



Crl.R.C.No.1468 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2024
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.1468 of 2024
and
CRL M.P.No.12331 of 2024**

Ramesh

... Petitioner / Accused

Vs.

The State Rep.by
The Inspector of Police,
Uddanapalli Police,
Crime No.258 of 2020

... Respondent / Complainant

PRAYER: Criminal Revision Petition filed under Section 442 of the Bharatiya Nagarik Suraksa Sanhita, 2023, to set aside the order passed by the Additional Session Court at Krishnagiri in CMP.2415 of 2024 in S.C.No.23 of 2023, dated 04.07.2024 and discharge the petitioner from the provisions of the aforesaid charge sheet.

For Petitioner : Mr.R.Murugesh

For Respondent : Mr.A.Damodaran
Addl.Public Prosecutor,



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ORDER

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Challenging the order dated 04.07.2024, in C.M.P.No.2415/2024 in S.C.No.23/2023 passed by the learned Additional Session Judge, Krishnagiri, for the offence under Sections 147, 148, 302, 120B, 149, 114, 109 and 201 of IPC., the present Revision is filed.

2. The case of the prosecution is that on 13.05.2020 at about 6.45 p.m., due to previous enmity, the accused persons Venkataraj/A-1, Harish/A-2, Muniraj/A-3, Srinivasan/A-4 and Mathesh/A-5 came to house of the deceased abused him in filthy languages, assaulted him with Aruval and wooden log, other deadly weapons and caused his death. Hence the complaint.

3. Mr.R.Murugesh, the learned counsel appearing for the Petitioner/ A7 would submit that the Petitioner is an undergraduate and at the relevant time of occurrence, the petitioner was working as a freelancer in the area of Network Marketing for Organisation which included QNET. His job responsibilities was selling various product of the organisations through online. The Petitioner make calls to the customers for his business. The learned counsel further submitted that the Petitioner / A7 was not named in the FIR. The petitioner is



arrayed based on the confession of the co-accused. The Redmi Phone is shown as recovery from the petitioner on his arrest on 17.05.2020, four days after the occurrence, but the Redmi phone has been shown as recovered from Muniraj/A3 and another Redmi phone from Madesh/A5, as per Form 95 and the charge sheet. Hence, no recovery from the Petitioner/A7. Further, 17.05.2020 is during Corono Period restrictions and no one was allowed to move freely. Thus, the case projected against the petitioner is with contradictions and prove the petitioner is falsely implicated. No specific overt act attributed against the petitioner and in the material placed by the prosecution before the trial Court did not indict the involvement of the petitioner in the offence. Hence, the petitioner filed a Petition in C.M.P.No.2415 of 2025 in S.C.No.23 of 2023, before the learned Additional Sessions Judge, Krishnagiri, under Section 239 Cr.P.C., r/w Sections 227, Section 245(2) of Cr.P.C., and under Article 21 of the Constitution of India, to discharge the Petitioner/A7. The said Petition was dismissed on 04.07.2024. The learned counsel, in support of his contentions, has relied on the Judgment of the Hon'ble Apex Court in ***Vishnu Kumar Shukla & Anr Vs. State of Uttar Pradesh & Anr*** reported in ***2023 SCC Online SC 1582***, wherein it has been held as follows:-



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“..... protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts.”

4. The learned counsel further relied on the Judgment of the Hon'ble Apex Court in Sajjan Kumar Vs. Central Bureau of Investigation reported in 2010 SCC (Cri) 1371, for the point that “If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused”. Further, the learned counsel relied on the Judgment of the Supreme Court in State of Orissa Vs. Debendra Nath Padhi reported in (2003) 2 SCC 711, wherein it has been held that “.... Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal



requirements”.

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5. Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the State would submit that based on the complaint given by the defacto complainant / Bakiya, Wife of the deceased Muniraj, the Respondent Police Registered the case in Crime No.258 of 2020, on 13.05.2020, for the offence under Sections 147, 148 and 302 IPC.. During the course of investigation, on 16.05.2020, the then Inspector of Police arrested the five named accused viz., Venkataraj/A1, Harish/A2, Muniraj/A3, Srinivasan/A4, Harish/A5 and Kumar/A6 and recorded their confession statements in the presence of witnesses and produced before the learned Judicial Magistrate No.II,House and thereafter, they were remanded into judicial custody. On the confession of the co-accused, the Petitioner/ A7/Ramesh, Subramani/A8, Mathesh/A9, Nagesh/A10, Sathish/A11, Prabakaran/A12 were added as accused. After recording their confession statements in the presence of the witnesses, they were produced before the learned Judicial Magistrate No.II, House, and remanded to Judicial custody. After completion of investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate No.II, Hosur in P.R.C.No.9 of 2021 for offence under



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Sections 147, 148, 302, 120B, 149, 201 r/w 109 and 114 of IPC., against A1 to A12. Latter, the case committed to Court of Sessions, which is pending trail before the learned Additional District Sessions Judge, Krishnagiri in S.C.No.23 of 2023, on 12.01.2023.

6. The learned Additional Public Prosecutor would further submit that after perusing the entire records, the learned Sessions Judge, Krishnagiri, rightly dismissed the petition filed by the petitioner for the reason that L.W.15/ Anil Kumar, L.W.19/Murugesh and LW.20/ Suresh given statements under Section 161(3) of Cr.P.C., admitting that the Petitioner has given confession statement to the Police and based on the confession statement, the properties were recovered in this case and whether such a confession statement was covered under Section 27(C) of the Indian Evidence Act has to be looked only at the time of trial. Further submitted that the petitioner was part of the conspiracy actively taken part in the crime, he was having a watch on the deceased informed the assailants the movement of deceased further gave instruction to the other accused to switch of the Electricity supply facilitating the assailants assault on the deceased and thereby ensured deceased is done to death. The learned Additional Public Prosecutor relied on the Judgment of the



Hon'ble Apex Court in State of ***Gujarat Vs. Dilipsinh Kishorsinh Rao*** reported in ***2023 SCC OnLine SC 1294***, for the point that “the revisional Court cannot look into the material produced by the accused and has to confine itself to the material collected by the prosecution”. Further, the learned counsel relied on the Judgment of the Apex Court in ***State of Rajasthan Vs. Ashok Kumar Kashyap*** reported in ***(2021) 11 SCC 191***, wherein the Apex Court held that “the evaluation of evidence on merits is not permissible at the stage of considering the application for discharge. At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible”. Hence, the learned Additional Public Prosecutor prayed for dismissal of the Revision.

7. I have heard the learned counsels appearing on either side and perused the materials available on record.

8. It is seen from the record that due to previous enmity, on 13.05.2020 at about 6.45 p.m., the accused persons Venkataraj/A-1, Harish/A-2, Muniraj/A-3, Srinivasan/A-4, Mathesh/A-5 came to house of the deceased, abused him in filthy language, assaulted him with wooden log, Aruval and other deadly weapons and caused his death.



On the complaint of the defacto complainant, the case in Crime No.258/2020, registered on 13.05.2020, for the offence under Sections 147, 148 and 302 IPC.. During the course of investigation, on 16.05.2020, the six named accused viz., Venkataraj/A1, Harish/A2, Muniraj/A3, Srinivasan/A4, Harish/A5 and Kumar/A6 were arrested, confession statement recorded in the presence of witnesses, thereafter, produced before the learned Judicial Magistrate No.II,Hosur and thereafter, they were remanded into judicial custody. Thereafter, on the confession of co-accused, the role played by the petitioner confirmed and the petitioner was arrested on 17.05.2020 and recovery made. In these circumstances, the Petitioner/A7 filed a Petition in C.M.P.No.2415 of 2025 in S.C.No.23 of 2023, before the learned Additional Sessions Judge, Krishnagiri, to discharge him from the charges and the same was dismissed on 04.07.2024. Against which, the present Revision.

9. It is seen that L.W.15/Anilkumar, L.W.19, Muruesh and L.W.20 given 161(3) Statements stating that the accused given confession statement to the Police and based on the confession statement, the properties were recovered in this case. It is seen the petitioner had been actively moving with the other accused when plan was made on



10.05.2020 to eliminate the deceased. Pursuance to the conspiracy on 13.05.2020, the disclosure statement reveals the petitioner was keeping a watch on the deceased, who had informed the assailants, further he had also instructed the other accused to switch of the Electricity supply facilitating the assailants to commit murder. The contention of the petitioner is factual, the confession, disclosure of facts, whether the confession of co-accused are corroborated and supported by material particulars by other witnesses can be gone into only during the course of trial. Further, as rightly contended by the learned Additional Public Prosecutor that the Petitioner / A-7 given a confession statement, and such confession statement was covered u/s.27 (C) of the Indian Evidence Act has to be looked only at the trial and the issues involved are triable in nature. The petitioner is a conspirator, conspiracy is hatched in dark and secrecy, there may not be direct evidence to conspiracy, which can be inferred only during trial. The trial Court finding that there are prima facie materials available against the involvement of the accused in the offence, has rightly dismissed the discharge petition filed by the Petitioner/A7.

10. In the result, the Criminal Revision Case stands dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.



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It is made clear that the observation made herein is limited purpose for deciding the above petition. The trial Court to proceed with the trial on its own merits, uninfluenced by the observations made in this Revision.

09.01.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Judicial Magistrate No.II,
Alandur
2. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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