

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2018

Pronounced on : 28.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.15685 of 2012
and M.P.No.1 of 2012

1.Malar Publications Private Limited,
office of the Daily Thanthi,
766, Avinashi Road,
Coimbatore-641 018.

2.P.Jayapandi,
Editor, Malai Malar,
766, Avinashi Road,
Coimbatore-641 018.

3.J.P.Vijayaraj,
Printer, Malai Malar,
766, Avinashi Road,
Coimbatore-641 018.

... Petitioners/Accused

Vs.

R.Sevvilamparithi

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the proceedings in C.C.No.332 of 2011 on the file of the learned Judicial Magistrate, Mettupalayam and to quash the same.

For Petitioners : Mr.B.Kumar, Sr. Counsel
for Mr.V.Sanjeevi

For Respondent : Mr.B.Harikrishnan

O R D E R

The first petitioner herein is a Tamil Newspaper namely, Daily Thanthi and the petitioners 2 and 3 are the Editors and Printers of another Tamil Newspaper namely, Malai Malar respectively. The petitioners herein have been arrayed as

accused in a private complaint for offences under Sections 499 to 502 IPC, for having published an alleged defamatory article. The petitioners herein now seek to quash the private complaint.

2. Heard Mr.B.Kumar, learned Senior counsel appearing on behalf of the petitioners and Mr.B.Harikrishnan, learned counsel for the respondent.

3. The case of the complaint is that there was a news item on 10.12.2011 in the Tamil Daily "Malai Malar" which stated that an Engineer was granted divorce through impersonation of a lady as his wife and a leading lawyer from Karamadai near Coimbatore was implicated of being responsible for arranging the fake wife and fake lawyer in the said case. Since the complainant herein is a leading lawyer ordinarily practicing in the Courts of Karamadai, he had lodged the present complaint on the ground that the said news article has defamed his reputation and therefore sought for punishing the petitioners herein for offences under Sections 500 and 502 IPC.

4. The learned Senior counsel for the petitioners submitted that the impugned complaint against the community of advocates cannot be termed to be defamation as against the advocates community in general. He further submitted that the article does not expressively name the respondent herein as the person responsible for facilitating to present a fake wife and fake lawyers before the concerned Court for obtaining the divorce for the Engineer. Even otherwise, the complainant cannot claim himself to be a leading advocate at Karamadai. By relying on various judgments, the learned Senior counsel submitted that a reference to a community of advocates alone may not be sufficient to make out an offence of 'defamation' and that such a collection of person must be an identifiable body with definiteness and since the impugned article does not specifically implicate the complainant, the offence has not been made out.

5. The learned counsel for the respondent herein on the other hand submitted that Karamadai is a small hamlet consisting of a very few advocates and that the respondent alone is a leading advocate in Karamadai and therefore the article implicates the complainant. In view of the defamatory words used in the article, the news item has brought harm to his reputation and therefore the article clearly falls within the meaning of defamation under Section 499 IPC. The learned counsel also relied upon various judgments of the Hon'ble Supreme Court and submitted that the complaint clearly makes out an offence of defamation against the petitioners herein and as such, grounds raised by the petitioners herein needs to be established during the course of trial and therefore the inherent powers under

Section 482 Cr.P.C., should not be invoked.

6.I have given careful consideration to the submissions made by the respective counsels.

7.Before addressing the various grounds raised by both the counsels, it would be appropriate to refer to the news article which is the subject matter of the private complaint.

8.The news item came to be published in the Tamil Daily "Malai Malar" on 10.12.2011 states that, one Sivakumar had engaged fake lawyers and a fake lady as his wife and obtained the divorce order for contracting a second marriage. The article further goes to report that the said Sivakumar had paid a sum of Rs.10 lakhs to a popular lawyer in Karamadai Village near Coimbatore for the purpose of engaging a fake lawyer and a fake wife for Sivakumar. It is this article which had given a cause of action for the complainant to file the impugned complaint, on the ground that, he is a popular lawyer in Karamadai village and therefore the article has caused harm to his reputation.

9.It is not in dispute that the news article does not specifically mention the name of the respondent/complainant. What is referred to in the complaint is a reference to "a popular lawyer in Karamadai Village" near Coimbatore.

10.The core question that needs to be addressed here is as to whether the reference to a collection of persons in general, could give a cause of action to an individual for the purpose of filing a complaint for an offence under Section 499 IPC on the ground that, such article implicates the said individual, though his name has not been specifically indicated. Consequently whether the inherent powers of this Court under Section 482 Cr.P.C., can be invoked.

11.Before analysing the aforesaid aspect, it could also be appropriate to refer to Section 199 Cr.P.C. For an easy reference, Section 199 Cr.P.C., is extracted hereunder:

Prosecution for defamation -

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according

to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

12. In order to maintain a complaint for defamation to enable the Court to take cognizance, the complaint as such, requires to be made by an aggrieved person under Section 199 Cr.P.C. In this background, it would be appropriate to analyse as to whether the respondent/complainant herein could be termed as a person aggrieved as contemplated under Section 199 Cr.P.C.

13. The impugned article refers to "a popular lawyer of Karamadai" which the complainant alleges that such refers indicates and imputes him. The lawyers of Karamadai village could be generally termed to be a class of persons to a particular profession. One popular lawyer among this collection of lawyers can mean any lawyer who is popular in that village. The term "popular" need not necessarily be a person who has a flourishing or leading practice among the lawyers of the village. When a person is liked or enjoyed by a large number of people he or she is generally termed to be "a popular person". If more than one lawyer is liked or known to the villagers in the peripherals, all of them can be termed to be one among the popular person. Hence, the number of lawyers practicing in the village may not have significance. What is to be looked into in this context is as to whether the popular lawyer refers to the respondent/complainant herein to make him an aggrieved person for the purpose of filing the present complaint. As observed earlier, the article refers to "a popular lawyer of Karamadai Village" and neither there is a reference to the name of the respondent/complainant herein nor does it even indicate that such a popular person would be the respondent/complainant herein. In order to term a person as "person aggrieved", the impugned article should clearly and explicitly identify such a person among the collection of persons.

14. When a similar set of facts came up for consideration before the Hon'ble Apex Court in a case in G.Narasimhan, G.Kasthuri and K.Gopalan Vs. T.V.Chokkappa and two other cases reported in 1972 (2) SCC 680, the proposition was discussed and the relevant portion of the said judgment is extracted hereunder:

"15. Prima facie, therefore, if Section 193 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually. Sec. 499 of the Penal Code, which defines defamation, laid down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or

knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing weighs against mankind in a general or against a particular order of men, e.g., men of law, it is no libel. It must descend to particulars and individual, to make it a libel [Ratanlal and Dhirajlal (1699) (3) Salk 224]. In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite, e.g. men of science, but a definite one, such as, the clergy of the diocese of Durham, (1) (1699) 3 Balk 224, cited in Ratanlal and Dhirajlal Law of Crimes (23rd ed.) 1317, the justices of the peace for the county of Middlesex. (see Kenny's Outlines of Criminal Law (19th ed.) 235. If a well-defined class is defamed, every particular member of that class can file a complaint even if the defamatory imputation in question does not mention him by name."

15. The Hon'ble Supreme Court in the aforesaid judgment was of the view that when collection of persons are referred to in a defamatory case, such a collection of persons must be an "identifiable body with definiteness" to distinguish such a body from the rest of the community.

16. The above proposition was also reiterated by subsequent judgments of the Hon'ble Apex Court in S.Khushboo Vs. Kanniammal

and another reported in 2010 (5) SCC 600. The views of the Hon'ble Apex Court in this case is as follows:

41. This Court in *G.Narasimhan V. T.V.Chokkappa* [1972 (2) SCC 680] further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of Section 198 CrPC, 1898. The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed.

42. While deciding the case, this Court placed reliance on the judgment of the House of Lords in *Knupffer Vs. London Express Newspaper Ltd.* (1944) 1 ALL ER 495, wherein it had been held that it is an essential element of the cause of action for defamation that the words complained of should be published "of the complainant/plaintiff". Where he is not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. In fact, it is the reputation of an individual person which must be in question and only such a person can claim to have "a legal peg for a justifiable claim to hang on".

17. In the background of the aforesaid judgments, it can be safely held that in a case of defamation, the law only permits an aggrieved person to move a Court in a case of defamation and such an aggrieved person must be a person distinguished with

definiteness from the rest of the class, in order to establish with precision, that the defamatory article refers to the complainant alone, in definite terms, as the person involved.

18. On an identical set of facts, a learned Single Judge of Gujarat High Court in Miscellaneous Criminal Application No.48 of 1984 [Narottamdas L.Shah Vs. Patel Maganbhai Revabhai and another] reported in 1984 Cri. L. J. 1790 had an occasion to deal with the same proposition. The relevant portions are extracted as under:

53. Examining the record of the case, the following position emerges:

(1) The editorial does not refer to any specific individual whomsoever. It does not refer to any institution of lawyers, that is to say, to any Taluka Bar Association, District Bar Association or High Court Bar Association or State Bar Council of Gujarat, or the Bar Council of India. The editorial positively refers to lawyers in general.

(2) The complaint is filed by the complainant in his individual capacity. He himself is a lawyer of about 20 (twenty) years standing. The complaint is not filed at the instance of or on behalf of any Bar Association. In the complaint or in the examination before the learned Magistrate, nowhere it is stated that the writing in question pertains to a determinate section of agitating lawyers and he being a member of that determinate section of lawyers, has been aggrieved by the writing in question.

(3) On the other hand, it is clear from the complaint and the examination of the complainant before the learned Magistrate that the allegation is that the editorial is in respect of the entire world of lawyers (Vakil Alam) whose reputation is affected by the publication of the editorial. It is categorically stated in the complaint that the editorial is aimed at defaming the constitutional and systematic agitation against the interference in judiciary by the Government.

(4) It is also stated in the complaint that the intention of the accused was to harm the reputation and prestige of the lawyers and to lower down the same in public. The complaint refers to lawyers en masse.

(5) Whenever the complainant has referred to the reputation and prestige and the lowering down thereof, the reference is made to the reputation and prestige of lawyers' class as a whole. Even in the examination before the learned Magistrate the complainant has categorically mentioned that the reputation of our business (Amara Dhandha Ni Abaru) is lowered down and commented upon.

(6) It is further stated in the examination before the learned Magistrate that his lawyer friends and the entire world of lawyers (Vakil Alam) were assisting in the cause of justice and were engaged in the noble and reputed business (dhandha) of providing best possible justice to the people. It is stated that an attempt to bring down the reputation has been knowingly made.

54. The editorial is in respect of lawyers. The occasion for writing the editorial was that the lawyers had decided to extend their strike up to November 6, 1983. The complainant is also clear that the editorial is in respect of lawyers' class as a whole. According to him, it is aimed at defaming and lowering down the constitutional, peaceful and systematic agitation of lawyers. Moreover, it lowers down the prestige of lawyers as a class. This is the basis on which, the complainant has proceeded. On this very basis the Bar Council has resolved to intervene in the proceedings. The reading of the entire editorial makes it abundantly clear that it does not refer to any particular group of lawyers. It refers to lawyers class as a whole. Therefore, on this basis only the question is required to be examined and answered. If the writing which is published in the newspaper does not refer to a person or to a determinate class or group of persons, but if it is in respect to a profession or in respect to a particular agitation, would it amount to an offence punishable under Section 500 IPC? The position is covered by a decision of the Supreme Court in the case of C. Narasimhan v. T.V. Chokkappa, . After referring to Explanation 2 to Section 499 of the Indian Penal Code, the Supreme Court has observed as follows At P. 56 of Cri LJ:

...The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an

identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations....

In the aforesaid case, the Supreme Court has also referred to the Law of Crimes (22nd Edition) by Ratanlal and Dhirajlal. It will be profitable to quote the relevant portion from the same book (page 1317):

If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual." Where a writing inveighs against mankind in general, or against a particular order of men. as, for instance, men of the gown, it is no libel, but it must descend to particulars and individuals to make it a libel, e.g. the religious society called the S. Nunnery, or "certain persons lately arrived from Portugal and living near Broad Street." The imputation must be capable of being brought home to a particular individual or Collection of individuals as such....

19. In the light of the above proposition and in the background of the facts of the present case, it can be noted here that while the lawyers of Karamadai village can be held to be a definite and identifiable section of lawyers, the term "a popular lawyer of Karamadai" cannot be said to be a definite or identifiable class. This proposition as to whether who can be a popular lawyer of Karamadai village again cannot be determined by adopting any yardsticks. As such, even assuming that the case is to be put on trial, it would be highly improbable to distinguish that section of lawyers who claim to be popular lawyers in Karamadai.

20. It would not be inappropriate at this juncture to refer to the meaning of "unpopular". The general dictionary meaning of an "unpopular person" would be a person who is not liked or enjoyed by a person or group of people in general. Therefore any lawyer who is not popular in the village of Karamadai will become a popular lawyer and as such I am unable to comprehend as

to how the respondent can claim himself to be a popular lawyer among the lawyers in Karamadai village. When it is improbable for the respondent to establish himself as a popular lawyer, he cannot be said to be a "person aggrieved" under Section 199 Cr.P.C., to maintain a complaint.

21. For the sake of convenience, Section 499 of IPC with Explanation (2) has been extracted 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 expected, to defame that person.

Explanation 2—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

22. The learned counsel for the respondent submitted that, in view of explanation (2) in Section 499 IPC, the respondent herein is deemed to be an aggrieved person as envisaged under Section 199 Cr.P.C. In support of his submission, he relied upon the judgment of the Hon'ble Supreme Court in John Thomas Vs. Dr.K.Jagadeesan reported in 2001 (6) SCC 30. The relevant portion of the said order is as follows:

12. In view of the said Explanation, it cannot be disputed that a publication containing defamatory imputations as against a company would escape from the purview of the offence of defamation. If the defamation pertains to an association of persons or a body corporate, who could be the complainant? This can be answered by reference to Section 199 of the Code. The first sub-section of that section alone is relevant, in this context. It reads thus:

"199. Prosecution for defamation.— (1) No court shall take cognizance of an offence under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence."

13. The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication

is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too farfetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the company. Hence the appellant cannot justifiably contend that the Director of the K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in Section 199(1) of the Code.

23.I am unable to agree with the submissions made by the learned counsel for the respondent. As stated in my findings above, an identifiable group of person could be "lawyers of Karamadai" but cannot be distinguishably identified as "popular lawyers of Karamadai".

24.Likewise, the further submission of the learned counsel for the respondent that in view of explanation (2) in Section 499 IPC, the complainant/respondent is deemed to be a person aggrieved also may not be tenable. Explanation (2) in Section 499 IPC envisages to mean and include an imputation to a collection of person as defamation. Since the "popular lawyers of Karamadai", cannot be said to be an identifiable collection of persons, the respondent herein may not be an "aggrieved person" to maintain the complaint.

25.The learned counsel for the respondent also relied upon various other judgments reported in 1996 (6) SCC 263 [Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathi and others] and 2002 Cri.L.J. 1730 [J.Taniguchi Vs. K.Gopi] on the same proposition. In view of my finding that the complainant cannot be an aggrieved person under Section 199 Cr.P.C., it may not be required to deal with the propositions laid down in these judgments.

26.To sum up, it can only be held that the alleged defamatory article refers to an individual among the class of "popular lawyers of Karamadai" and since the "popular lawyers"

cannot be an identifiable group of persons, the respondent will not be an aggrieved person referred to in the alleged defamatory article. Since the respondent is not an aggrieved person, the complaint for defamation made by him for an alleged offence under Section 199 Cr.P.C., and hence the trial Court was not justified in taking cognizance of the same. Since the alleged article does not personally impute the respondent herein, the same is liable to be quashed.

27. Accordingly, the proceedings in C.C.No.332 of 2011 on the file of the learned Judicial Magistrate, Mettupalayam stands quashed. Consequently, the Criminal Original Petition is allowed. Consequently connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

DP

To

1. The Judicial Magistrate,
Mettupalayam.
2. Do- Thro' The Chief Judicial Magistrate,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Hari Krishnan, Advocate in sr.no.23876
+1cc to Mr.V.Sanjeevi, Advocate in sr.no.23694

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and
M.P.No.1 of 2012

RJ(CO)
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