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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.RC(MD)No.1071 of 2022

and

Crl.MP(MD)Nos.13653 and 13654 of 2022

1.Geetha
2.Rajkumar

: Petitioners/Petitioners/
A3 and A4

Vs.

State represented by
The Inspector of Police,
S.S.Kottai Police Station,
Sivagaigai District.
(Crime No.47 of 2017)

: Respondent/Respondent/
Complainant

Prayer:- This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code against the order passed by the Chief Judicial Magistrate, Sivagangai, in Crl.M.P No.6788 of 2022 in SC No.94 of 2022, dated 20/10/2022 which is filed under section 227 of the Criminal Procedure Code by the petitioners herein.

For Petitioner : Mr.T.Veerakumar

For Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

**ORDER**

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This criminal revision has been filed against the order passed by the Chief Judicial Magistrate, Sivagangai, in CrI.M.P No.6788 of 2022 in SC No.94 of 2022, dated 20/10/2022, which is filed under section 227 of the Criminal Procedure Code by the petitioners herein.

2.The allegation against the petitioners is that they instigated the accused to cause murder and assault upon the injured and the de-facto complainant. In the FIR, it has been stated that these petitioners, two days prior to the above said assault, instigated and abetted A1 and A2 to behead the injured.

3.During the course of investigation, the statement of the witnesses have been recorded and they have also corroborated the allegation made in the FIR. So on that account, they have been implicated as accused stating that there instigated, abetted the commission of the offence punishable under sections 294(b), 341, 506(ii) IPC.



4. Now the ground on which, the above said discharge petition was filed by the petitioners stating that they were not present in the place of occurrence; On the mere assumption, the above said FIR has been registered; Against the petitioners also, there was a motive between A1 and A2 and the de-facto complainant, in which, the petitioners are not involved; The first petitioner is living in some other place and there is a manipulation in the FIR by the Registering officer by including the offence under section 307 IPC; Even in the complaint or in the course of statement recorded by the alleged Investigation Officer, time, date and place and the alleged abetment, and instigation has not been stated; Only bald allegation has been made that no proper care was taken by the trial court, while dismissing the discharge petition.

5. All those grounds were raised by the petitioners before the trial court. The trial court has dismissed and rejected the contention that has been raised by the petitioners.



6. Whether, actually there was any abetment or instigation can be found out only during the course of trial. That has to have been decided on the basis of the evidence. Seeking discharge, without any basis is not permissible under law. Abetment can be proved through the circumstantial evidence also. Simply because, the first petitioner is residing somewhere from the place of occurrence, it cannot be stated that there was no abetment or instigation as the case may be. There is a clear averment in the FIR as well as the in the statement of the witnesses to the effect that two days prior to the occurrence, there was abetment by the petitioners.

7. No doubt, time, place of abetment are not mentioned. But those things cannot be taken into account at this stage. Similarly, the contention that there is absolutely no motive between the petitioners and the de-facto complainant, which cannot be taken into account at this stage.

8. Whether any manipulation of the FIR is also a matter for consideration during the trial. The trial court has rightly appreciated the legal issue in this



matter and came to the conclusion, based upon the materials that have been placed. It is a well considered order, which does not suffer from any illegality or irregularity. So the grounds that have been raised by the petitioners are not convincing to discharge them from the criminal prosecution.

9. In the result, this criminal revision fails and the same is **dismissed**. Considering the request of the petitioners, their personal appearance is dispensed with on condition that within 15 days from the date of receipt of a copy of this order, the petitioners must appear before the trial court and file an undertaking affidavit that they will appear as and when required by the court, the attested photograph must be attached in the affidavit and they must ensure that they are properly represented by an Advocate. Consequently, connected Miscellaneous Petitions are closed.

15/11/2022

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

- 1.The Chief Judicial Magistrate,
Sivagangai.
- 2.The Inspector of Police,
S.S.Kottai Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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