

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

CrI.R.C.No.396 of 2015

and

M.P.Nos.1 and 2 of 2015

1.Subbulakshmi
2.Dhinesh
3.K.K.Muthu

... Petitioners

vs.

K.Kannan

... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., seeking to call for the records from the file of learned Hon'ble III Additional District Judge and Sessions Judge at Salem pertaining to the impugned order passed in C.R.P.No.5 of 2015 dated 16.04.2015 and set aside the same and confirm the order passed by the learned Judicial Magistrate III, Salem in C.M.P.No.5925 of 2014 in un numbered C.C.No..... of 2014.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Sathyaraj

For Respondent : Mr.N.A.Ravindran

O R D E R

This revision challenges the order of learned III Additional District Judge and Sessions Judge at Salem, passed in C.R.P.No.5 of 2015 on 16.04.2015.

2. A private complaint was preferred alleging commission of offence under Section 499 IPC by the respondent. Petitioners are the Principal Agents of a Courier Service by name Professional Courier. They had appointed the respondent as a sub agent. Differences arose between them and the agency was terminated in February 2012. Thereafter, on 26.03.2014, petitioners caused publication in a Tamil Newspaper to the effect that the respondent was no longer an agent and persons dealing with him would be doing so at their own risk. The photograph of the respondent was also published. Aggrieved thereby the respondent filed a private complaint seeking prosecution for defamation. The respondent and witnesses were examined by the learned Judicial Magistrate and at

that stage, the petitioners appeared before the Magistrate and filed their objections. The Magistrate, took into consideration the objections and noted exception 10 to Section 499 IPC viz., "Caution intended for good of person to whom conveyed or for public good: --It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.", applied and dismissed the complaint. Aggrieved by the said order, the respondent moved a revision in C.R.P.No.5 of 2015, which came to be allowed on 16.04.2015. There against, the petitioners preferred the present revision.

3. Heard learned senior counsel for petitioners and learned counsel for respondent.

4. Learned senior counsel for petitioners submitted that a bare reading of the publication stated to be defamatory informs that it is not so. In causing the publication, petitioners acted towards protecting their interest in keeping with Section 208 of the Contract Act.

5. Learned counsel for respondent submitted that the Magistrate had committed an error in considering the objections of petitioners since prior to taking cognizance, the petitioners/accused could have no say. Learned counsel further submitted that learned Judicial Magistrate had committed an error in finding applicable the exception 10 to Section 499 IPC. He contended that having terminated the service of the respondent in February 2012, causing of the publication in March 2014, pointed to the poor intent of petitioners. Therefore, he would contend that the order under challenge did not call for any interference.

6. This Court has considered the rival submissions.

7. This Court is in agreement with the submission of learned counsel for respondent that the petitioners could have no say at the pre-cognizance stage. This Court is also in agreement with him when he submits that exception 10 to Section 499 IPC wrongly stood considered by the Magistrate since just as any other exception, exception 10 to Section 499 IPC also is to be pleaded and proved and thereby, the same becomes a matters for trial. Even so, on finding the publication complained against totally bereft of any statement that could be considered defamatory, this Court would not dismiss the revision but would proceed to exercise power available u/s.482 Cr.P.C. As stated supra, all that the publication informs is that the respondent is not an agent of petitioners and persons dealing with him would be doing so at their own risk. The publication of the respondents photograph could only be towards making certain the identity of the respondent to the public at large and would not by itself be a defamatory act.

Sections 208 of the Contract Act reads as follows:

"208. When termination of agent's authority takes effect as to agent, and as to third persons.- The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."

A reading of the above would show that the action of the petitioners is one in keeping with the law and towards protecting their interests. The action for defamation necessarily fails.

For the above reasons, this Court, in exercise of power under Section 482 of the Criminal Procedure Code, quashes the proceedings in C.C.No.113 of 2015 on the file of learned Judicial Magistrate III, Salem. This Criminal Revision accordingly is ordered. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsm

To

1. The III Additional District Judge and Sessions Judge,
Salem.

2. The Judicial Magistrate III, Salem.

+ 2 ccs to Mr.S.Sathyaraj, Advocate Sr 2368 (2/5/16)

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Cr1.R.C.No.396 of 2015

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