



WEB COPY



Cr.O.P.No.1971 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2023

DELIVERED ON : 07.12.2023

CORAM

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

Cr.O.P.No.1971 of 2015
and M.P.No.1 of 2015

P.Varadarajan

... Petitioner

-Vs-

Saraswathi

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C, to call for all records in C.C.No.130 of 2014 pending on the file of the Judicial Magistrate No.I, Tindivanam and quash the private complaint and cognizance taken in the above case.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.K.Balu

ORDER

This Criminal Original Petition has been filed calling for all records in C.C.No.130 of 2014 pending on the file of the Judicial Magistrate No.I, Tindivanam and quash the private complaint.

2. The respondent lodged a complaint alleging that she was defamed by



an article published in “Kumudham Reporter” dated 27.03.2014. The statements are that the respondent, earlier saved her husband by writing a letter to the former Chief Minister, while he was arrested and placed in Vellore Prison. Further, for the purpose of saving her son, she had approached the wife of another politician and sought her help, thereby alliance was made between two political parties. The article was published to defame the respondent. Because of the said defamatory article published by the accused, she got mental agony and other illness. It was a reason for her bed rest. Hence, the complaint.

3. On receipt of the complaint, the Trial Court had taken cognizance in C.C.No.130 of 2014, on the file of the learned Judicial Magistrate No.I, Tindivanam, for the offences under Sections 501 and 502 of IPC as against the accused.

4. The learned counsel for the petitioner would submit that there are totally five accused, in which the petitioner is arrayed as A1. He does not have any personal enmity against the respondent. Even as per the alleged defamatory article, there was no motive or malafide intention to publish the said article. Further, the petitioner is only Printer and Publisher of the Kumudham Publications Private Limited. The said Company has not been implicated as an



CrI.O.P.No.1971 of 2015

accused. Therefore, the entire complaint is vitiated and liable to be quashed.

The petitioner is not directly involved in the publications of alleged defamatory article. The petitioner had no intention to defame the respondent. As per the reporter, the Editor and its team only are liable for any news published in the book. Therefore, the petitioner, being the Managing Director of the Kumudham Publications Private Limited cannot be held liable for any of the offences as alleged by the respondent. No specific allegation is made in the complaint as against the petitioner. Further, the petitioner is residing in Chennai, whereas, the complaint has been lodged before the learned Judicial Magistrate No.I, Tindivanam. Therefore, before issuance of summons, the Trial Court failed to follow the procedures laid down under Section 202 Cr.P.C. There is no presumption available under Section 7 of the Press and Registration of Books Act, in order to prosecute the petitioner for the offences under Sections 501 and 502 of IPC. In support of his contention, he relied upon various Judgments of the Hon'ble Supreme Court of India and this Court.

5. Per contra, the learned counsel for the respondent would submit that the accused had not only published a defamative article, they morphed the photograph of the respondent and the wife of another political leader, as if they were sitting in the same sofa together and talking together. The respondent



never met the said person and never sat together to discuss anything. The

respondent is a very respected lady and she is also the wife of the founder and leader of a political party, at no point of time, she approached the wife of another political leader to save her husband and her son. Therefore, the article was published only with a clear intention to defame the respondent and her family members and her political parties among the general public.

6. The Trial Court strictly followed the mandates provided under Section 202 of Cr.P.C, while issuing summons to the accused. The Trial Court conducted enquiry by recording the statements from three witnesses apart from the respondent. After having been satisfied with the evidence on record and on perusal of available records, issued summons to the accused. Even assuming that the Trial Court failed to follow the procedure laid down under Section 202 Cr.P.C, the complaint cannot be quashed and it can be remitted back to the Trial Court for taking cognizance afresh after following the procedures laid down under Section 202 Cr.P.C.

7. In support of his contention, he relied upon the Judgment of the



Hon'ble Supreme Court of India reported in **2017 3 SCC 528** in the case of

Abhijit Pawar Vs Hemant Madhukar Nimbalkar and another, wherein it was

held as follows:-

“30. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter.

31. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.”

8. He further submitted that the Trial Court had taken cognizance only for the offences under Sections 501 and 502 of IPC. Therefore, though the petitioner is a Managing Director or a Printer and Publisher of the Kumudham Publications Private Limited, is held liable for the offences under Sections 501 and 502 of IPC.

9. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2018 1 SCC 615** in the case of **Mohd. Abdulla Khan Vs Prakash K**, wherein it was held as follows:-



“16. We must make it clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods - the newspaper. Those activities if carried on by people, who are employed either directly or indirectly by the owner of the newspaper, perhaps render all of them i.e., the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502 IPC, (as the case may be) if the other elements indicated in those Sections are satisfied.”

10. He further contended that though the petitioner is a Printer and Publisher or the Managing Director of the Kumudham Publications Private Limited, when the specific allegation is made out that he had knowledge and was responsible for publishing defamatory article and he was responsible for selling the alleged defamatory article, he is liable to be punished. That apart, it is a matter for Trial.

11. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2002 6 SC 670** in the case of **K.M.Mathew Vs K.A.Abraham and others**, wherein it was held as follows:-

“ 22. In the instant appeals, the complainant in each case has alleged that these appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the 'Editor' had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each



case. If the complaint is allowed to proceed only against the 'Editor' whose name is printed in the newspaper against whom there is a statutory presumption under Section 7 of the Act, and in case such 'Editor' succeeds in proving that he was not the 'Editor' having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. We are not unmindful of the powers of the Court under Section 319 of the Code of Criminal Procedure, but such powers are circumscribed by limitations.”

12. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

13. The respondent lodged a complaint for the offences under Sections 109, 114, 463, 464, 465, 499, 500, 501, 502 r/w Section 34 of IPC, Sections 1(1), 5(5), 5 5(1), 5(7) of the Press and Registration of Books Act. After recording the evidence of the respondent and supportive witnesses, the Trial Court had taken cognizance in C.C.No.130 of 2014 for the offences under Sections 501 and 502 of IPC and issued summons to the accused.

14. A perusal of the complaint revealed that the crux of the complaint is that the accused had published an article in Kumudham Reporter in issue dated 27.03.2014. The following article published by the article as follows:-

“ “அன்று ஜெயலலிதா இன்று பிரேமலதா தஞ்சம் அடைந்த சரஸ்வதி” “அன்று கணவருக்காக ஜெயலலிதாவுக்கு கடிதம் எழுதி சிறையிலிருந்து கணவரைக் காப்பாற்றியவர் சரஸ்வதி



இராமதாசு இன்று தனக்காக பிரேமலதாவிடம் பேசி மகனைக் காப்பாற்றி குடும்ப கலவரத்திலிருந்து கணவரையும் காப்பாற்றி இருக்கிறார் சரஸ்வதி இராமதாசு ”..... அன்றைய அ.தி.மு.க ஆட்சியில் ராமதாஸ் வேலுர் சிறையில் அடைக்கப்பட்டார். ஆந்த நேரத்தில் முதல்வர் ஜெயலலிதாவுக்கு ராமதாஸின் மனைவி சரஸ்வதி ஓர் கடிதம் எழுதினார். அவரது உடல் நிலையைக் கருத்தில் கொண்டு கருணையுடன் அவரை விடுவிக்க வேண்டும் என்ற கடிதம் தான் ராமதாசை வெளியே வரவைக்க உதவியது அந்த காலத்தைவிட இது இன்னும் சோதனையான காலகட்டம்.

கணவரைக் காப்பாற்ற எடுத்த அந்த முடிவைவிட மகனைக் காப்பாற்ற ஒரு திடமான முடிவுக்கு வந்ததால் சரஸ்வதி பா.ம.க.வால் கடுமையாக விமர்சிக்கப்பட்ட ஓர் அரசியல் இயக்கத்தின் தலைவருடைய மனைவியிடம் பேசினால் அது தனது குடும்பத்தை காப்பாற்றும் அப்படி பேசாவிட்டால் குடும்பத்தில் பெரும் கலவரம் வெடித்து அனைத்து அரசியல் கட்சிகளும் கைகொட்டி சிரித்துவிடும் என்பதை உணர்ந்தவராக பிரேமலதாவிடம் தஞ்சம் அடைந்தார்.

பெரியவர் பேச்சை எதுவும் கண்டுகாதீங்க உங்க வீட்டுக்காரரும் சில தொகுதியை பெருந்தன்மையா விட்டுக் கொடுத்ததா அன்புமணி சொன்னால் எப்படியாச்சும் இந்த கூட்டணி வந்தா நல்லாயிருக்கும் அதுக்கு நீங்களும் உதவி செய்யனும் என்று சரஸ்வதி மாட்டலாட பிரேமலதாவும் தன்மையாக பேசினார். எதிர்பார்த்ததைவிட பிரேமலதா அன்பு பாராட்டிப் பேசிய வார்த்தைகள் சரஸ்வதிக்கு பெரும் ஆச்சரியத்தை ஏற்படுத்தியது இரு தரப்புமே இதில் மகிழ்ச்சி அடைந்தது..... பா.ஜ.க. கூட்டணிக்குள் பா.ம.க வரவில்லை என்றால் இந்த ஐந்து கண்டிஷன்களிலிருந்து பின் வாங்க மாட்டேன் என்று அன்புமணி அடித்துச் சொல்ல அதை அப்படியே கணவரிடம் கண்ணீர் மல்க முன் வைத்தார் சரஸ்வதி ராமதாஸ் கரையத் தொடங்கினார்..... நல்ல செய்தியை கேட்டதுமே சேருமா/சேராதா என்று தமிழ்நாடே எதிர்பார்த்திருந்த இந்த அரசியல் பேச்சுவார்த்தையில் ஹைலைட்டாக அமைந்தது சரஸ்வதி ராமதாஸின் பேச்சுவார்த்தைதான்.”



WEB COPY

15. There are totally five accused, in which the petitioner is arrayed as A1. He is impleaded in the capacity of Printer and Publisher of Kumudham Publications Private Limited.

16. The petitioner raised three specific grounds;

(i) Whether the complaint is maintainable without adding the company as accused?

(ii) Whether the complaint is vitiated when the Trial Court failed to follow the mandatory provisions under Sections 202 of Cr.P.C and issued summon to the petitioner without conducting any enquiry, when the petitioner is residing out of the jurisdiction of the Trial Court?

(iii) Whether the complaint can be quashed on the ground that the petitioner is only a Printer and Publisher and no presumption can be drawn under Section 7 of Press and Registration of Books Act?

17. A company is an artificial person or a juristic entity, it is incapable of having any mind and the question of the company having such a state of mind could not arise. Therefore, the complaint is very much maintainable, even though the company is not implicated as an accused. Insofar as the non



compliance under Section 202 of Cr.P.C is concerned, a perusal of records revealed that the Trial Court had examined the respondent and conducted enquiry in order to comply with the provisions under Section 202 Cr.P.C by examining three more witnesses. After having been satisfied with the statements and on perusal of records, the Trial Court had taken cognizance for the offences under Sections 501 and 502 of IPC and issued summons.

18. Even assuming that the Trial Court failed to follow the procedures laid down under Section 202 Cr.P.C, the complaint cannot be quashed and it can only be remitted back to the Trial Court for taking cognizance afresh for following the procedures laid down under Section 202 Cr.P.C. In the case on hand, as stated supra, the learned Magistrate had taken cognizance after following the procedures laid down under Section 202 Cr.P.C.

19. Admittedly, the petitioner is a Printer and Publisher of Kumudham Publications Private Limited. As per the reporter, the Editor and its team are to be held liable for any news or article published in the Magazine.

20. It is relevant to extract the provisions under Section 7 of Press and Registration of Books Act, 1867 as follows:-



WEB COPY

“ 7. Office copy of declaration to be prima facie evidence.—*In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, 7 [or, in the case of the editor, editor, a copy of the newspaper containing his name printed on it as that of the editor] shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, 7 [or printed on such newspaper, as the case may be] that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) 7. Office copy of declaration to be prima facie evidence.—In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, 7 [or, in the case of the editor, editor, a copy of the newspaper containing his name printed on it as that of the editor] shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, 7 [or printed on such newspaper, as the case may be] that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be).”*

21. The expression “Editor” is defined in Section 1 of Press and Registration of Books Act. Accordingly, “Editor” means the person who controls the selection of the matter that is published in a newspaper. Therefore, the provisions under Section 7 of Press and Registration of Books Act is not applicable to the petitioner, being a Printer and Publisher of Kumudham Publications Private Limited. As per its provisions, there is a presumption that the editor whose name is printed in the article or newspaper as editor shall be held to be the editor in any civil or criminal proceedings in respect of that



publication. Therefore, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper.

22. Admittedly, the petitioner is not an Editor of the reporter and the presumption can be drawn only against the person who was the Editor, within a meaning of the Act. Therefore, there is no justification to draw presumption against the petitioner who is the Printer and Publisher. Therefore, he cannot be held liable for the acts committed by the Editors team viz., A2 to A5. Therefore, the presumption available under Section 7 of the Press and Registration of Books Act apply to the petitioner, who is being a Printer and Publisher of Kumudham Publications Private Limited. Further, in the absence of any specific overtact as against the petitioner and as to the role played by the petitioner in selection of the news, he cannot be prosecuted unless it is shown that he participated in actual selection of articles. That apart, in order to attract the offences of defamation, it mandatorily requires “mens rea” intention to cause harm. It is the most essential sine-qua-non for the offence under Section 499 of IPC.

23. In view of the above, the impugned complaint cannot be sustained as



Cr.O.P.No.1971 of 2015

against the petitioner and it is liable to be quashed. Accordingly, the proceedings in C.C.No.130 of 2014 pending on the file of the Judicial Magistrate No.I, Tindivanam, is hereby quashed as against the petitioner. The Trial Court is directed to complete the trial in C.C.No.130 of 2014 as against other accused and complete the trial, within a period of three months from the date of receipt of a copy of this order.

24. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

07.12.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
mn



WEB COPY



CrI.O.P.No.1971 of 2015

G.K.ILANTHIRAIYAN, J.

mn

To

The Judicial Magistrate No.I, Tindivanam.

CrI.O.P.No.1971 of 2015

07.12.2023