



CrL.R.C(MD)No.998 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 04.11.2022

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

CrL.RC(MD)No.998 of 2022

and

CrL.M.P(MD)Nos.12414 and 12415 of 2022

1. A.Raja Gandhi

2. A.Kennadi

: Petitioners

Vs

State through the
The Inspector of Police,
Samayanallur Police Station,
Madurai District.
in Crime No.1417/2020

: Respondent

Prayer: This Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C., praying to call for the records from the lower court and set aside the order passed in CrL.MP.No.2806/2022 in CC.No.65/2022, dated 29/08/2022 by the Judicial Magistrate, Vadipatti, Madurai District.

For Petitioners

: Mr.T.K.Gopalan

For Respondent

: Mr.S.S.Madhavan

Government Advocate (CrL.Side)



WEB COPY



CrI.R.C(MD)No.998 of 2022

ORDER

This Criminal Revision Case has been filed to set aside the impugned order, dated 29/08/2022, by the Judicial Magistrate, Vadipatti, Madurai District in CrI.MP.No.2806/2022 in CC.No.65/2022.

2.The facts in brief is as follows:

(i)The defacto complainant viz., Ramakrishnaraju lodged a complaint stating that his maternal grandfather viz., Kazhungan was a cultivating tenant from the year 1972, under one Krishnamoorthy, in S.No.43/1, *admeasuring* 93 cents. The said Krishnamoorthy was also owning the property, adjacent to the above said land. That land was under the cultivation of one Ramayee, who is also a close relative of the defacto complainant. The son of said Ramayee, viz., Rajagandhi sold both the properties in the year 2019.

(ii) On 06.07.2020 at about 04.30PM, when they were planting sugarcane in the disputed property, at the instigation of Rajagandhi, Kennedy and Muthukrishnan, the accused persons viz., Sivaramachandran, his wife Rajeshwari, Jawahar Nehru and Thiraviyam came to that place and picked up quarrel, abused them in filthy language, assaulted his mother and also



CrL.R.C(MD)No.998 of 2022

criminally intimidated them. The injured was taken to the hospital and based upon the above said occurrence, a case was registered in Crime No.14 of 2020, under Sections 147, 294(b), 323, 506(i) r/w 109 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. After completing the investigation, a final report also filed against the accused persons, viz., A1 to A3 have committed the offence under Sections 147, 294(b), 323, 506(i), 109 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002; against A4, A6, A7 have committed the offence under Sections 147, 294(b), 323, 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002; against A5 has committed the offence under Sections 147, 294(b), 323, 506(i)IPC.

3. Before the trial Court, A1 and A2 have filed a petition under Section 239 Cr.P.C in CrI.M.P.No.2806 of 2022, seeking discharge, which was dismissed by the trial Court finding that the mother of defacto complainant also sustained injury; there was admission on the part of petitioners that they had purchased the disputed property, where the defacto complainant was the cultivating tenant; in respect of other issues that raised at the argument, are to be taken into account only at the time of trial. Since against the petitioners, there is a *prima facie* case and materials collected during the course of investigation,



CrL.R.C(MD)No.998 of 2022

the above said petition was dismissed. Challenging the above said dismissal order, this revision case has been preferred by both the petitioners.

4.The learned counsel for the petitioners would submit that even as per the observation made by the trial Court, Accused Nos.1 to 3 were not present in the place of occurrence. Hence, according to him, when A1 to A3 were not present in the place of occurrence, the question of instigation may not arise. Apart from that it was also stated that probability of occurrence, being taken place is also remote. No document has been collected during the course of investigation to show the tenancy right.

5.Per contra, the learned Government Advocate (Crl.Side) would submit that only at the instigation of these persons, the above said occurrence had taken place. Therefore, the involvement of the petitioners can be found out during the course of trial.

6. No doubt, even in the complaint, it has been stated that the petitioners were not present in the place of occurrence, when the above said assault was taken place. However, it is stated that only at the instigation of A1 to A3, above said assault was committed by the co-accused. Therefore, the



CrI.R.C(MD)No.998 of 2022

petitioners have been charged under Section 109 IPC along with main sections.

Whether there is any abetment or instigation by the petitioners, is a matter for consideration during trial. Witnesses have been examined during the course of investigation were unanimous to the statement to the effect that only at the instigation of these persons, above said assault took place.

7.The injured was taken to the hospital and she was treated. It cannot be disputed by petitioners. Even though, the learned counsel for the revision petitioners submitted that there is no possibility or probability for the above said occurrence to have taken place. For that purpose, he had referred the observation mahazar, rough sketch etc., to show that in the observation mahazar, it has been observed that no material object was found in the property. According to him, if really the planting of sugarcane has been taken place during that time, it would have been found place in the observation mahazar. In the absence of any such things in the observation mahazar, the occurrence itself is doubtful.

8.Whether such occurrence has taken place or not, is a matter for trial. As I mentioned earlier, the defacto complainant's mother was injured and taken to the hospital and she was found with injuries. Hence, the contention on



Cr.L.R.C(MD)No.998 of 2022

the part of petitioners that there is no probability for above said occurrence to have taken place, cannot be taken into account, at this stage. The only point that is to be decided in the trial is whether there is any abetment on the side of petitioners to commit the above said assault and criminal intimidation etc. When enough materials have been collected during the course of investigation, the petitioners have to face the trial to its logical conclusion. This Court finds that there is no interference to the order passed by the trial Court, is called for.

9. The contention on the part of petitioners that the petitioners were not present at the time of occurrence, is sufficient enough to discharge them from the criminal case, cannot be accepted since in a criminal case, the presence of an abettor, is not necessary in the place of occurrence. This argument cannot be taken into account. From the above facts, I find no ground to allow this case and it is liable to be dismissed.

10. Accordingly, ***this Criminal Revision Case stands dismissed.***

However, considering the fact that the first accused is working in Central Excise Department and the second accused is a Teacher, working in a Government



CrL.R.C(MD)No.998 of 2022

Aided School, their personal appearance before the trial Court is dispensed with, upon the petitioners swearing to an undertaking affidavit, within a period of 15 days, from the date of receipt of a copy of this order, informing their address for service, that they duly would be represented by their counsel on all hearing dates, that they would, at no instance, dispute their identity and that, they would appear before the trial Court, as and when required. Upon the petitioners doing so, the trial Court may seek the presence of the petitioners before it, solely on the important hearing dates, ie., for collecting the final report and other papers under Section 207 Cr.P.C., for framing of charges, for questioning under Section 313 Cr.P.C and on the date of Judgment.

11. Consequently, connected miscellaneous petitions are closed.

04.11.2022

Index :Yes/No

Internet:Yes/No

PNM

To:

1.The Inspector of Police,
Samayanallur Police Station,
Madurai District.

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



WEB COPY



CrI.R.C(MD)No.998 of 2022

G.ILANGO VAN, J.

PNM

CrI.RC(MD)No.998 of 2022
and
CrI.M.P(MD)Nos.12414 and 12415 of 2022

04.11.2022