

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.12.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P No.25052 of 2010
and
M.P.No.1 of 2010

S.Gunasekaran .. Petitioner/Accused

vs.

Kulasekaran .. Respondent/Complainant

Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for records in S.T.R.No.114 of 2009, on the file of the learned Chief Judicial Magistrate, Pondicherry and quash the same.

For Petitioner : Mr.Ilanthiraiyan
for M/s.Sai Bharath and Ilan

For Respondent : Mr.M.Gnanasekar

JUDGMENT

The brief facts are necessary for the disposal of this instant quash petition. The petitioner and respondent herein are employees under Pondicherry Government. The petitioner works as Sub-Editor, department of Information and Publicity and now on deputation working as Deputy Secretary, Sahitya Academy. The respondent works as Public Relation Assistant, Department of Information and Publicity. The above private complaint in S.T.R.No.114 of 2009 on the file of the learned Chief Judicial Magistrate at Pudhucherry came to be taken on file on the basis of a private complaint made by the respondent herein under Section 200 of Cr.P.C. for the alleged offences under Sections 499, 500 and 503 of IPC.

2.It is petitioner's case that he is an innocent and have not committed any offences as alleged in the subject complaint in S.T.R.No.114 of 2009, whereas it was lodged to counter blast the petitioner's complaint dated 07.11.2007 which came to be registered in Crime No.15 of 2008 dated 27.08.2008 under Section 506 (ii) read with 34 IPC as against the respondent.

3.The respondent's case is that on 05.12.2007 when he went to office, the petitioner along with 2 other persons circulated pamphlets which are defamatory to the respondent and his family. The pamphlets were circulated to the staffs and outsiders therein. The contents of the pamphlets were derogatory to the reputation of the respondent. It caused serious harm over reputation of his family, which made him sleepless. That apart the petitioner also posted wall posters containing defamatory averments as against the respondent and

his wife. Previously the very same defamatory statements were published in two editions of magazine dated 01.12.2007 and 01.06.2008 of local magazine namely "Pudhumai" at the instance of the petitioner. The respondent having undergone unbearable pain, mental agony and loss of reputation he lodged a complaint before the concerned police authority for appropriate action. However, as there was no action taken over the respondent's complaint he came up with the subject complaint in S.T.R.No.114 of 2009.

4.It is the contention of the petitioner that the above complaint is false and as well the complaint is not maintainable on the following grounds that:

(i).In the complaint, the alleged offence was held while office hours in the place of their working office. Hence, this complaint is not legally maintainable as no proper permission from concerned office of the petitioner/accused as contemplates under Section 197 of Cr.P.C was obtained.

(ii).The proof for the alleged offence which is filed by the respondent are (1).Pamphlet dated 16.12.2007, (2).Wall posted dated 22.12.2007, (3).Magazine of April dated 01.12.2007 and Magazine of Pudumai dated 1 to 15 June 2008, wherein all those documents contain no iota of evidence that the petitioner has signed or served to others for basic prima facie allegations or even the name of the Printer.

(iii).The case is invented for the purpose of revenge.

5.At this juncture, it is noticed by this Court that the petitioner herein has earlier filed a discharge petition in CrI.M.P.No.276 of 2010 in S.T.R.No.114 of 2009 to discharge him from the subject complaint by raising the very same grounds stated above. It is further disclosed that the said discharge petition was dismissed by the trial Court by holding that Section 197 Cr.P.C is inapplicable to this case, because version of the respondent is doubtful as to whether the offence took place at the office hours and within the working place. It could be lime lighted only during the course of trial. Moreover the complaint alleges the act of the petitioner committed by the accused privately and personally. Whereas, not while acting or purporting to act discharge of official duty. Therefore, permission under Section 197 of Cr.P.C. does not come into play, even otherwise those facts are to be adjudicated while weighing the evidence at ripe stage of trial.

6.Even though the names of the printing press was not mentioned in the pamphlets, it is liberty to the petitioner herein to place the same before the trial and during cross examination of witness, he could enlighten that it is a created one for the purpose of taking revenge against the petitioner for the complaint preferred before the PCR Cell P.S. Moreover such motive could be established only after appraisal of the oral and documentary evidence.

7.It is significant to note that the above discharge petition was dismissed by trial Court on 05.10.2010, whereas the present Criminal Original Petition is found to be filed on 25.10.2010 i.e. 20 days thereafter, the dismissal of discharge petition by raising very same contentions as grounds for quash. However, nowhere in petition, the petitioner has stated about the dismissal of his discharge petition in Cr.M.P.No.276 of 2010 in S.T.R.No.114 of 2009.

8.It is needless to say that all the grounds raised by the petitioner were already dealt and answered by the trial Court in a proper and right manner. Only after having convinced on the available records on file, the learned Judge has taken the complaint on file.

9.In so far as the other ground raised by the petitioner, it would be appropriate to be decided only after conclusion of a fair trial to be undergone and supported by sufficient oral and documentary evidence of either sides.

10.It is needless to say that in view of the above facts, this Court is of the opinion that the case on hand is not a fit case to exercise its inherent power, which is to be exercised cautiously and sparingly to prevent abuse of process of law and to secure the ends of justice.

11.In the result:

(a) this Criminal Original Petition is dismissed;

(b) the petitioner/accused is permitted to put forth all the grounds raised in this Criminal Original Petition before the learned Chief Judicial Magistrate, Pondicherry in S.T.R.No.114 of 2009;

(c) the learned Chief Judicial Magistrate, Pondicherry, is directed to dispose the S.T.R.No.114 of 2009 within a period of three months from the date of receipt of a copy of this order, without influencing the order of this Court in this Criminal Original Petition. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Pondicherry.

2. The Public Prosecutor,
Pondicherry.

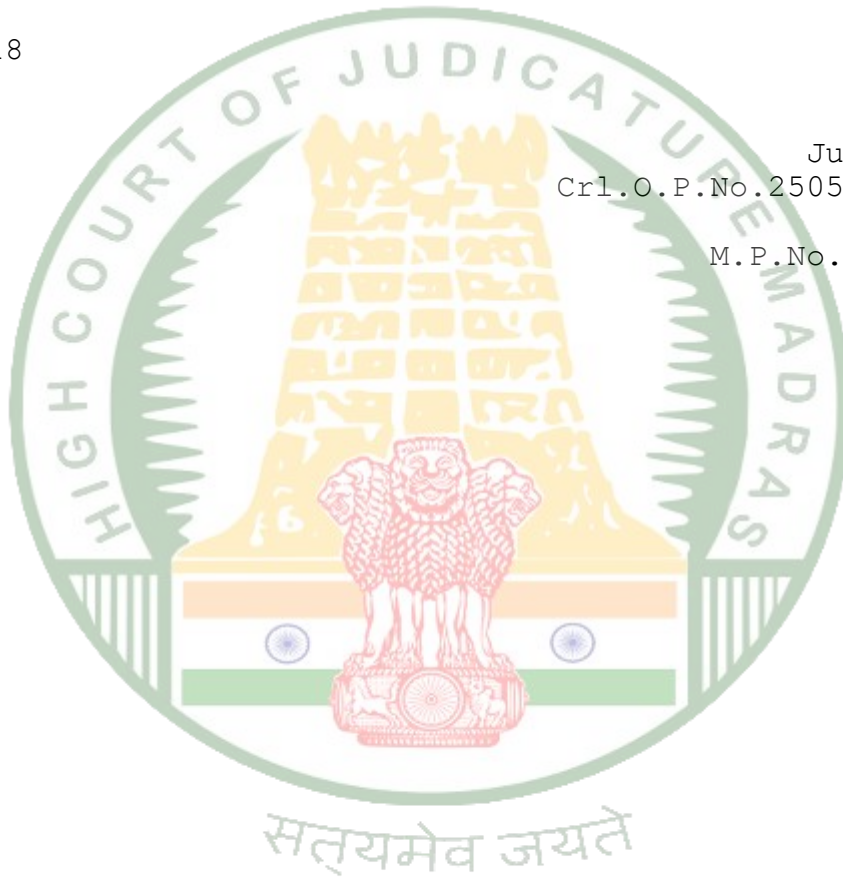
+lcc to Mr.N.Gnanasekar, Advocate Sr.No.87562

+lcc to M/s.Sai Bharath & Ilan, Advocate Sr.No.87496

SAI (CO)

sm:9.2.2018

Judgment in
Cr1.O.P.No.25052 of 2010
and
M.P.No.1 of 2010



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