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Madras High Court

Krishnakumar @ Kanthan vs State Represented By on 21 June, 2022

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CRL.A.(MD).No.359 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.06.2022

PRONOUNCED ON : 21.06.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.359 of 2018

and

CrI.M.P.(MD)Nos.6343 to 6345 of 2018

1.Krishnakumar @ Kanthan

2.Rajendran

3.Subaskaran @ Jeevan @ Raja @ Prabha

.. Appellants/Accused Nos.1, 2 and 4

Vs.

State represented by

The Additional Superintendent of Police,

Q Branch Crime Investigation Department,

Tirunelveli Range,

Ramanathapuram Range(Incharge),

(In Crime No.1 of 2015).

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under [Section 374](#) Cr.P.C, to call for the judgment dated 28.04.2018 made in S.C.No.7 of 2016, on the file of the learned Principal District and Sessions Judge, Ramanathapuram and set aside the same.

For Appellants : Mr. Mr.T.Lajapathi Roy
for Mr.T.Thirumurugan
for A.1 and A.3
: No Appearance for A.2

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CRL.A.(MD).No.359 of 2018

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

The Criminal Appeal is directed against the judgment of conviction and sentence imposed on the appellants/accused – A.1, A.3 and A.4 in S.C.No.7 of 2016, dated 28.04.2018, on the file of the Principal District and Sessions Court, Ramanathapuram.

2. The case of the prosecution is that on 20.07.2015 at 08.30p.m., on receiving a secret information about the movement of LTTE cadres, Q Branch CID Inspector Kennedy and his party organised vehicle check up at Uchipuli bus stand, that the said police party intercepted a white TATA Indigo Car bearing Registration No.TN-07-BK-3574 proceeding from Ramanathapuram towards Rameswaram and found the first accused – Krishnamumar and the third accused – Rajendran seated in the car and the second accused – Sasikumar was on the wheel, that during the search, 75 Cyanide capsules, 600grams chemicals meant for manufacture of cyanide, 4 GPS, 6 mobile phones, Indian Currency of Rs. 46,200/-, Sri Lankan currency of Rs.19,300/-, one sovereign gold chain, Sri Lankan National ID card, one ATM card of IOB, Driving licences issued at India and Sri Lanka were seized from the possession of the first accused Krishnakumar, that two mobile phones, SBI passbook, Voter ID card and Aadhar <https://www.mhc.tn.gov.in/judis> Card along with the TATA Indigo Car were recovered from the second accused Sasikumar, that one mobile phone was seized from the third accused Rajendran and that the Inspector of Police Kennedy preferred a special report and produced the accused along with the seized items to the Inspector of Police – S.K.Ramesh, Q Branch CID, Ramanathapuram District and on that basis, FIR came to be registered in Cr.No.1 of 2015 for the offences under [Sections 10\(a\)\(i\)](#), (iv) and 38(1) of the [Unlawful Activities \(Prevention\) Act, 1967](#), [Section 3\(a\)](#) r/w 12(1)

(a) of the Passport Act, 1967, Section 3 and 14(c) of the Foreigners Act 1946, Section 6 of the Poisons Act, 1919 and Section 419 I.P.C.

3. It is the further case of the prosecution that the Inspector of Police, Trichy Q Branch CID had conducted a search at the residence of the first accused – Krishnakumar at No.5, 1st Main road, Renga Nagar, K.K.Nagar, Trichy-21 on 21.07.2015 at about 16.00hours and seized driving licence, Sri Lankan Passport, Karur Vysya Bank passbook, Aadhar card, photos of Prabhakaran and Thileeban, certificate issued to the first accused in the name of Kanthan for visiting Mullivaikkal Muttram at Thanjavur along with Laptop, two DVD and camera memory card.

4. It is the further case of the prosecution that the first accused in his confession had disclosed about the fourth accused Subhaskaran @ Jeevan @ <https://www.mhc.tn.gov.in/judis> Raja @ Prabha who was allegedly helping in transacting the funds collected through illegal means from the sympathizers of LTTE living in foreign countries, that the said fourth accused Subhaskaran was arrested on 25.07.2015 at 23.00hours and during the course of search, two cell phones, Indian Currency of Rs.10,355/-, Naam Tamilar Katchi visiting card containing photos of Prabhakaran and Seeman, one pen drive, one 8 GB memory card, two sim cards, one black colour diary and non-camp refugee certificate, route map showing their rival camps in Sri Lanka, Hit list containing the names of Sri Lankan Tamil leaders, note books and a travel bag were seized, that the fourth accused Subhaskaran was an active cadre in LTTE and well trained by the LTTE in weapon handling, that the Q branch CID, Chennai City police had conducted a search at the residence of the fourth accused-Subhaskaran at No.1/145, Bajana Kovil Street, Uthandi, Chennai on 26.07.2015 and that two hard discs, one electronic travel ticket, birth certificate, aadhar card, one hand written article on the history of Eelam, 10 pages printed article on the history of Eelam, diary, Karur Vysya Bank transaction receipts, photo copy of the Qatar National ID Card were seized.

5. It is the further case of the prosecution that their investigation revealed that the accused A.1, A.4, A.5 and A.6 had conspired together with an intention to carry out effective attacks in Sri Lanka by reviving the LTTE and eliminate <https://www.mhc.tn.gov.in/judis> rival groups, that in pursuance of their conspiracy, they had procured arms and cyanide capsules and also prepared to leave India for Sri Lanka through illicit ferry and enact their sinister plan in Sri Lanka, that they have obtained necessary sanction of prosecution under Section 45(1) of the Unlawful Activities (Prevention) Act, 1967 from the Principal Secretary to Government, Home Department, Secretariat, Chennai, vide G.O.(4D), Nos.4 and 5 dated 07.01.2016 for prosecuting the accused A.1, A.4, A.5 and A.6 for the offences punishable under Sections 10(a)(i) and (iv) of the Unlawful Activities (Prevention) Act, 1967 and 38(1) of the Unlawful Activities (Prevention) Act, 1967, separately and also the sanction of prosecution has been obtained from the District Collector, Ramanathapuram, vide proceedings dated 09.01.2016 for prosecuting the accused A.1, A.3, A.4 and A.5 for the offences punishable under the Passports Act 1967 and that after completing the investigation, final report has been laid before the Principal District and Sessions Court, Ramanathapuram.

6. After filing of the charge sheet, the case was taken on file in S.C.No.7 of 2016, on the file of the Principal District and Sessions Court, Ramanathapuram and that since the accused A.5 and A.6 were absconding, the case as against them were ordered to be split up as S.C.No.15 of 2016 and NBWs were pending against them.

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7. After complying with the necessary legal formalities, charges were framed against the accused. During the trial, the prosecution had examined 71 witnesses as P.W.1 to P.W.71, exhibited 85 documents as Exs.P.1 to P.85 and marked 66 M.Os as M.Os 1 to 66. Thereafter the accused were questioned under Section 313 Cr.P.C., regarding the incriminating evidence found against them and they have denied the same. The accused have examined three witnesses as D.W.1 to D.W.3 and adduced no documentary evidence. The learned Principal Judge, Ramanathapuram, on considering the evidence adduced and also on hearing the arguments of both sides, has passed the impugned judgment on 28.04.2018 convicting them as detailed herein:

“Convicting the 1st Appellant Under Section 120 (b) of Indian Penal Code and sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo Simple Imprisonment for two weeks convicting him for the offence Under Section 10 (a) (i) and (iv) of the Unlawful Activities (Prevention) Act 1967 and sentenced to undergo Rigorous Imprisonment for the period of two years and to pay fine of Rs.2,000/- in default to undergo Rigorous Imprisonment for the period of two weeks convicting him for the offence U/s. 38 (1) of Unlawful Activities (Prevention) Act, 1967 and sentenced to undergo 10 years and to pay a fine of Rs.30,000/-

and in default to undergo Rigorous Imprisonment for one Year convicting him U/s. 3 r/w. 12 (1)(a) of the Passport Act, 1967 and sentenced to undergo Rigorous Imprisonment for the period of 2 years and to pay a fine of Rs.5,000/- and in default to <https://www.mhc.tn.gov.in/judis> undergo Rigorous Imprisonment for one month convicting him U/s. 14 (c) of the Foreigners Act, 1946 and sentenced to undergo Rigorous Imprisonment for the period of 5 years and to pay a fine of Rs.7,000/- and in default to undergo Rigorous Imprisonment for 1 month and convicting him U/s. 6 of Poison Act 1990 and sentenced to undergo 3 months Simple Imprisonment and to pay a fine of Rs.500/- and in default to under to 2 Weeks Simple Imprisonment; Convicting the 2nd Appellant Under Section 120 (b) of Indian Penal Code and sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo Simple Imprisonment for 2 Weeks and U/s. 12 (1) (a) of the Passport Act, 1967 and sentenced to undergo Rigorous Imprisonment for the period of 2 years and to pay a fine of Rs.5,000/- and in default to undergo Rigorous Imprisonment for 1 month and convicting him U/s. 14 (c) of the Foreigners Act, 1946 and sentenced to undergo Rigorous Imprisonment for the period of 5 years and to pay a fine of

Rs.7,000/- and in default to undergo Rigorous Imprisonment for 1 Year; Convicting the 3rd Appellant Under Section 120 (b) of Indian Penal Code and sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo Simple Imprisonment for 2 Weeks and convicting him for the offence Under Section 10 (a)

(i) and (iv) of the [Unlawful Activities \(Prevention\) Act](#) 1967 and sentenced to undergo Rigorous Imprisonment for the period of 2 years and to pay fine of Rs.2,000/- in default to undergo Rigorous Imprisonment for the period of 2 Weeks convicting him for the offence U/s. 38 (1) of Unlawful Activities <https://www.mhc.tn.gov.in/judis> (Prevention) Act, 1967 and sentenced to undergo 10 years and to pay a fine of Rs.30,000/- and in default to undergo Rigorous Imprisonment for 1 Year convicting him U/s. 3 r/w. 12 (1) (a) of the [Passport Act, 1967](#) and sentenced to undergo Rigorous Imprisonment for the period of 2 years and to pay a fine of Rs.5,000/- and in default to undergo Rigorous Imprisonment for 1 month and convicting him U/s. 14 (c) of the [Foreigners Act, 1946](#) and sentenced to undergo Rigorous Imprisonment for the period of 5 years and to pay a fine of Rs.7,000/ and in default to undergo Rigorous Imprisonment for 1 month.”

8. The learned Counsel for the appellants would submit that the prosecution has neither cited nor examined any independent witnesses to substantiate the main contentions relating to the occurrence and the involvement of the accused persons and that the learned trial Judge has failed to consider the above main aspect.

9. As rightly contended by the learned Additional Public Prosecutor, the prosecution has examined independent witnesses P.W.5 to P.W.7, P.W.21, P.W. 22, P.W.30, P.W.31, P.W.35 and P.W.53 and the learned trial Judge has considered the evidences of the said witnesses. Moreover, as rightly pointed out by the learned Additional Public Prosecutor, it is not the case of the appellants that the above said witnesses are interested witnesses to the prosecution or that the said witnesses are having enmity with the appellants. <https://www.mhc.tn.gov.in/judis>

10. The learned Counsel for the appellants would further contend that there is no proper sanction accorded by the competent authorities to prosecute the appellants under the [Unlawful Activities \(Prevention Act\)](#), 1967 and under the [Passport Act](#) 1967 and that therefore, the entire case falls to the ground as there was no valid sanction.

11. It is evident from the records that the Principal Secretary to the Government, Home Department, Chennai accorded sanction for the prosecution of the appellants, in excise of powers conferred by Section 45(1) of the Unlawful Activities (Prevention)Act, 1967 r/w the Government of India Notification No.S.O.1004(E), dated 21.06.2007 for the offences under Section 10(a)(i) and

(iv) of the [Unlawful Activities \(Prevention\) Act, 1967](#). The prosecution has exhibited the Government Order in G.O. (4D)Nos.4 and 5 as Exhibits 64 and 65 and P.W.68 had deposed about the factum of according sanction. It is further evident that in pursuance of the powers of [Section 15](#) of the Passport Act, 1967 r/w modification of M.E.A., G.S.R.No.662(E), dated 01.12.1979 published in the Gazette of India, dated 09.02.2020, Central Government authorizes the Collectors of all Districts in Tamil Nadu for the said purpose and the District Collector, Ramanathapuram, who deposed as P.W.60, has accorded sanction to prosecute the appellants under the [Passport Act](#). Though the appellants have <https://www.mhc.tn.gov.in/judis> alleged that proper sanction was not obtained, they have not elaborated anything further.

12. The learned Counsel for the appellants would further submit that the materials recovered allegedly at the instance of the appellants are all not incriminating and there is absolutely no evidence to connect the appellants to the alleged recovery or the offences alleged against them. The learned Counsel for the appellants would further submit that the above case has been falsely foisted with an intention to make it appear that the members of the banned LTTE organisation are actively functioning in the Indian soil and thereby to get an order extending the banning of the LTTE for which the refugees who are the appellants have been falsely roped in the above case. He would further submit the entire prosecution story is created and invented. According to the appellants, there is absolutely no proof with regard to the alleged criminal conspiracy and absolutely there is no evidence to the effect that the appellants have participated in the said conspiracy, more fully with an intention to regroup the banned LTTE organisation.

13. The learned Counsel for the appellants would further submit that the trial Court has miserably failed to see that the arrest alleged by the prosecution is an invented story and that there are no independent witness examined by the prosecution to prove the alleged arrest.

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14. The learned Additional Public Prosecutor would submit that the appellants had hatched a plan to smuggle the contraband to Sri Lanka through Rameswaram coast by illicit ferry and that the evidence of P.W.6, P.W.7, P.W. 21, P.W.30, P.W.31, P.W.25 and P.W.53 establishes the preparation made by the appellants to revive the banned LTTE organisation. More importantly, as rightly contended by the learned Additional Public Prosecutor, the first accused was found in possession of Sodium Cyanide and Cyanide Capsules, which is the icon of LTTE and that the evidence of P.W.39 – Visalakshi, attached to the Forensic Science Department corroborated by the analysis report, which was marked as Ex.P.44 would go to show that the seized cyanide capsules are hazardous and poisonous in nature and that they have also recovered route map, which was allegedly recovered from the fourth accused Subashkaran. As already pointed out, 75 Nos. of cyanide capsules, 600 grams cyanide power, a piece of paper showing “September 24” containing route map showing their rival camps in Sri Lanka were recovered from them.

15. The learned Additional Public Prosecutor would submit that the evidence of P.W.6 and P.W.7 had clearly indicated the preparation made by the accused for regrouping the LTTE cadres to revive their organisation and their plan to procure arms and cyanide and to eliminate the rival groups. It is the <https://www.mhc.tn.gov.in/judis> specific case of the prosecution that P.W.6 has deposed about the recovery of articles from the house of the first accused at Trichy and the conspiracy hatched by the first appellant with the other accused, that P.W.6 has shared the rent amount of the house and whereas P.W.7 had deposed about the conspiracy hatched between the accused A.1 and A.5.

16. As already pointed out, a route map to effect an attack in Sri Lanka was prepared and the same was recovered from the fourth accused and according to them, he was the main agent in managing and distributing the funds received from abroad. It is also not in dispute that a search was made in the house of the third appellant Subhaskaran and M.Os 35 to 44 were recovered.

17. The learned Additional Public Prosecutor would submit that the evidence of P.W.6 and P.W.7 would go to show the appellants' involvement in the commission of offence under the provision of the Unlawful Activities (Prevention) Act, 1967.

18. Admittedly, P.Ws.18 to 20, 23 to 29, 42 to 45 and 48 are the Bank Officials and they had deposed about the payments made to the first accused account and all the deposits have been made with the false identity. It is the specific case of the prosecution that the first appellant had Sri Lanka Passport <https://www.mhc.tn.gov.in/judis> valid upto 13.08.2019 and visa expired on 09.12.2009, that he has not registered as Sri Lankan Tamil refugee, whereas the appellant Subhaskaran has no valid visa to stay in India and two years after his arrival, he registered himself as Sri Lankan tamil and not as a refugee and that the said accused has not obtained proper permission from the competent authority. As rightly pointed out by the learned Additional Public Prosecutor, the prosecution has produced the documents to prove the alleged conspiracy between the accused by documents to show that there existed the meetings of the mind by the accused by contacting among themselves over mobile phones and according to the prosecution, several phone calls have been made between the first accused and the sixth accused and so on.

19. Apart from the merits of the case, the learned Counsel for the appellants would submit that the second appellant/third accused, after serving his period of 5 years imprisonment, was released from prison. The learned Counsel would further submit that the appellants 1 and 3 were charged with the offences under [Section 120\(b\)](#) I.P.C., under [Section 3](#) r/w 12(1)(a) of the [Passport Act, 1967](#), under [Section 14\(c\)](#) of the Foreigners Act, 1946, under [Section 6](#) of the Poisons Act, 1919 and under [Section 10\(a\)\(i\) & \(iv\)](#) and 38(1) of the [Unlawful Activities \(Prevention\) Act 1967](#) and the punishment imposed for the above offences except the offence under [Section 38\(1\)](#) of the Unlawful Activities <https://www.mhc.tn.gov.in/judis> (Prevention) Act, have already been undergone by the appellants and the only sentence now pending is for the offence under [Section 38\(1\)](#) of the Unlawful Activities (Prevention) Act, for which the appellants were imposed with the punishment of 10 years.

20. The learned Counsel for the appellants, after submitting the arguments on merits, would further submit that they are not challenging the conviction imposed on the appellants and that they are only pleading for modification and reduction of sentence. As already pointed out, the appellants 1 and 3 had already undergone nearly 7 years of imprisonment.

21. Whatever it is, as rightly contended by the learned Additional Public Prosecutor, the prosecution through ample evidence had established the involvement of the appellants in the occurrences alleged. When the learned Counsel for the appellants had confined their request only for reduction of sentence, the learned Additional Public Prosecutor, on instructions, would submit that the appellants 1 and 4 being the members of the LTTE Organisation, should leave the Country after their release and that they should not indulge in any such activities.

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22. The appellants 1 and 3 have filed an affidavit, wherein they have given an undertaking that they would leave India, soon after the completion of the criminal appeal and they have given further assurance that they will not involve in law and order problem, after completion of the criminal appeal.

23. Moreover, the learned Additional Public Prosecutor, on instructions, would further submit that the appellants should remain in the refugee camp till they leave the Country, for which also, the learned Counsel for the appellants had consented for the same. The undertaking given by the appellants that they would leave from India, soon after their release and they will not involve in law and order problem and that they will remain in the refugee camp till their leaving from India is recorded.

24. On considering the entire evidence and the arguments advanced and also taking note of the submission of the learned Counsel for the appellants that they are not challenging the conviction, this Court has no hesitation to hold that the findings recorded by the trial Court are liable to be confirmed, but at the same time, considering the fact that the appellants had already undergone the punishment awarded to the other offences and they had already served 6 years 10 months in prison and also the undertaking given by the appellants, this Court is of the view that ends of justice would be met in case the punishment of sentence <https://www.mhc.tn.gov.in/judis> is reduced from 10 years Rigorous Imprisonment to 7 years Rigorous Imprisonment. Accordingly, the punishment of sentence of imprisonment is reduced from 10 years Rigorous Imprisonment to 7 years Rigorous Imprisonment.

25. In the result, the conviction recorded by the learned Principal District and Sessions Judge, Ramanathapuram in S.C.No.7 of 2016, vide judgment dated 28.04.2018 is confirmed and the sentence of imprisonment awarded at 10 years of Rigorous Imprisonment for the offence under [Section 38\(1\)](#) of the Unlawful Activities (Prevention) Act, is reduced to 7 years Rigorous Imprisonment. In view of the undertaking given, the appellants are directed to leave India immediately after the release from the prison and they have to remain in a refugee camp till they leave India. The Criminal Appeal is disposed of accordingly. Consequently, the connected Miscellaneous Petitions are closed.

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1.The Principal District and Sessions Court, Ramanathapuram.

2. The Additional Superintendent of Police, Q Branch Crime Investigation Department, Tirunelveli Range, Ramanathapuram Range(Incharge),

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

4.The Section Officer, Criminal Section, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> K.MURALI SHANKAR, J.

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