

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.23982 of 2009

and

M.P.No.1 of 2009

Premila .. Petitioner/Accused
Vs
P.Karthikeyan .. Respondent/Complainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.309 of 2009 on the file of the Judicial Magistrate No.II, Puducherry and quash the same in so far as the petitioner is concerned.

For Petitioners : Mr.R.Karthikeyan

For Respondent : Mr.V.Raghavachari

ORDER

The petitioner has filed this petition to call for the records in C.C.No.309 of 2009 on the file of the learned Judicial Magistrate No.II, Pudhucherry and quash the same.

2. The respondent had filed a complaint against the petitioner and two others for the offences under Section 499, 500, 107 and 34 IPC before the Judicial Magistrate No.II, Puducherry stating that he was a retired Vice-Principal of Government Higher Secondary School, Puducherry and he had been practicing as an advocate since 2005 and had been rendering free legal opinion. It is alleged that in the conference conducted on Capacity Building on Women Managers held at Chennai on 22.10.2008, the petitioner (2nd accused), who was working as Principal Nursing Officer, Mother Theresa Post Graduate and Research Institute of Health Sciences; 1st accused (Supriya K.Vinod) who was working as Professor, Department of Physiotherapy, and the 3rd accused Dr.V.Balu, who was working as Dean in Mother Theresa Post Graduate and Research Institute of Health

Sciences, Puducherry have made certain comments about the petitioner stating that a "Womaniser", "black-mailer", "dismissed School Assistant", "man of no means of living", "leading a life of getting Rs.5 or 10 for writing petitions for others" etc., and the said factum was witnessed by one Kala, who had informed her friends in Puducherry and they had informed the complainant about the incident. When the respondent met Kala and asked her about the incident, she had confirmed the same. On 17.12.2008, the respondent issued notice to the first accused and the petitioner and both of them have given a copy of the said notice to the third accused, who had published part of the notice by among the teaching staff of the Nursing College and thereby the third accused had spoiled the name, fame and lowered the reputation of the respondent. According to the petitioner, on 23.1.2009, the petitioner and the first accused have suitably replied the notice issued by the respondent. Despite reply, the respondent had lodged the private complaint before the Judicial Magistrate No.II, Puducherry.

3. No counter-affidavit has been filed by the respondent.

4. I heard Mr.R.Karthikeyan, learned counsel for the petitioner and Mr.V.Raghavachari, learned counsel for the respondent and also perused the materials available on record.

5. The petitioner seeks quashing of the criminal proceedings in C.C.No.309 of 2009 pending on the file of the Judicial Magistrate No.II, Puducherry on the following grounds:

- (i) The respondent had failed to made out ingredients of the offences under Sections 499, 500, 107 and 34 IPC.
- (ii) Even accepting the case of the respondent, the cause of action in this case i.e., the conference/meeting said to have been held at Chennai and the complaint having been filed in Puducherry and as such the Judicial Magistrate No.II, Puducherry does not have jurisdiction to try the said offence in view of Section 177 Cr.P.C.
- (iii) The respondent has failed to state as to how and in what manner his reputation and dignity was lowered in the minds of the public.
- (iv) There was no evidence as to which accused had made the speech. The legal

notice issued by the respondent also was silent about which accused had made the said speech.

(v) When the respondent alleged that the third accused had circulated letters, the petitioner had no role in it.

(vi) The ingredients of the complaint do not satisfy Explanation 4 of Section 499 IPC.

(vii) No complaint can be maintainable under Section 499, 500, 107 and 34 IPC jointly, as there can be no common intention to defame any person.

6. The learned counsel for the petitioner submitted that no such incident took place in the conference as alleged by the respondent and the petitioner had not uttered the said words. According to the learned counsel, even accepting the case of the respondent that the occurrence took place at Chennai, the respondent ought not to have filed the complaint in Puducherry Court and the Puducherry Court has no jurisdiction to entertain the complaint. He would submit that since the ingredients of the offences under Sections 499 and 500 IPC have not been made out as against the petitioner, the Judicial Magistrate No.II, Puducherry ought not to have taken the complaint on file and issued summons to the petitioner.

7. The learned counsel further submitted that the complaint of the respondent was one more act of malice, an abuse of process which ought not to be permitted. The learned counsel submitted that the complaint ought not to have been taken cognizance of inasmuch as the respondent had attributed defamatory utterances to both the petitioner and the first accused in common, without informing specifically who had said what. In his complaint, the respondent stated that the third accused who had circulated letters. When such being the statement of the respondent, the petitioner had no role in it.

8. The learned counsel for the petitioner further submitted that earlier the first accused/Supriya K.Vinod had filed CrI.O.P.No.27944 of 2009 for quashing the criminal proceedings against him in C.C.No.309 of 2009 and by applying the same, the learned counsel prayed for allowing of the present Criminal Original Petition.

9. Reiterating the complaint, the learned counsel for the respondent submitted that the Judicial Magistrate No.II, Puducherry has rightly taken the cognizance of the offence against the petitioner and there was no need to quash the same.

10. it is seen that the first accused in C.C.No.309 of 2009 had already approached this Court and filed CrI.O.P.No.27944 of 2009 for quashing of the criminal proceedings against him. By an order dated 30.6.2014, the learned Single Judge of this Court allowed the said CrI.O.P.No.27944 of 2009 filed by the first accused. The relevant portion of the order reads thus:

"9. In the decision in Neelu Chopra and another vs. Bharti [2010 (1) LW (CrI.) 685], the Apex Court has informed that mere making vague allegations without informing particulars would not be sufficient to sustain a complaint for offence under section 498-A IPC. Though such finding came to be rendered in a case relating to cruelty, the line of reasoning would apply also in respect of offence under section 499 IPC. It would not be possible for a Court to decide which of the accused uttered what that was defamatory unless the complainant is able to inform the same with some accuracy. In the instant case, the respondent's allegations are that this petitioner and the second accused made offending utterances. The utterances are attributed to both in common. Turning to the recorded statements of the complainant and his witness Rukmani examined with him, it is seen that the respondent has acted on the say-so of the said Rukmani. Her statement informs no more than that this petitioner endorsed the statement of the second accused and to the effect that this petitioner too had suffered at the hands of the respondent. Therefore, neither the complaint nor the statements recorded would justify taking cognizance against the petitioner. Though, normally an accused cannot escape trial on the ground that a Court otherwise competent lacked territorial jurisdiction, the manner in which cognizance stands taken in the instant case reflects non-application of mind on the part of the Judicial Magistrate. After informing that the petitioner and the second accused made defamatory remarks against him at a workshop at Chennai, the respondent has informed the further defamatory action to be that of publication of copies of his notice by the third accused, at the instance of this petitioner and the second accused, at Pondicherry. The learned Magistrate has

thought it not fit to take cognizance against the third accused. If so, it follows that no cause of action has arisen within Pondicherry and hence, he would not have territorial jurisdiction.

10. The reasoning above informed would apply also in respect of the second accused. This Criminal Original Petition shall stand allowed. The proceedings in C.C.No.309 of 2009 on the file of learned Judicial Magistrate II, Puducherry, shall stand quashed. Consequently, connected miscellaneous petitions are closed."

11. The respondent was unable to produce any material to show that the aforesaid order of the learned Single Judge has been set aside by the higher forum and/or the same will not be applicable to the case of the petitioner herein. Since the very same criminal proceedings in C.C.No.309 of 2009 against the first accused had been quashed by the learned Single Judge of this Court, this Court do not want to take a different view. Further, the allegations levelled against the petitioner and the first accused by the respondent in his complaint are more or less same.

12. Following the order dated 30.06.2014 passed in CrI.O.P.No.27944 of 2009, dated 30.06.2014, this Criminal Original Petition is allowed. The proceedings in C.C.No.309 of 2009 on the file of the learned Judicial Magistrate No.II, Puducherry shall stand quashed in respect of the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs
To
The Judicial Magistrate No.II,
Puducherry.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 15712

+1cc to Mr.V.Raghavachari, Advocate SR.No. 15730

CRL.OP.No.23982 of 2009 and

M.P.No.1 of 2009

ASK(09/10/2018)