

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 236 of 2009

Ms. Alverna B. Mcgrat

..Petitioner/Complainant

Vs

1. Dr. G.K. Francis

2. Mr. Melford I. Terry

... Respondents /Accused

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records and set aside the order dated 30.01.2009 passed in M.P. No. 285 of 2009 on the file of II Metropolitan Magistrate at Egmore, Chennai.

For Petitioner : Mr. N.D. Bahety

For Respondent : No appearance

ORDER

The petitioner has filed this Criminal Revision Case questioning the correctness of the order dated 30.01.2009 passed by the learned II Metropolitan Magistrate, Egmore, Chennai in M.P. No. 285 of 2009. By the said order, the trial court refused to take cognisance of the complaint filed by the petitioner.

2. The petitioner has filed the complaint in MP No. 285 of 2009 before the trial Court, contending interalia that she is a life member of Vepery Auxillary (Branch) of The Home Missionary Society of India, which is a society registered under the Tamil Nadu Societies Registration Act and running a school in the name of Mountain Home School. According to the petitioner, the first respondent was one of the members of the said society. It is contended that earlier, the first respondent was expelled from his membership by another society called The friend-in-Need society and such expulsion was challenged by him in C.S. No. 206 of 2003 before this Court and this Court refused to grant any interim order. The first respondent was also expelled from his membership in yet another society called The Home Missionary Society of India and it was also duly recorded by the second respondent herein. However, on 04.12.2008 the first respondent issued a circular addressed to all the members of The Home Missionary Society of India informing the convening of a meeting on 10.12.2008. In the said circular, the first respondent was described as President even though he was expelled from his membership from the society on 26.04.2008 onwards. This act of the first respondent in issuing the circular

notwithstanding his expulsion was abetted by the second respondent. According to the petitioner, the respondents have issued the circular dated 04.12.2008 without any authority of law and it amounts to impersonation, cheating and playing fraud on the members of the society. Therefore, the petitioner has filed the instant complaint praying the Court below to take cognisance of the complaint and to punish the respondents for having committed the offences punishable under Section 107, 153-A, 416 and 506 (ii) of IPC.

3. The trial Court, on appreciation of the documentary evidence, particularly Ex.P3, Circular dated 04.12.2008 held that the first respondent did not pretend himself to be another person or alleged to have represented himself as the President of the society and at the most, the act of the first respondent can only be construed as a misrepresentation. It was further noted that there is no act done by the respondent which proved to be prejudicial to the maintenance of harmony and functioning of the society and therefore, the complaint cannot be taken cognisance of.

4. The learned counsel for the petitioner only contended that the circular dated 04.12.2008, marked as Ex.P3, was issued by the first respondent by suppressing his expulsion from the membership. According to the counsel for the petitioner, the first respondent has issued the circular, Ex.P3 dated 04.12.2008 without any authority of law and it was duly abetted by the second respondent, knowing fully well about the expulsion of the first respondent from his primary membership. This according to the counsel for the petitioner constitutes an offence of cheating by impersonation besides that the circular dated 04.12.2008 issued by the first respondent has caused disarray in the administration of the society. In such circumstance, the learned counsel for the petitioner prayed this Court to direct the court below to take cognisance of the complaint filed by the petitioner and to proceed further in accordance with law.

5. I heard the counsel for the petitioner and perused the materials placed on record, including the order passed by the Court below. The only grievance of the petitioner is that the first respondent, inspite of his expulsion from the membership of the society, has issued the Circular dated 04.12.2008 and it was duly abetted by the second respondent. It has to be noted that mere issuance of the circular by the first respondent will not be a ground to proceed against him for the offence of cheating by impersonation. As pointed out by the trial court, the ingredients of the offence of cheating by impersonation or abetment does not arise in the facts of the present complaint. The trial court, has rightly pointed out that if at all, the issuance of circular by the first respondent could be ranked as a misrepresentation for which he cannot be criminally prosecuted. The trial court also noted the contents of the Circular, Ex.P3 and concluded that it discloses only the personal opinion of the first respondent to hand over the Home Missionary Society of India to C.S.I. Thus, the trial court has come to a categorical conclusion that the complaint preferred by the

petitoirer does not disclose a prima facie case to proceed against the respondents. Such a finding rendered by the trial court, in my view, does not call for any interference. The reasons assigned by the trial court for not taking cognisance of the complaint given by the petitioner is valid and therefore the order passed by the trial court has to be confirmed.

6. Accordingly, the Criminal Revision Case is dismissed confirming the order passed by the court below.

-Sd/-

Assistant Registrar(cs-II)

//True copy//

Sub Assistant Registrar

rsh

To

II Metropolitan Magistrate
Egmore, Chennai.

+1 cc to Mr.N.D.Bahetty,counsel for the Petitioner(sr.44295)

vgi(co)
cp 07/10/2015

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