

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.16639 of 2010

and

M.P.No.1 of 2010

1.Sirugudu Naga Venkata Durga Kumari
2.Maganti Uma Maheswara Rao
3.Maganti Rajeswari
4.Maganti Satyanarayana
5.Kolla Purnachandra Rao
6.Ghanta Laxmi Tulasi ... Petitioners/Accused 1 to 6

vs.

Sirugudu Jhansilakshmi ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.4617 of 2003, on the file of the learned X Metropolitan Magistrate, Egmore, Chennai and to quash the proceedings therein.

For Petitioners: Mr.C.S.Dhanasekaran

For Respondent : No Appearance

O R D E R

The petitioners, who are accused 1 to 6 in C.C.No.4617 of 2003, on the file of the learned Additional Metropolitan Magistrate, Egmore, Chennai, are the petitioners in this Criminal Original Petition filed the present criminal original petition to quash the private complaint in C.C.No.4617 of 2003 filed under Section 499 I.P.C. punishable under Section 500 of I.P.C.

2.The case of the respondent/complainant in C.C.No.4617 of 2003 is that the first accused, who is the first petitioner herein, is married to the complainant's brother in law. During the month of August 1998, the first accused and the complainant's husband went to Andhra Pradesh and the first accused and other accused gave a false complaint against the

complainant's brother-in-law, namely, the husband of the first accused and a case was registered against the first accused husband for the offences under Section 498(A) IPC in December 1998. Thereafter, the accused with a malafide intent to disgrace, defame and to take revenge against the complainant, her husband and in-laws had filed a false complaint against them on 03.08.1999.

3.It is the further case of the complainant that the complainant along with her family went to attend a marriage of her brother's daughter on 16.08.2000. The accused had made the police complaint to arrest the complainant and her father-in-law in the marriage ceremony itself, thus defaming the complainant and her family members. Some of the complainant's relatives made defamatory statements about her and her husband. The Bridegroom had said why did you allow a person with a criminal case to accompany the Bride in Sathyanarayan Pooja which is an auspicious ceremony of bringing the Bride to the Marriage Hall. After the incident, there was wide spread comments about the character of the complainant.

4.It is the further case of the complainant that the action of the accused had depicted the complainant as a bad person in front of her friends and relatives. This made the relatives to pass comments about the complainant and her husband. The father-in-law and mother-in-law and the relatives and friends started to disassociate from the family of the complainant. After the incident, the complainant and her family were lowered in the estimation of well wishers, family friends, relatives and in the society. Therefore, the accused were acted with malafide intention to defame the complainant and her family as she had given a false complaint against them after eight months and utilized the opportunity to arrest them when the complainant, her husband, mother-in-law and father-in-law went to attend her brother's daughter marriage.

5.It is the further case of the complainant that when she was accompanying the bride in the wedding ceremony, on 17.08.2000 the accused 1 to 6 herein had instigated the police to arrest the complainant in the wedding ceremony itself. The accused 1 to 6 herein went along with the police, arrested the complainant and thereafter, they brought her in the police jeep to the complainant's residence at Ayanavaram, Chennai and under pretext of searching the complainant's husband had paraded her escorted by the police. Thereafter, the accused 2 and 3 went around the residence of the complainant and told the neighbours of the complainant at Ayanavaram and told them that the complainant's family members had demanded money from the first accused and that the complainant has been arrested by the police that the complainant's husband had hidden himself in the neighbourhood and the accused 4 to 6 were shouting that no one

should have any relationship with the complainant and her family as they are all criminals particularly accused 4 and 5 went to the opposite house and threatened the inmates that if they harbour criminals like the complainant and her husband, they will also be arrested for harbouring the accused. This incident was unwarranted by the accused 1 to 6 herein, done deliberately to harm the reputation of the complainant's family in the estimation of the complainant's neighbours.

6.It is the further case of the complainant that the above spoken words by the accused had made imputation to harm the reputation of the complainant and hence, lowered in the reputation and defamed them in the public and neighbours. The complainant's character and reputation had been lowered before her relatives and in the eyes of the people present in the marriage hall and thereafter, the complainant went to jail in this case. Thereafter, the complainant has been discharged by the IV Metropolitan Magistrate, Vijayawada, Andhra Pradesh, which clearly proves that the complaint given by the accused is with a malafide intend to tarnish the reputation and image of the complainant and her husband and in-laws in front of their relatives, neighbours and others. Due to the act of the accused, going to the houses of her neighbours Vasudevan and Ramasamy and searching for the complainant's husband and her in-laws in particularly accused Nos.3 to 5 going to the house and telling that the complainant and her husband had demanded lakhs of Rupees in jewels from the accused 1 and 2 herein and that they are anti-social elements and they should be socially boycotted. After this incident the neighbours particularly the womenfolk in the neighbourhood socially boycotted the complainant and she was never welcomed into any family gather in the Railway Circle. Therefore, the respondent complainant has filed the above complaint initially before the learned X Metropolitan Magistrate, Egmore, Chennai, praying to take the complaint on file and issue process to the accused and deal with them according to law.

7.After taking cognizance of the complaint, the learned X Metropolitan Magistrate, Egmore, Chennai, had issued summons to the accused to appear before the said Court. After the appearance of the accused before the said Court, namely, learned X Metropolitan Magistrate, Egmore, Chennai and later on it was transferred to the learned Additional Chief Metropolitan Magistrate Court, Egmore, Chennai. Now, the accused filed the present Criminal Original Petition praying to quash the said proceedings in C.C.No.4617 of 2003, on the file of the learned Additional Metropolitan Magistrate, Egmore, Chennai.

8.It is the case of the petitioners/accused 1 to 6 that the first petitioner is the wife of the brother-in-law of the respondent/complainant. Since the marriage, the first petitioner

was being ill-treated by the in-laws. Hence, a complaint was filed against them under Section 498(A) of I.P.C. in December 1998. Thereafter, a complaint was given against the respondent/complainant and others on 03.08.1999. Pursuant to the complaint, the police during investigation arrested the respondent/ complainant. The respondent/complainant was taken by the police to her residence at Ayanavaram and her house was searched. The action of the police in arresting the respondent was only in the process of investigation and nothing else and further in the private complaint in C.C.No.248 of 2001, on the file of the learned IV Metropolitan Magistrate-cum-Mahila Magistrate at Vijayawada against the respondent/complainant and her husband and her in-laws for the offence under Section 498(A) of I.P.C., and the respondent/complainant and her in-laws preferred a petition for discharge. The said petition for discharge was allowed by virtue of the order dated 21.01.2002. But, the arrest and the search at the house of the respondent/complainant was only on 17.08.2000. Therefore, there is no proximity for her arrest and her discharge. Further, the husband of the first petitioner was convicted on 15.03.2001 by the learned IV Metropolitan Magistrate, Vijayawada in C.C.No.272 of 1999 for the offences under Section 498(A) I.P.C. was sentenced to undergo 6 months imprisonment and was directed to pay fine of Rs.1,000/- in default one month Simple Imprisonment. His appeal in Criminal Appeal No.40 of 2001 was dismissed by the learned Sessions Judge/Mahilapore, Vijayawada on 31.03.2005. Thus, the case against the brother-in-law of the respondent herein ended in conviction.

9.It is the further case of the petitioners are that admittedly a complaint was filed against the respondent in the year 1999 and she was arrested by the police in the year 2000 pursuant to the said complaint. Her discharge in the year 2002 does not have any bearing on her innocence to sustain the present complaint. During the arrest of the respondent, there was a complaint pending and her arrest was legal. The respondent/complainant has maliciously instituted the present complaint in C.C.No.4617 of 2013 with an ulterior motive of wreaking vengeance on the petitioner and also a view to spite them due to personal grudge. The present complaint has been lodged with a complete malicious intent to simply harass the petitioners herein. The averments made in the complaint are totally indefinite in their nature and none of the ingredients of the offences alleged to have been committed are made out against the petitioners. Except the date of arrest i.e. on 17.08.2000 no other date was mentioned in the complaint.

10.It is the further case of the petitioners that the learned Magistrate did not scrutinize even the contents of the complaint and was a silent spectator at the time of recording of preliminary evidence before summoning the petitioners. If the

learned Magistrate perused the complaint properly, he would have realized that the respondent herself had made a mention about the criminal complaint against her and the police arrested her pursuant to the said complaint. In the present case, the criminal law has been set in motion by the respondent to harass the petitioner herein needlessly and to wreak personal vengeance in order to bring them under pressure not to further prosecute the proceedings against the order of her discharge. The petitioners, the native of Vijayawada have been dragged from all the way to Chennai for the present prosecution and the same is nothing but abuse of process of law. Thus, look at from any angle the present complaint in C.C.No.4617 of 2003 has been filed to counter blast the proceedings taken by the first petitioner against the brother-in-law of the respondent and also against her. Therefore, these petitioners/accused had filed this Criminal Original Petition for quashing the case in C.C.No.4617 of 2003, on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

11.I heard Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioners/accused and perused the materials available on records. No representation for the respondent.

12.It is the case of the respondent/complainant that she was falsely implicated in a case given by these petitioners/accused and thereafter, she was discharged from the said case by the IV Metropolitan Magistrate, Vijayawada, Andhra Pradesh. Apart from this, it is alleged by the respondent/complainant that when the respondent/complainant along with her husband went to Wedding Ceremony on 17.08.2007, the petitioners/accused 1 to 6 had instigated the police to arrest the complainant in the wedding ceremony itself. Thereafter, the petitioners/accused 1 to 6 went along with the police, arrested the complainant and thereafter, they brought her in the police jeep to the complainant's residence at Ayanavaram, Chennai and under the pretext of searching the complainant's husband had paraded her escorted by the police.

13.It is the further case of the respondent/complainant that the petitioners/accused 2 and 3 went around the residence of the complainant and told the neighbours of the complainant at Ayanavaram that her family members had demanded money from the first accused and that she has been arrested by the police and that the complainant's husband had hidden himself in the neighbourhood and accused 4 to 6 were shouting that no one should have any relationship with the complainant and her family as they are all criminals particularly accused 4 and 5 went to the opposite house and threatened the inmates that if they harbour criminals like the complainant and her husband, they will also be arrested for harbouring the accused. This action was unwarranted by the accused 1 to 6, done deliberately to harm

the reputation of the complainant's family in the estimation of the complainant's neighbours. It is the further case of the respondent/complainant that she was sent to jail in this case and thereafter, she has been discharged by the IV Metropolitan Magistrate, Vijayawada, Andhra Pradesh. It is clearly proved that the complaint given by the accused is with a malafide intention to tarnish the reputation and image of the complainant and her husband and in-laws in front of their relatives, neighbours and others.

14. It is the case of the de-facto complainant that only to counter blast this complaint has been given by the first accused against the de-facto complainant, her husband and her in-laws for the offence under Section 498(A) of I.P.C. and thereafter, they have preferred a petition for discharge. The said discharge petition was allowed by virtue of the order dated 21.01.2002. Thereafter only, the complainant/respondent was discharged. Whereas the first accused husband who is the brother-in-law of the respondent/complainant was convicted on 15.03.2001 by the learned IV Metropolitan Magistrate, Vijayawada in C.C.No.272 of 1999 under Section 498(A) of I.P.C. and his appeal was dismissed by the learned Sessions Judge/Mahilapore, Vijayawada, on 31.01.2005. Thus, the case against the brother-in-law of the respondent herein ended in conviction.

15. Though the above complaint has been filed and the same is pending without any further progress and as on date there is no findings and issues raised in this Criminal Original Petition has been decided, since no evidence has been taken in the said complaint as on date.

16. When the complaint has been filed by the respondent/complainant, the question of fact which require evidence in respect of defamation, the Hon'ble Apex Court in the case of Jeffrey J. Diermeier and Another v. State of West Bengal and Another reported in (2010) 6 Supreme Court Cases 243, has held as follows:

"28. "Defamation" is defined under Section 499 IPC. It reads as under:

"499. Defamation.-Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

29. To constitute "defamation" under Section 499 IPC, there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm

the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

30. However, as per Explanation 4 to the section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, in the estimation of others or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

31. As stated above, the thrust of the argument of learned counsel for the appellants was that since the "Word of Caution" was issued in "good faith" for the benefit of those who were planning to acquire the CFA certificate, and the same being for the "public good", the case falls within the ambit of Tenth Exception to Section 499 IPC and, therefore, the appellants cannot be held liable for defamation.

36. However, it cannot be denied that while the publication refers to the interim order passed by the Delhi High Court, it omits to mention that the said injunction will not come into effect till the end of current academic session of the CFA programme, which, according to Respondent 2, was to conclude in May 2009, and that the order would not mean expression of final opinion on the matter. According to Respondent 2, the omission of last two sentences of the interim order was a conscious and deliberate suppression to somehow project ICFAI in a bad light in order to harm its reputation in the eyes of the professional community and, therefore, the offending publication was neither in "good faith" nor in "public interest".

37. It is trite that where to the charge of defamation under Section 500 IPC the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him. The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify

the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt.

38. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with the degree of proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception."

17. If the findings of defamation is the harm caused to the reputation of a person like the respondent/complainant and the imputation made by these petitioners, which is harm the reputation of the respondent/complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged, the evidence alone to be proved.

18. Therefore, the Hon'ble Supreme Court in the above judgment very categorically held that unless the evidence has been taken to prove the defamation, this Court cannot go into question of quashing the complaint filed by the respondent/complainant. Since whether the word as well as the activities alleged to be done by the petitioner/accused is a question of fact, which required evidence, in this case, recording of evidence ought not been urged and in the absence of any evidence, findings and issues in respect of defamation raised, cannot be decided in this Criminal Original Petition. Therefore, the petitioner/accused by giving liberty to raise all the grounds, which are all raised in the Criminal Original Petition before the learned Additional Chief Metropolitan Magistrate, Chennai in the complaint in C.C.No.4617 of 2003. Without influencing the averments made in this Criminal Original Petition, the learned Magistrate can consider and dispose the complaint within a period of six months from the date of receipt of a copy of this order.

19. In the result:

(a) This Criminal Original Petition is dismissed;

(b) Since the case of the year 2003 and it is pending for more than 14 years, the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, is hereby directed to dispose of the said complaint, on day to day basis, within a period of

six months from the date of receipt of a copy of this order;

(c) Both the parties are hereby directed to give their fullest co-operation to the trial Court for speedy disposal of the case;

(d) Since the petitioners/accused are the residence of Andhra Pradesh, this Court finds the difficulty to attend the Court for every hearing and hence, their appearance is dispensed with except the date of hearing of the case at the initial appearance, questions under Section 313 of Cr.P.C. and on the date of Judgment.

20. Accordingly, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

vs

To

1. The Additional Metropolitan Magistrate,
Egmore, Chennai.

2. -Do Thro Chief Metropolitan Magistrate,
Egmore, Chennai.

3. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai

+1cc to Mr.C.S.Dhanasekaran, Advocate sr.18122

Cr1.O.P No.16639 of 2010 and
M.P.No.1 of 2010

rsy(co)
ss(20/7/2017)