



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 25.09.2018
CORAM

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD)No.12043 of 2014
and
M.P.(MD)Nos.1 and 2 of 2014

S.Varadan ... Petitioner

Vs.

V.Ashok Kumar ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the private complaint in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Karur and quash the same insofar as the petitioner is concerned.

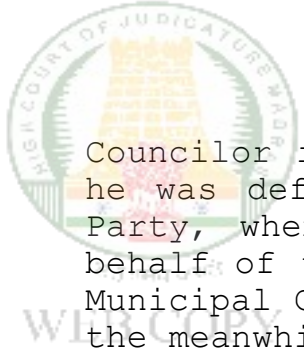
For Petitioner : Mr.M.Bindran

For Respondent : Mr..M.Chidambaran Kumar
Bharathi

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Karur and have taken cognizance for the offence under Sections 500, 501 and 502 I.P.C as against the petitioner and others, in which, the petitioner is arraigned as Accused No.2.

2.The case of the prosecution is that the respondent herein is running a Textile business in Karur. In the business run by the respondent, more than 50 labourers are working. Apart from running the Textile business, he is doing public service among the general public and thereby, he is having good reputation among the public living in the Karur District. In the year 2011, the brother of the respondent viz., Senthil Balaji, contested in the assembly election and after winning in the election, he has become the Minister of the State. In the same year, the local body elections were held in Karur District and due to the sincere work of the respondent and his brother, the ruling AIADMK Party captured so many seats. Previous to the said election, the first accused Maniraj was elected as a



Councilor in Karur Municipality. But, in the election held in 2011, he was defeated by a candidate contested on behalf of the AIADMK Party, when the first accused Maniraj was facing the election on behalf of the DMK Party. Since the first accused lost the post of Municipal Councilor, he is having grudge against the respondent. In the meanwhile, on 19.09.2013, one Kamatchi Periyasamy @ Gokul lodged a complaint before the Superintendent of Police, Karur District, in which, he made an allegation of land grabbing. Based on the complaint, a case has been registered in Crime No.31 of 2011 against 8 accused persons. It is further alleged that the petitioner had entered appearance for the Accused Nos.2,6 and 8 in the above case and in order to obtain a personal gain, the petitioner entered into an agreement with Kamatchi Periyasamy @Gogul and arranged to give a confessional statement in Crime No.31 of 2011 with an intention to take vengeance against the respondent and the petitioner had stated that Kamatchi Periyasamy @Gogul had given a confession statement in the Court of Judicial Magistrate No.II, Karur in which he had stated that he was compelled to take liquor and obtained signatures in the white paper and thereby grabbed his land and administered toxic injection and he was detained for two weeks and he was tortured and it was done by the respondent. The above statement appeared and published by the other accused person in Kalaaigner TV and in Kalai Kadir, Tamil Daily and thus the respondent was defamed and the petitioner and other accused have committed the offences under Sections 500, 501 and 502 I.P.C.

3.The learned counsel appearing for the petitioner would submit that the petitioner is arraigned as Accused No.2. The offences under Sections 500, 501 and 502 I.P.C are not at all attracted as against the petitioner. The main ingredients require for constituting an offence punishable under Section 500 I.P.C are one making or published any imputation concerning any person, such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations. The said imputation must have been made with an intention to harm or with knowledge or having reason to believe that the same will harm the reputation of the person concerned. It is seen from the allegations as against the petitioner is that publishing the news in the newspaper is not amounting involving in an act of defamation. The published news item in question in facts and circumstances could not be said to have been published with an intention of harming the reputation of the complainant, offending news item could only be said to have been published in good faith and public interest. Therefore, he prays to quash the private complaint.

4.Per contra, the learned counsel for the respondent would submit that there are specific allegations made in the complaint to make out the offences under Sections 500, 501 and 502 I.P.C. Further, he would submit that there is a Prima Facie case made out as against the petitioner and others and the points raised by the petitioner are liable to be tested during the trial. Therefore, he prays for dismissal of this petition.



5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6. The petitioner is arraigned as Accused No.2. Admittedly, he is an editor cum publisher of Kalai Kadir Daily Newspaper and he published the news item. Whether the news item defamed the respondent or not is the question of fact. Even then, whether the charges under Sections 500, 501 and 502 I.P.C are attracted as against the petitioner or not is under question. Therefore, he filed the present quash petition.

7. Before considering the submission made by the learned counsel appearing on either side, this Court has to find out what are the materials constitute an offence of defamation, for which, the Hon'ble Supreme Court in Mohamed Abdullah Khan Vs. Prakash K. reported in 2018 (1) SCC 615, has held as follows:

'10. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;

(i) Such imputation must be made either

(a) With intention, or

(b) Knowledge, or

(c) Having a reason to believe

that such an imputation will harm the reputation of the person against whom the imputation is made.

(ii) Imputation could be, by

(a) Words, either spoken or written, or

(b) By making signs, or

(c) Visible representations

(iii) Imputation could be either made or published.

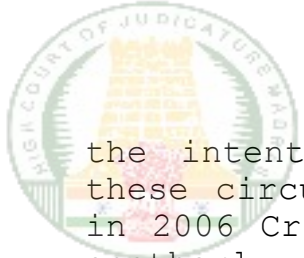
The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal
- 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal
- 'X' publishes the imputation.

The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.'

8. In view of the settled principles of law, it is necessary to see that whether the petitioner is having an intention to defame the respondent among the public or not. It is seen from the complaint and on perusal of documents, there is no iota of evidence to show that the petitioner has previous enmity with the respondent. Further, the respondent had not mentioned anything about the offence committed by the petitioner, particularly, in what way, he is having



the intention to defame the reputation of the respondent. Under these circumstances, it is relevant to refer the judgment reported in 2006 Cri. L.J. 720 [Darusing Durgasing Vs. State of Gujarat and another], wherein at Paragraph No.14, the High Court of Gujarat has held as follows:

''14.Looking to the authorities relied upon by Mr.Naik, it appears that the petitioner's case is squarely covered by Exceptions 7, 8 and 9 of Section 499 of the Criminal Procedure Code and since the complaint does not disclose any offence against the present petitioner there is no need to send the petitioner to face the trial, as it would amount to travesty of justice. When submissions are made in good faith without any malicious motive, the person should not be sent to face criminal trial.''

9.The provisions of Sections 501 and 502 I.P.C read as follows;
 "501. Printing or engraving matter known to be defamatory

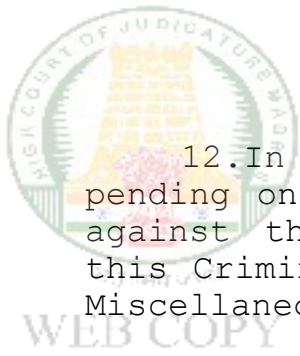
Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Sale of printed or engraved substance containing defamatory matter.-

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both".

10.It is seen from the complaint that there is absolutely no averment to attract the offences under Sections 501 and 502 I.P.C as against the petitioner. Furthermore, when the petitioner published the news item, without having the intention to harm the respondent, the offences under Sections 501 and 502 have no legs to stand further as against the petitioner herein.

11.Therefore, even presuming that the petitioner alone published the news item in Kalaaigner TV and in Kalai Kadir Daily Newspaper, since the matter is touching the public issue, it is not an offence, which does not constitute the offence of defamation. The entire proceedings is nothing but sheer abuse of process of law. Under these circumstances, the petitioner need not to go for an



12. In view of the above, the proceedings in C.C.No.351 of 2012 pending on the file of the Judicial Magistrate Court No.II, Karur, against the present petitioner shall stand quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

/True Copy/

Sd/-
Assistant Registrar (CS-III)

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate No.II,
Karur.

2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+ 1 CC TO Mr.M.BINDRAN , ADVOCATE IN SR No. 86849.

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