

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.223 of 2015

M.Chokkalingam

... Petitioner

vs.

1.A.P.Mani
Union Chairman

2.The Editor,
Kalai Kathir,
M.G.Road,
Fair Lands,
Salem-636 016.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to set aside the order dated 06.12.2013 in CrI.M.P.No.4887 of 2013 on the file of the learned Judicial Magistrate No.V, Salem.

For Petitioner :Mr.P.Jagadeesan

JUDGMENT

Material on record discloses that the petitioner has preferred a complaint against the respondents under Section 200 CrPC, alleging that they have committed offences under Sections 499 and 500 IPC. In his complaint, he has stated that he is a member of a political party. A news item was published in a daily edition dated 07.07.2013, wherein accused No.1, is stated to have given a reply, which reads as follows:

“அரசியல் பிரமுகர்கள், அதிகாரிகள் ஆகியோர் மீது புகார்கள்
அனுப்பி பணம் பறிப்பதே அவரது வேலையாகும்.”

2. In his complaint, the petitioner has further stated that on seeing above report, his friends and members of a political party, to which he belongs, asked him about the defamatory remarks. Being aggrieved over the newspaper report and unable to tolerate the mental agony, due to the disrepute caused, he gave a complaint to Karipatti Police Station and it was assigned CSR.No.209/2013. Accused No.1 was the then Chairman of Ayothiyapattinam Panchayat Union. As the police had not taken appropriate action, the petitioner was constrained to prefer a private complaint under Section 200 CrPC to the Court. In

the complaint, the petitioner has cited 13 documents and proposed to examine 10 witnesses.

3. Material on record further discloses that the petitioner was examined on 27.08.2013 by the learned Judicial Magistrate No.V, Salem. Apart from examining himself as PW1, 8 witnesses have been examined by him. After considering the averments in the complaint and the statements of witnesses, on oath, vide order dated 06.12.2013, the learned Judicial Magistrate No.V, Salem, came to the conclusion that the petitioner did not make out a case to proceed further and accordingly, dismissed the complaint under Section 203 CrPC.

4. Assailing the correctness of the order, Mr.P.Jagadeesan, learned counsel for the petitioner submitted that the Court below has failed to consider that witnesses 2 to 9, examined on behalf of the petitioner have categorically spoken about the disrepute caused to the petitioner and therefore, the Court below ought to have taken cognizance of the offences and consequently, issued summons to the respondents. Learned counsel for the petitioner further submitted that when the complaint disclosed cognizable offences, the Court below ought to have issued summons to the respondents. Placing reliance on the decision of this Court in Mukesh Jain, S/O.Prem Chand v. Balachandar, reported in 2005 (2) MWN (Cr.) 15 DCC, Mr.P.Jagadeesan, learned counsel for the petitioner further submitted that if both the complaint dated 13.08.2013 and the sworn statement of the petitioner, dated 27.08.2013, if read conjointly, then the same, would make out a prima facie case and in such circumstances, the Court below ought to have issued summons to the respondents for the offences under Sections 499 and 500 IPC.

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

5. Material on record discloses that the petitioner is stated to have given a complaint to the Hon'ble Chief Minister Special Cell, Tamilnadu, against accused No.1, alleging dishonest and illegal activities. According to him, the said complaint was forwarded to Karipatti Police Station and to the office of the Deputy Superintendent of Police, Valappadi. In the private complaint dated 13.08.2013, preferred by the petitioner under Section 200 CrPC., the petitioner has further stated that during the 1st week of July, a person working in the Office of the respondent No.2 namely, Editor, Kalai Kathir, M.G.Road, Fair Lands, Salem, contacted the petitioner overphone and asked about the details of the complaint preferred to the Hon'ble Chief Minister Special Cell. On 07.07.2013, by way of a reply to the complaint sent to the Hon'ble Chief Minister's Special Cell, Chennai, a news item was published in Kalai Kathir, Salem Edition, by respondent No.1, which according to the petitioner caused disrepute.

6. Material on record further discloses that it is the case of the petitioner that upon reading the news item, witnesses came to his house and asked him about the abovesaid publication. According to the petitioner, publication of the said news item, enquiries, made by his friends and the members of the political party, to which, he belongs, caused him intolerable mental agony and thus, the respondents have committed offences punishable under Sections 499 and 500 IPC.

7. Material facts stated in the complaint for invoking the offences under Sections 499 and 500 IPC, are extracted hereunder.

"On seeing the same, the complainant was shocked and affected mentally in which his name and reputation in the society was spoiled by the defamatory statement printed in the Tamil Kalai Kathir daily news paper by the accused No.2 as per the alleged defamatory statement given by the accused No.1. On 07.07.2013, evening the friends of the complainant and the member of the political parties of AIADMK, who are all cited as witnesses in this complaint, came to this complainant's house and ask about the abovesaid alleged defamatory statement showing the newspaper dated 07.07.2013 and they returned from the complainant's house stating that hereafter they won't accompany with this complainant to do any service to the public on behalf of the AIADMK party and the friends also left after insulting the complainant by showing the said report of Kalai Kathir Newspaper . These incidents gave so much of intolerable mental agony to the complainant and hence, this complaint."

8. Witnesses examined have spoken about the publication. Some of them seemed to have only enquired the petitioner, as to the veracity of the statement, alleged to have been made by respondent No.1 to the Newspaper. One or two witnesses have spoken about the disrepute caused. However, after going through the sworn statement of the petitioner/complainant, the Court below, by observing that the petitioner has not stated anything about the contents of the news item, as to how the publication in Kalai Kathir newspaper, imputed him, with an intention to cause disrepute and further observing that the petitioner/complainant in the sworn statement, has not said anything as to how his reputation was affected, dismissed the complaint under section 203 CrPC. While considering the sworn statement of the petitioner and other witnesses, the learned Magistrate has also observed that there were contradictions, in the evidence adduced by the witnesses and the averments made in the complaint. Thus, recording the abovesaid reasons, vide order dated 06.12.2013, the Court below has dismissed the complaint under section 203 of the Code of Criminal Procedure .

9. Sections 499 and 500 of the Indian Penal Code are extracted hereunder:

"499.Defamation—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

500.Punishment for defamation — Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

10. As per section 190 of the Code of Criminal Procedure, subject to the provisions of Chapter XIV, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence:-

"(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

11. As per Section 200 of the Code of Criminal Procedure, a Magistrate taking cognizance of an offence on the complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Proviso to the said Section states that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Proviso further states that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

12. Sections 201, 202, 203 and 204 of the Code of Criminal Procedure are extracted hereunder:

"201. Procedure by Magistrate not competent to take cognizance of the case - If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall, -

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court

202. Postponement of issue of process (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant

203. Dismissal of complaint - If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process -

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

13. Testimony of the complainant/petitioner is reproduced hereunder:

"சொக்கலிங்கம் என பெயர். நான் உடையாப்பட்டியில் குடியிருக்கிறேன். எதிரி என்னுடைய கட்சிக் காரர். அந்த வகையில் எதிரியை எனக்குத் தெரியும். கடந்த 07.07.2013 ரூயிற்றுக் கிழமை காலைக்கதிர் நாளிதழில் என்னைப் பற்றி அவதூறாக செய்தி அச்சிட்டு வெளியிட்டனர். அதனால் அச்சிடப்பட்டதற்கு காரணமானவரையும் வெளியிட்டவரையும் சட்டப்படி தண்டிக்க வேண்டும் என்று கேட்டுக்கொள்கிறேன்."

14. As rightly observed by the learned Magistrate, the petitioner/complainant has not even spoken as to what was the news item published in Kalai Kathir on 07.07.2013, and how his reputation was defamed, either directly or indirectly, in the estimation of others. Though there is some evidence to indicate that the witnesses have enquired about the petitioner/complainant, about the new item, at the same time, when the petitioner/complainant is stated to have been defamed in the estimation of others, it is for him, to adduce specific oral evidence to the Court to the effect that, there was imputation with intention, to spoil the reputation of the petitioner.

15. Going through the testimony of the petitioner/complainant, extracted supra, this Court is of the view that apparently there is an omission on the part of the petitioner/complainant to state even the details of the news published. Even taking it for granted that documentary evidence is available in the form of a copy of the Newspaper, still, that alone is not sufficient, to issue summons to the respondents for the offences under Sections 499 and 500 IPC. To make out a prima facie case, it is obligatory on the part of the petitioner/complainant to adduce sufficient evidence to speak about

the acts, alleged to have been committed by the accused, named in the complaint, by which, his name or reputation, has been spoiled, in the estimation of others. Complainant has not deposed anything in the sworn statement.

16. In Mukesh Jain's case, a complaint is stated to have been presented under Section 138 of the Negotiable Instruments Act, 1881. The same was dismissed by the learned Magistrate, on the ground that the complainant in his sworn statement has not given particulars with regard to the date of cheque, date of its presentation, date of return and that therefore, the learned Magistrate came to the conclusion that no prima facie case was made out. However, in the complaint, there were categorical averments to the effect that the cheque was given in his favour; presented for collection through the Bank; returned with an memo stating funds insufficient; on receipt of the same, the complainant has issued a notice demanding the amount covered by the cheque; reply to the said notice and thereafter, a complaint has been presented to the Court of the competent jurisdiction along with the dishonoured cheque, banker's intimation, a copy of demand notice, reply notice and other documents etc., Though all the materials were already on record, with the averments made in the complaint under Section 138 of the Negotiable Instruments Act, 1881, finding fault with the sworn statement, the Court below, dismissed the complaint as per Section 203 CrPC.

17. In the abovesaid circumstances, after considering the Judgments in Chandra Deo Singh v. Prakash Chandra Bose alias Chabi Bose and another reported in AIR 1963 SC 1430 and in Rashmi Kumar (Smt.) V. Mahesh Kumar Bhada, reported in 1997 SCC (Cri) 415, in Mukesh Jain's case, at Paras 4 and 5, this Court, held as follows:

"4. The object of the enquiry in Section 202 of Criminal Procedure Code is to ascertain the truth or falsehood of the complaint and the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself and the statements made before him by the complainant and other persons examined by him. (CHANDRA DEO SINGH v. PROKASH CHANDRA BOSE alias CHABI BOSE AND ANOTHER (AIR 1963 Supreme Court 1430). This is reiterated by the Apex Court in the decision in RASHMI KUMAR (SMT) v. MAHESH KUMAR BHADA (1997 Supreme Court Cases (Cri) 415) in the following lines:

"Para 14. It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in State of Bihar v. Rajendra Agarwalla

((1996) 8 SCC 164) that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence, and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters."

5. The complaint has to be read along with the sworn statement of the complainant recorded under Section 200 of Criminal Procedure Code and they should not be read disjunctively, since they supplement and complement each other. The scheme and purport of Sections 200, 203 and 204 of the Code are not sufficient to show that the averments in the complaint are not to be looked into for the purpose of taking a decision either to dismiss a complaint under Section 203 or to issue process under Section 204 of the Code. This is made clear by the reference in Section 203 to the words "if any" occurring after the words "statement on oath of the complainant". This makes it clear that complaint is also, at any rate, one of the records to be looked into for the purpose of taking a decision under Sections 203 and 204 of the Code. It cannot be said that Court can look into sworn statement only and not the complaint itself."

18. Though Mr.P.Jagadeesan, learned counsel for the petitioner submitted that, in the case on hand, if the complaint dated 13.08.2013 and the sworn statement dated 27.08.2013, are read together, a prima facie case, is made out for issuance of summons, this Court is not inclined to accept the same, for the reason that the sentence, "if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation" has to be considered, by the Court, by giving due importance to the evidence of the complainant, as to whether, he has adduced oral evidence, to the effect that his reputation was spoiled in the estimation of others.

19. The Magistrate, in an inquiry, under Sub Section (1) of Section 200 Cr.PC, if he thinks fit, can take evidence on oath. In the case on hand, the learned Magistrate has thought it fit to

examine the witnesses on oath. The offence alleged is defamation. Therefore, the question to be considered by the Learned Magistrate is whether the person who has preferred a private complaint to the Court has satisfied the Court, by adducing evidence, to prove that he has made out a case under Sections 499 and 500 IPC.

20. When a person alleges that he has been defamed, he has to speak before the Court that he was offended by the statement or remarks or publication made by X. If his oral testimony is silent on this aspect, whether the Court has to accept the statement of others, the Answer of this Court, is a clear 'No'. Offence of defamation is personal. Even if others say that reputation of the complainant is affected, statements of others, can lend only support to the case of the complainant against whom, such defamatory statement is made. But, if the complainant himself is silent and does not make any statement before the Court, on oath, about the details of publication, and as to how, he was defamed, then, in my humble view, Court need not rely on the statements of others, on oath. As per the Code, the statement of the complainant should be supported by others, and it is not the reverse, more so, if there is none by the complainant and in particular, on the aspect of defamation.

21. The purpose of recording a statement on oath, along with the statements of witnesses, if any, is to enable the Magistrate to form an opinion, as to whether, there is any ground for proceeding on the complaint and in this regard, it is all the more important and necessary that the complainant must make out a prima facie that his reputation was spoiled and what is relevant is the version of the complainant, warranting a Court, to make out a prima facie case. When the petitioner/complainant has not spoken, as to how, his name or reputation was defamed in the estimation of others, there is no need to proceed further, by issuing summons. If the recitals in the complaint itself alone are enough, to take cognizance of the offence, then there is necessity for the jurisdictional Court, to examine the complainant on oath. In my humble view, the legislature has intentionally thought it fit to state that the complainant should speak and depose that an offence has been committed.

22. On the facts and circumstances of the case, I am of the view that no summons need to issue, in the case of an offence, in relation to an individual, like in the case of defamation, and that there should be some difference, in relation to an offence, against the state. Even in the latter case, there should be some evidence. That is why, when a complaint is referred to the Police, under Section 156(3) Cr.P.C., evidence is collected by the Police and that a report is filed to the Court and only in the case of a positive report, the Court issues summons, if it is satisfied. In the case of a negative report, the Court in its discretion, either accepts the report or orders for a further investigation.

23. For the reasons stated supra, this Court is of the view that there is no manifest illegality, in dismissing the complaint under section 203 of the Criminal Procedure Code. Hence, The Criminal Revision Case is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps/skm

To

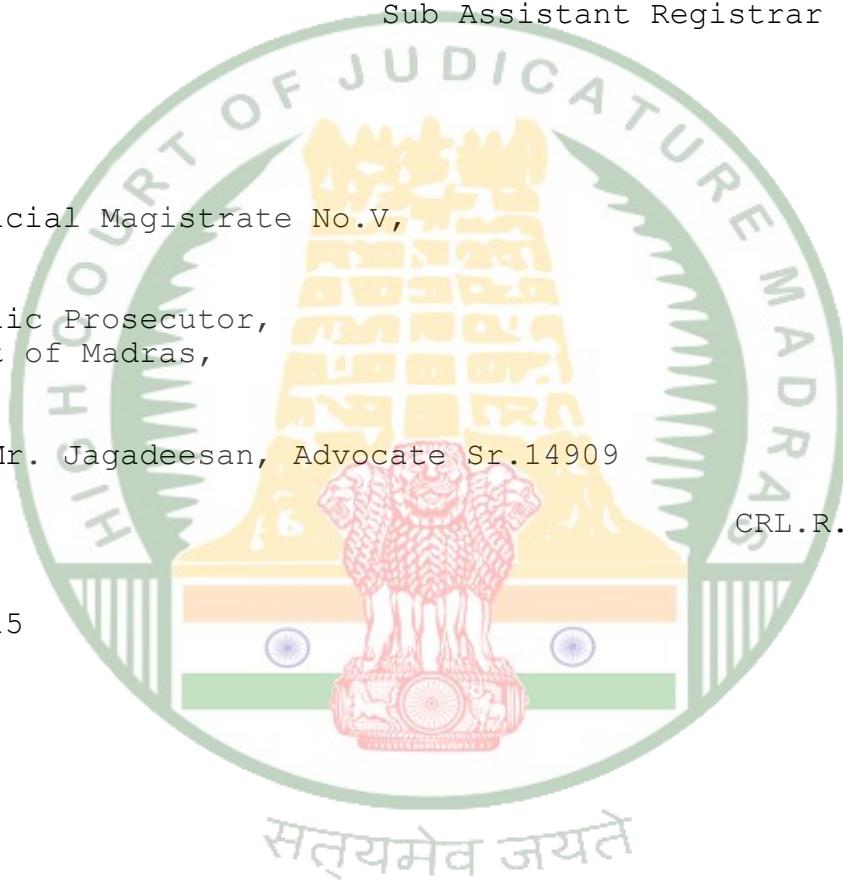
1.The Judicial Magistrate No.V,
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

1 cc to Mr. Jagadeesan, Advocate Sr.14909

CRL.R.C.No.223 of 2015

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