.

He is not in a position to travel.”

9. Hence, we are convinced that the witness who is 73 years old is suffering from a disease which would not enable him to travel and depose before the trial Court. At this juncture, the learned counsel for the appellant/A22 submitted that the witness is suffering from 'Dementia' and therefore, incompetent to be a witness. We find however that the medical certificate does not reveal that he is suffering from such an ailment.

10. Section 284 of the Cr.P.C., provides for issuance of Commission for examination of witness, if the Court finds that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience.



Crl.A.No.1663 of 2023

WEB COPY

11. The medical condition of the witness reveals that he cannot be procured without inconvenience. Therefore, the discretion exercised by the trial Court to issue a Commission for the examination of the witness LW218 cannot be faulted with. Hence, we find no merits in the instant Criminal appeal and the same is liable to be dismissed.

12. Accordingly, the instant Criminal Appeal is dismissed. The order in Crl.M.P.No.2260 of 2023 in Spl.S.C.No.3 of 2022 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.

[M.S.R.,J.] [S.M.,J.]
01.02.2024

Index : yes/no
Neutral citation : yes/no
ars



Crl.A.No.1663 of 2023

WEB COPY

To
1. The Deputy Superintendent of Police,
'Q' Branch,
Dharmapuri, Dharmapuri District.

2. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.1663 of 2023

M.S.RAMESH, J.

and

SUNDER MOHAN,J.

ars

CrI.A.No.1663 of 2023

01.02.2024



WEB COPY



Crl.A.No.1663 of 2023