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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2018

Delivered on : 12.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)Nos.948 and 620 of 2013

and

M.P.(MD)Nos.1 and 1 of 2013

1.Dhandapani
2.R.A.Doyal
3.P.Amirtham

... Petitioners in
Crl.O.P.(MD)No.948 of 2013/
A3 to A5

N.Maniraj

... Petitioner in
Crl.O.P.(MD)No.620 of 2013/A1

Vs.

V.Ashok Kumar

... Respondent in
both the Crl.O.Ps./
Complainant

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings initiated by the respondent in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Karur.

For Petitioners

in Crl.O.P.(MD)No.948/2013 : Mr.Veerakathiravan
Senior Counsel
for Mr.C.Jeganathan

For Petitioner

in Crl.O.P.(MD)No.620/2013 : Mr.S.Duraisamy
for Mr.M.Bindran

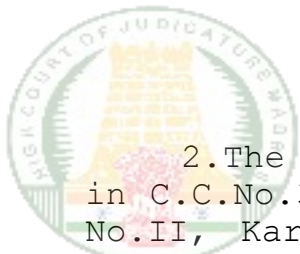
For Respondent

(in both the Crl.O.Ps.)

: Mr.AN.Ramanathan
for Mr.M.Chidambarakumar Bharathi

COMMON ORDER

Since the issues involved in these Criminal Original Petitions are interlinked, they are heard together and disposed of by this common order.



2.The petitioner in CrI.O.P.(MD)No.620 of 2013 is Accused No.1 in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Karur. The petitioners in CrI.O.P(MD)No.948 of 2013 are Accused Nos.3 to 5 in the abovesaid case. Now, these Criminal Original Petitions have been filed by the petitioners, in which, they are seeking the relief to quash the proceedings in C.C.No.351 of 2012 as illegal.

3.In the Trial Court, the case of the respondent is as follows:

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 08.08.2011, 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, in which, the first accused - Maniraj appeared for Accused Nos.2, 6 and 8 in that case. Further, after colluding with the said Kamatchi Periyasamy @ Gokul, the petitioners herein attempted to include the respondent as one of the accused. While so, on 05.05.2012, the said Kamatchi Periyasamy @ Gokul gave a statement before the learned Judicial Magistrate No.I, Karur, in which, he made an allegation against this respondent that she was confined for a period of two weeks for obtaining his signature in the blank stamp paper and also he was threatened by the respondent for grabbing the land.

4.In the abovesaid case, initially, the first accused Maniraj appeared for the accused and subsequently, he himself filed an application before the Court for re-examination. Thereafter, he himself filed an application for fresh examination. In the application filed by the said Maniraj, he made an allegation as made by Kamatchi Periyasamy @ Gokul. The said news was published in the newspaper run by the second accused - S.Varathan as



”சிக் குவாரர் மந்திரி”. Thereafter, on 10.11.2012, the same news was published in Kalanignar T.V., for which, Accused Nos.3 to 5 in this case are fully responsible. Moreover, a case has been registered against the Minister for kidnapping and land grabbing. In the same time, one Gokul, who is the resident of Kulathupalayam near Karur, lodged a complaint before the Karur Court, in which, he made an allegation that a person, who is under the control of Minister Senthil Balaji, kidnapped him and obtained a document for his entire property. For the abovesaid Gokul, the first accused - Maniraj was appearing as Advocate and made a report that the associate of Senthil Balaji including the respondent herein by using wooden stick and hockey stick threatened the said Gokul, for which, a petition has been filed before this Court. Thereafter, the said Gokul was absconded. On 16.11.2012, the said news was also published in the Kalanignar T.V., after collecting the news by the third accused and edited by the fourth accused. While things are being so, on 17.11.2012, when the respondent along with his friends at the time of going to the Temple, the people, who are all present near to the Temple spoken themselves as what is the necessity for the respondent for committing this type of offence by using the name of the Minister. Only for the said incident, the respondent lodged a complaint before the Judicial Magistrate Court No.II, Karur.

5.After taking cognizance, the learned Judicial Magistrate No.II, Karur, issued summons to all the petitioners herein and thereby, after receiving the summons, the petitioners have approached this Court by way of filing the present Criminal Original Petitions under Section 482 Cr.P.C.

6.In order to substantiate the claim made by the petitioners in the petitions, the learned Senior Counsel appearing for the petitioners made a submission as in the complaint, no material was put forth by the respondent for constituting the offence under Section 499 I.P.C. Further, he added as in order to take cognizance under Section 499 I.P.C., the person, who lodged a complaint, may make a *prima facie* case as due to the act of the petitioners, the harm is necessary to the person aggrieved. But, in this case, in the complaint filed by the respondent, nothing was mentioned with regard to the harm. Further, he made a submission as A3 to A5 are publishing the said news only with a good intention and thereby, as per Exception - IV of Section 499 I.P.C., we cannot come the conclusion that the petitioners have committed an offence as alleged by the respondent and therefore, the complaint filed by the respondent is nothing but abuse of process of law and the same is liable to be quashed.



7. On the other hand, the learned counsel appearing for the respondent made a submission as without verification of the news and without seeing the legal document, the petitioners 3 to 5 published the said news and thereby, they made harm to the reputation of the respondent. Further, he added as the first accused - Maniraj with an intention to cause damage to the reputation of the respondent, he gave an interview with the Reporters attached with the third accused.

8. 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.

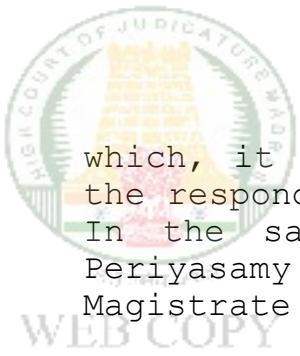
The difference between making of an imputation and publishing the same is:

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.'

9. So, according to the said observation, in this case, we have to identify that the petitioners herein are having the intention or knowledge or reason to believe that the interview given by the first accused will harm the reputation of the respondent, for



which, it is necessary to go through the sworn statement given by the respondent before the learned Judicial Magistrate No.II, Karur. In the said statement, he himself admitted that one Kamatchi Periyasamy @ Gokul gave a statement before the learned Judicial Magistrate No.II, Karur, in which, he implicated his name.

10.Further, he gave a statement as one Gokul, a resident of Kulathupalayam also lodged a complaint before the Karur Court, for which, the name of the first accused - Maniraj was mentioned as he is the Advocate for the said Gokul, which shows that being an Advocate appearing for the said Gokul and Kamatchi Periyasamy, the said Maniraj gave an interview, in which, he included the statement given by Gokul and Kamatchi Periyasamy. So, according to the Sworn Statement of the respondent, a harm is caused only by the persons, who gave statement before the Court and not by the Advocate - Maniraj.

11.Now, on going through the Exception - IV of Section 499 I.P.C., it is mentioned that 'it is not defamation to publish a substantially true report of the proceedings of the Court of justice or of the result of any such proceedings'. Now, the interview given by the said Maniraj is based on the statement recorded in the Court proceedings. The Sworn Statement of the respondent recorded by the learned Magistrate clearly shows like this. Thereby, according to Exception - IV of Section 499 I.P.C., the offence committed by the first accused - Maniraj does not come under the definition of defamation. Accused Nos.3 to 5 in the abovesaid case also published a news through their Television only after collecting the particulars of interview given by the first accused.

12.In the above circumstances, this Court cannot come to the conclusion that the interview given by the first accused is only with an intention to harm the reputation of the respondent. As already discussed, for constituting the offences under Sections 499 and 500 I.P.C., the intention is necessary. But, in this case, in order to believe that the first accused - Maniraj is having the intention is not substantially established by the respondent and therefore, this Court comes to the conclusion that the averment made in good faith without malice cannot be treated as defamatory and the same was not causing any injury to the reputation of the respondent.

13.In this context, 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.''

14.This Court has also taken the same view and decided as allowing the trial proceedings in the Trial Court is unnecessary and wasting the precious time of the Court and therefore, the proceedings in C.C.No.351 of 2012 pending on the file of the Judicial Magistrate Court No.II, Karur, against the present petitioners alone shall stand quashed. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Judicial Magistrate No.II,
Karur.

+One cc to M/s.Veera Associates, Advocate, SR.No.54741

+One cc to M/s.Chidambara Kumar Bharathi, Advocate, SR.No.54388

+One cc to M/s.S.Doraisamy, Advocate, SR.No.54366

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RL/5C/6P/SV/SAR3/21/3/2018

Common order in
Crl.O.P. (MD) Nos.948 and 620 of 2013