

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.29655 of 2011
and
Crl.M.P.No.6691 of 2017

1.Sri Priya
2.R.Vijayakumar
3.S.Sathiya Raj
4.S.Sriya
5.V.Arun Vijay
6.R.Sarath Kumar
7.Cheran
8.Vivek

... Petitioners/Accused

Vs.

M.Rozario

... Respondent/Complainant

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the entire records comprised in C.C.No.171 of 2011, pending on the file of the learned Judicial Magistrate's Court at Udhagamandalam and quash the same.

For Petitioners : Mr.Krishna Ravindran

For Respondent : Mr.J.Franklin

JUDGMENT

That the Petitioners have approached this Court to quash the proceedings that is a private complaint filed by the Respondent herein before the Learned Judicial Magistrate at Uthagamandalam, Nilgris District in Calendar Case No.171 of 2011 for the alleged offence under section 499 and 500 of IPC. At the time of filing of the instant petition, these petitioners were directed by the learned Judicial Magistrate by issuing summons to appear before him on 19.12.2011.

2.As per the version of the counsel for the petitioners and the perusal of the complaint in C.C.No.171 of 2011 on the file of the aforesaid Court, it is ascertained that all these petitioners are actors in Tamil cinema. The genesis of the instant case could be traced that on 03.10.2009, a cine actress was arrested under the provisions of Immoral

Trafficking (Prevention Act) and same was published almost in all the electronic media in Tamil Nadu. As such, the morning Tamil daily Dinamalar by its publication dated 04.10.2009 published a news item with a comment "Periya Vibachara Nadigaigal" and also published the photographs of six other leading heroines including the photograph of the 1st Petitioner at page No.11 in the Chennai Edition.

3. Feeling aggrieved, the 1st Petitioner and some other actresses brought the said news item to the South Indian Artist Association for legal action against the persons for the defamatory publication. The said Association decided to lodge a complaint and accordingly on 05.10.2009 a complaint was lodged before the Commissioner of Police, Chennai. Subsequently, the news editor of Dinamalar news paper was arrested on 07.09.2010. However, the Defacto-complainant filed the aforesaid complaint stating that under the aforesaid circumstances on 07.10.2000 a meeting was organized by the South Indian Actors Association at Swami Sangaradass Hall, Chennai.

4. The said meeting was organized to condemn the news item published by aforesaid news paper. In the meeting, the petitioners made defamatory imputations as stated in Para No.11 of the complaint. Further the defamatory imputations made by the petitioners were widely telecasted and it reached to several crores of people all over the world. Thereafter, the Petitioner, as he is a freelance journalist was not able to meet his friends as they enquired him about the aforesaid meeting. So, his social reputation is badly affected and in the eyes of his friends his respect was degraded. So, the Defacto complainant filed the complaint before the aforesaid Court.

5. However, the counsel for the Petitioners submits that when similar complaints were filed in C.C.No.232 of 2009 (Judicial Magistrate Court, Sivagangai, C.C.No.380 of 2009 Judicial Magistrate, Trichirappalli, C.C.No.233 of 2009, Judicial Magistrate, Srivilliputhur, C.C.No.485 of 2009 Judicial Magistrate, Palani) and this complaint also. However, as against the cognizance taken in the aforesaid calendar cases, petitions were filed before the Madurai Bench of Madras High Court in CrI.O.P.Nos.10194 of 2009, 10328 of 2009, 10794 of 2009 and 11742 of 2009. In those applications the further proceedings of the respective calendar cases are stayed. The further contention of the Petitioner's counsel would be that the complainant has not stated anywhere in his complaint that in what manner he has been defamed but bald and vague allegations alone are available which would not make out or attracted the ingredients of section 499 and 500 of IPC.

6. Further, the learned Judicial Magistrate without any satisfaction issued process under section 202 of Criminal

Procedure Code is bad in law. Further, the competency of the complainant is also questioned as he in no manner affected and hence he has no locus-standi to file the complaint.

7.Per contra, the learned counsel for the Respondent would contend that it is very clear that the petitioners have committed the offence as defined under section 499 of IPC. Hence the same is punishable under Section 500 of IPC. So, the act of taking cognizance by the concerned Judicial Magistrate is as per law and its merit cannot be decided in the quash petition filed under Section 499 and 500 of IPC. So, the petition filed by the petitioners is liable to be dismissed.

8.I heard Mr.Krishna Ravindran, learned counsel appearing for the petitioners and Mr.J.Franklin, learned counsel appearing for the respondent and the materials available on records are perused.

9.For the best of appraisal, Section 499 of IPC is reproduced here under:

"Whoever, by words either spoken or intended to be read or by science or by visible representation, make or published any imputation conserving any person..... the reputation of such person is said, except in the case herein after excepted, to defame that person".

10.Here is the case that the Section provides the imputation must be concerning about a person. Further the Respondent complainant could not be a "person aggrieved within the meaning of Section 199 (1) of Cr.P.C and he cannot therefore maintain the complaint."

11.This Court has referred the judicial decision reported 2010(2) SCC Criminal 1299 in the matter of S.Khushboo Vs Kanniammal and another. Moreover, the 9th exception of Section 499 would provide that "it is not defamation to make an imputation on the character of another, provided that the imputation be made the good faith for the protection of the interest of the person making it, or any other person or for the public good". However, the perusal of the complaint in C.C.No.171 of 2011 would make it clear that the complainant would not come under the purview of aggrieved person and he has not locus-standi to file the aforesaid complaint. On the other hand this complaint is very vague and has not made out any case as to how the respondent/complainant is affected.

12.It is further brought to the notice of this Court that the Respondent/Complainant is a freelance journalist and whose moral life is affected by the speeches of the Petitioner/Respondent in the meeting held on 07.10.2009. Whereas, in his complaint the Respondent/Petitioner has not stated that whether he is having any nexus with Dinamalar daily and against the said daily the alleged meeting was held.

13.As for as the offence under Section 499 of IPC is concerned the prosecution for defamation is dealt under section 199 of the Code of Criminal Procedure which reads as follows that "No Court shall take cognizance of an offence punishable under chapter XXI of the Indian Penal Code. Upon complaint made some person aggrieved by the offence in the opinion of this Court". The perusal of the complaint would show that the Respondent/Complainant will not come under the purview of "aggrieved person". Apart from that when this Court analyzed the alleged defamatory speeches by the Petitioners, it has even no remote nexus with the Respondent/Complainant. Further, it is already held by the Hon'ble Supreme Court in AIR 1972 SC 2609 (G. Narasimman v. T.V.Chakkappa) that only "such person has directly or indirectly suffered his own reputation can set the law in motion". But here the Respondent/Complainant in the opinion of this Court and perusal of the complaint he is no way connected by the alleged defamatory speeches of this Petitioner.

14.Further, when the examination under Section 200 of Cr.P.C., is commenced that too for taking cognizance of offence, the duty of the Magistrate concerned is to find out the prima-facie case as against the accused. Otherwise, no one can prevent the vexatious litigations. The object of examination under section 200 Cr.P.C., is to find the truth like removal of chaff from the grains. Further, under Section 202 of Cr.P.C., the Magistrate is having discretion to take cognizance and to issue process.

15.Moreover, as held by the Hon'ble Supreme Court in 2007 SCC 552, the "person aggrieved" means a person is wrongfully deprived of his entitlement which he is legally entitled to receive and it not include in kind of disappointment or personal inconvenience, person aggrieved means, a person who is adversely affected in legal sense. Heaving applied this ratio, this Court did not able to find any reason to bring the Petitioner within the definition of "person aggrieved". Further, as per the explanation under Section 499 of IPC., that no imputation is said ..., unless imputation directly or indirectly, in the estimation of other lowers the moral or intellectual character of that person or lowers the character of that person in respect of his cast or of his calling, or lowers the credit that person or cause it to be believed that the body of that person in a loathsome state or in a state generally considered as disgraceful.

16.Further, this Court has perused the order passed in Cr1.O.P.(MD)Nos.10194, 1032, 10794 and 11742 of 2009 dated 06.09.2013 in the said cases the instant petitioners are the petitioners for the similar issue and in those cases, all the Criminal Original Petitions were allowed and the proceedings of the respective Calendar Cases were quashed.

17.In the result, this Criminal Original Petition is allowed, in the careful consideration of the materials available on record, this Court is not able to accept that the Respondent/Complainant has made out prima facie case to constitute the offence punishable 500 IPC. Therefore, this Court has no other option except to quash the proceeding in C.C.No.171 of 2011 on the file of the learned Judicial Magistrate, Uthagamandalam, accordingly quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate,
Udhagamandalam.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras 104.

+10cc's to Mr.Krishna Ravindran, Advocate, S.R.No.48855

Cr1.O.P No.29655 of 2011
and
Cr1.M.P.No.6691 of 2017

CS V
CA(13/09/2017)

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