

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Cr1.O.P.No.8234 of 2012

1.Dr.Krishnamurthy
2.Dr.R.Lakshmipathy

3."Dinamalar" Tamil Daily
Rep by its Publisher
Dr.R.Lakshimikpathy
No.39, Whites Road,
Chennai - 600 014. ... Petitioners

Vs.

K.S.Selvakumar ... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records in C.C.No.19/2012 on the file of the Judicial Magistrate, Vriddhachalam and quash the same.

For Petitioners : Mr.C.S.Dhanasekaran

For Respondent : Mr.M.R.Jothimaniyan

O R D E R

The petitioners are accused 1 to 3 in C.C.No.19 of 2012 on the file of the Judicial Magistrate, Vriddhachalam. The respondent/complainant filed a private complaint under section 200 Cr.P.C. before the Judicial Magistrate, Vriddhachalam against the petitioners herein for the alleged offences punishable under Sections 153 A, 500, 501(ii), 502(ii), 503, 504 and 505 1(C) and 2 of IPC r/w. 109 IPC. The case of the respondent/complainant is that the petitioner/accused published in their Tamil Daily, Dinamalar dated 29.01.2012 misleading, false article titled

"வாழ்வாதாரத்தை உயர்த்த இப்படியும் ஐடியா
"கவுண்டர்" களாக மாறி வரும் வன்னியர்கள் "

2. According to the respondent/complainant the said article was published with an intention to defame the complainant and his community people and their social status.

The Judicial Magistrate took cognizance of the offences

punishable under Sections 153 A, 500, 501(ii), 502(ii), 503, 504 and 505 1(C) and 2 of IPC r/w. 109 IPC against the petitioners herein and issued summons to them.

3. Mr.C.S.Dhanasekaran, learned counsel for the petitioners would contend that the said article would not hurt the feelings of the said community and that in any event, immediately on the next day (i.e) on 30.01.2012, the petitioners expressed their regret over the publication of the article on 29.01.2012. He also would contend that the Magistrate has taken cognizance of all the offences punishable under Sections 153 A, 500, 501(ii), 502(ii), 503, 504 and 505 1(C) and 2 of IPC r/w. 109 IPC, even though there is an express bar under Section 196 Cr.P.C.

Section 196 Cr.P.C. reads as under:

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence

(1) No Court shall take cognizance of- (a) any offence punishable under Chapter VI or under section 153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of - (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction

under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155".

4. Though the petitioners contend that the article published in Dinamalar, Tamil Daily dated 29.01.2012. would not hurt the feelings of people of Vanniyar community, they have also published a retraction on the very next day that is on 30.01.2012 and therefore I do not find any malafide intentions on the part of the petitioners. The Editor of a Newspaper has to rely on various inputs received from the reporters who make field visits to report such incidents. In the instant case, the petitioners have regretted for the publication on 30.01.2012 though they ought to have been more careful before publishing any article. Apart from this, a plain reading of Section 196 of Cr.P.C clearly shows that there is a bar in taking cognizance of the offences punishable under Sections 153 A and 505 IPC, unless, the Government or the District Magistrate has given consent in writing to initiate the proceedings. In view of all these reasons, the entire proceedings in C.C.No.19/2012 is liable to be quashed.

5. Accordingly, the petition is allowed and the proceedings in C.C.No.19/2012 is quashed.

Sd/-
Deputy Registrar (CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

msv

TO

The Judicial Magistrate, Virudhachalam.

+ 1 cc to Mr.M.R. Jothimanian, Advocate Sr.40671
+ 1 cc to Mr.C.S. Dhnasekaran, Advocate Sr.40289

Cr1.O.P.No.8234 of 2012

(CS-DR)
EU(17/07/2018)