



Crl.RC.No.415 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.415 of 2018 and
Crl.MP.Nos.5044 & 5045 of 2018

Vijai

... Petitioner/A17

Versus

State Rep by
Inspector of Police,
Meensuriti Police Station,
Ariyalur District
(crime No.130 of 2008)

... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the order dated 08.03.2018 made in Crl.MP.No.135 of 2018 in SC.No.138 of 2013 passed by the learned III Additional District and Sessions Judge, Salem.

For Petitioner : Mr.D.Krishnamoorthy
for Mr.B.Nambiselvan



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For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is directed as against the order passed in Crl.MP.No.135 of 2018 dated 08.03.2018 in SC.No.138 of 2013 on the file of the III Additional District and Sessions Judge, Salem, thereby dismissing the petition filed for discharge.

2. The case of the prosecution is that one, Desingubalan of Vangudi Village was murdered by the deceased. While being so, on 16.05.2008, in retaliation of Desingubalan murder, the accused committed murder. Therefore, FIR has been registered for the offence under Sections 147, 148, 341, 324, 326, 307, 302 r/w 120(b) of IPC. The petitioner is arrayed as 17th accused. After completion of investigation, the respondent filed final report and the same has been taken cognizance in SC.No.138 of 2013. While pending trial, the petitioner filed petition to discharge him from all the charges.



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3. The petitioner raised ground that the petitioner's name did not find place in the FIR. He was only twenty years at the time of occurrence i.e.16.05.2008. He was implicated at the aid of Section 120(b) of IPC, for which there is no direct or indirect evidence to show that the petitioner also indulged in the occurrence along with 18 accused persons. The petitioner was unnecessarily and falsely implicated in the present case. He further submitted that there is no *prima facie* case made out as against the petitioner and the test to determine a *prima facie* case depends upon facts of each case. In support of his contention, he also cited the judgment of the Hon'ble Supreme Court of India in the case of **P.Vijayan Vs. State of Kerala and another** reported in AIR 2010 (3) SCC 663, wherein it is observed that *if two views are possible and one of the them gives rise to suspicion only, as distinguished from grave suspicion, the trial court will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal.*

4. Heard, the learned counsel for the petitioner and the learned Government Advocate(crl.side) appearing for the respondent / police.



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5. On perusal of the charge sheet, revealed that though the petitioner has been charged under the conspiracy, it is matter for trial. There are sufficient materials to attract other offences read with Section 120(b) of IPC. Therefore, in the initial stage of trial itself, it cannot be predicted that the petitioner will be acquitted. Therefore, the trial court rightly dismissed the petition for discharge and this Court finds no infirmity or illegality in the order passed by the court below.

6. Accordingly, this criminal revision is dismissed. Consequently, connected miscellaneous petitions are closed.

17.10.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned III Additional District and Sessions Judge,
Salem
- 2.Inspector of Police,
Meensuriti Police Station,
Ariyalur District
- 3.The Public Prosecutor,
High Court of Madras

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