

**HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**Criminal Revision Case No.148 of 2022**

**Judgment:**

This criminal revision case is directed against the order dated 18-01-2022 passed in CrI.M.P. No.210/2021 in C.C.No.72 of 2021 on the file of the learned Judicial Magistrate of First Class, Podili, whereby the petition filed to discharge the petitioners, who are accused 1 to 4, was dismissed.

2. Heard learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the 1<sup>st</sup> respondent/ State.

3. The petitioners are accused 1 to 4 in C.C.No.72 of 2021 on the file of the learned Judicial Magistrate of First Class, Podili. They have been facing prosecution for the offences punishable under Sections 323, 498-A and 506 read with Section 34 of IPC.

4. The petitioners have filed a petition to discharge them from the said case on the ground that accused No.4 is an employee and he was in his duty on the date of offence and he has been falsely implicated in the above case and that in proof of the said fact that the extract of attendance certificate is produced.

5. The trial Court dismissed the said petition by the impugned order on the ground that at the stage of framing charges, the Court is only required to see whether the uncontroverted allegations made by the prosecution and the evidence produced in support of the said allegations *prima facie*

disclose the commission of the offences by the accused or not and that the disputed question of fact and the plea of defence taken by the accused cannot be taken into consideration at pre-trial stage. This Court does not find any legal flaw or infirmity in the impugned order of the trial Court. When the accused has taken a plea of alibi, undoubtedly it is a matter relating to question of fact as to whether the accused was present at the scene of offence at the time of the offence or not. In a way, it amounts to taking a plea of alibi by the accused. It is settled law that the burden of proving the said plea of alibi is on the accused. Therefore, they are all disputed questions of fact which requires evidence and appreciation of the same in the final adjudication of the case. The said ground that accused No.4 was elsewhere at the time of commission of the offence cannot be a ground to discharge him from the said case. Therefore, the impugned order of the trial Court is perfectly sustainable under law and it calls for no interference in this criminal revision case.

6. Therefore, the criminal revision case is dismissed at the admission stage. Pending applications, if any, shall stand closed.

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**CHEEKATI MANAVENDRANATH ROY, J.**

06<sup>th</sup> April, 2022.

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