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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.OP (MD) No.19684 of 2022

and

CrI.MP (MD) No.13520 and 13521 of 2022

Raja @ Rocketraja @ Arumugapandian
@ Vivekanandan : Petitioner/A7

Vs.

- 1.The State rep. by
The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
(Crime No.161 of 2018) : R1/Complainant
- 2.Chinnapan : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in PRC No.289 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli district and quash the same as against the petitioner.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For 2nd Respondent : No appearance

**O R D E R**

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This criminal original petition is filed seeking quashment of the case in PRC No.289 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli.

2.The case of the prosecution in brief:-

The de-facto complainant namely the conductor belongs to the Tamil Nadu Government Transport Corporation was on duty in the bus bearing registration No.TN-72-N-1822, which are plying between the Tirunelveli Junction and Thalaiuthu. On 15/05/2018 at about 11.25 am, the bus started from the Junction and the driver was one Parameswaran. At about 11.50 am, near Thalaiyuthu bus stop, two identified persons came towards the bus having a large knife and petrol bottle. They criminally intimidated them to stop the vehicle. Fearing their life, they got down from the bus. They poured petrol and fire the bus, causing complete damage. Over the above said occurrence, a case in Crime No.161 of 2018 was registered for the offences punishable under sections 294(b), 506(ii), 353 IPC r/w 4 of TNPPDL Act.



3. After completing the formalities of investigation, final report was filed and during the course of investigation, it was found that only at the instance, instigation of this petitioner, the above said offence has been committed by the co-accused. Charging this petitioner, who is arrayed as A7, final report was filed under sections 294(b), 506(ii), 353 IPC r/w 4 of TNPPDL Act and section 109 IPC. Now the committal process is underway.

4. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that when the alleged occurrence said to have taken place, he was in prison; Absolutely, there was no material to show that only at his abetment and instigation, the above said occurrence was committed.

5. Heard both sides.

6. The learned Senior Counsel appearing for the petitioner would submit that except the alleged confession statement of one of the co-accused, absolutely no material has been collected or available to implicate



this petitioner into the offence under section 109 IPC.

He would further submit that absolutely, there is no possibility for any one to meet this petitioner when he was escorted to the court on a particular day; in the absence of any such materials, prosecution itself is not legal. For that, he would rely upon the judgment of the Hon'ble Supreme Court in the case of Parveen @ Sonu Vs. State of Haryana (2021 SCC OnLine SC 1184).

7.Per contra, the learned Additional Public Prosecutor would submit that only at his instance and instigation, abetment, the above said offence said to have been committed. So according to him, since the investigation has been completed and final report has been filed, the trial must be taken in its logical conclusion.

8.No doubt the petitioner was in prison in some other case, when the above said occurrence took place. Now the prosecution says that the above said fire of the Government vehicle took place demanding the release of this petitioner from the prison.



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9. According to the prosecution, absolutely, there is no possibility for the above said occurrence to be taken place without the abetment of this petitioner.

10. Section 107 IPC reads as under:-

"107. Abetment of a thing.—A person abets the doing of a thing, who—

First—Instigates any person to do that thing; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the



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commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

11. Whether any meeting of mind between the petitioner and the co-accused is to be decided only during the course of trial. For abetment or conspiracy, no direct evidence can be anticipated or possible. So that can be proved by the prosecution before the trial court by leading oral evidence or circumstantial evidence as the case may be.

12. Perusal of the CD file further shows that in the place of occurrence, some pamphlets were found demanding release of this petitioner from the prison. That was also recovered from that place. Some of the witnesses have also spoken about the meeting of the co-accused with the above said petitioner, when he was escorted to the trial court.

13. The veracity of the witnesses can be tested only during the course of trial. This is not the stage to analysis the reliability of those statements. So the contention on the part of the petitioner that absolutely



14. In the result, this criminal original petition is
 dismissed. Consequently, connected Miscellaneous
 actions are closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.III,
Tirunelveli.
- 2.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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