

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2018

DELIVERED ON : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.10649 and 10673 of 2011

and

M.P.Nos.1 and 2 of 2011 in Crl.O.P.No.10649 of 2011

and

M.P.No.1 of 2011 in Crl.O.P.No.10673 of 2011

M.Shreedhar

S/o.S.S.Murthy

...Petitioner in Crl.O.P.No.10649/2011/
Accused No.4

1.K.Durga Devi

D/o.P.Kasi

2.K.Kanchana

W/o.P.Kasi

3.A.Adhi Lakshmi

D/o.Arumugam

...Petitioners in Crl.O.P.No.10673/2011/
Accused No.1 to 3

vs

1. M/s.Sevalaya

registered Charitable Trust
represented by its
Managing Trustee V.Muralidharan
Kasuva Village, Pakkam Post,
Thiruvallur Taluk,
Thiruvallur District.

2. V.Muralidharan

S/o.K.Vadhirajan

... Respondents in both petitions /
Complainants

Criminal Original Petitions filed under Section 482
Cr.P.C. praying to call for records in C.C.No.417 of 2010 on the
file of learned Judicial Magistrate I, Thiruvallur and quash the
same.

For Petitioners: Mr.P.T.Perumal
[Crl.O.P.No.10649/2011]
Mr.Shreedhar for
M/s.Shreedhar Associates
[Crl.O.P.No.10673/2011]
For Respondents: Mr.M.A.Raghunathan, senior counsel
for Mr.M.Thirumalai [in both Crl.O.Ps.]

C O M M O N O R D E R

Petitioners seek quash of proceedings in C.C.No.417 of 2010 on the file of learned Judicial Magistrate I, Tiruvallur.

2. Petitioners in Crl.O.P.No.10673 of 2011 are A1 to A3 in C.C.No.417 of 2010 and petitioner in Crl.O.P.No.10649 of 2011 is A4 in such case. First respondent is registered Charitable Trust and second respondent is its Founder and Managing Trustee. Respondents/complainants have preferred a complaint in C.C.No.417 of 2010 on the file of learned Judicial Magistrate I, Tiruvallur, informing as follows:

They are running the said trust for many years and providing education to poor and destitute children. There are many donors for the said Trust. One S.Rajagopalan, a Foreign National of Indian Origin and a member of Yoga Verienigung Rajagopalan, German based funding Agency, used to donate funds for the trust. While so, the said Rajagopalan introduced one Rajesh alias Vasudevan Verma, who is none other than his nephew, as representative of Yoga Verienigung Rajagopalan, who often entered the trust in a drunken state and hence, the trust restricted his entry. Angered thereby, Rajagopalan preferred false complaints against the trust. Elaborate enquiries were conducted by the Chief Educational Officer, the District Education Officer, the District Collector, the Sub-Collector, the Deputy Superintendent of Police, Tiruvallur, Intelligence Wing, Tiruvallur, with a team of Police Officials, the Tahsildar, Tiruvallur and the Revenue Inspector and all of them found that the complaint was baseless, false and mischievous and rejected the complaints. The name of the Trust has also been recommended for National Award for the year 2008 for Best Children's Home. Not stopping there, the said Rajagopalan and his colleague one Jan-Uwe Burmeister, sent e-mails to the donors of the trust defaming the trust and making false allegations. They have also instigated the former students and staff of the trust to speak against the complainants. As a consequence, A2, mother of A1 preferred a complaint against the second respondent informing that her daughter was outraged by him and based on which, a case was registered in Crime No.363 of 2008 on the file of Vengal Police and upon completion of enquiry, closed as 'mistake of fact'. Against such finding, A1 and A2 preferred

CrI.O.P.No.28037 of 2008 before this Court and pursuant to directions of this Court, investigation was done by CBCID, who found no case against the complainants but registered a case against one G.Palanisamy, Physics Teacher in Mahakavi Bharathiyar Higher Secondary School at Sevalaya, for offences u/s.354 IPC and 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and the case was tried in C.C.No.123 of 2009 on the file of learned Judicial Magistrate I, Tiruvallur. Even in the Section 164 Cr.P.C. statements, A1 and A2 had categorically stated that the complaint was prepared by A4, who is an Advocate and they did not know the contents in the complaint since the same was written in English and not explained to them. While so, A4, on 06.01.2009, had intentionally made a highly defamatory statement in a web journal called 'Web Dunia' against the second respondent as also against the first respondent trust in an exclusive interview given by him in a bi-weekly called 'Kumudham Reporter'. That apart, A1 and A3 in the presence of A4, on 27.08.2010, gave an interview in the dailies, namely, 'Dinathandi' and 'Dinakaran' making defamatory and scurrilous statements relating the complainants with the case in C.C.No.123 of 2009 when the complainants are noway connected with such case. Likewise, accused have made several defamatory statements against complainants.

3. Heard learned counsel for petitioners and learned counsel for respondents.

4. Learned counsel for petitioners submitted that respondents/complainants have earlier filed a defamation case against some German Donors and some medias before learned XVII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2489 of 2008 and the said complaint was quashed by this Court under orders in CrI.O.P.No.17268 of 2008 dated 09.07.2010. Learned counsel submits that the present complaint has been filed out of vengeance against A4 for brining out the truth against the trust and the trustees and publicly tarnishing their image. Learned counsel submitted that petitioners are nothing to do with the press reports and articles as it is the duty of press to report acts of child abuse and other wrong doings. The present complaint has also been filed only to make the victim family to arrive at a compromise and close the criminal case in C.C.No.123 of 2009. Learned counsel submitted that A4 being an Advocate has not done any act punishable u/s.500 IPC and he is protected under exception to Section 500 IPC in clause 1, 2, 3, 4, 5, 6, 8, 9 and 10. Submitting as above, learned counsel submitted that the complaint is not all maintainable and prayed that the same may be quashed.

5. Per contra, learned counsel for respondents submitted that though G.Palanisamy, Physics Teacher in Mahakavi Bharathiyar Higher Secondary School at Sevalaya, has been convicted by both trial and lower appellate Court, this Court, under orders in Crl.R.C.No.287 of 2015 dated 25.10.2017, found that the prosecution has miserably failed to prove the case against him beyond reasonable doubt and both the courts below without considering the material available on record in a proper perspective, erroneously convicted the petitioner and accordingly, acquitted him.

6. This Court has considered the rival submissions.

7. On perusal of the complaint, it is seen that the cause of action for the complaint is that A1 had given an interview on 27.12.2009 to the 'Kumudham Reporter' and A2 and A3 have accompanied A1. Likewise on 27.08.2010, A4 had given an interview to the 'Dhina Thandhi' and 'Dinakaran' and the interview was also telecasted in 'Sun News', 'Polimer News TV' and 'NDTV' channels on 28.08.2010. It is alleged that in the said interview, accused have made defamatory statements against respondents. It is seen that other than the complainant no other person have been cited as witness in the complaint nor any mention has been made to show that the imputation, in the estimation of others, lowers the moral or intellectual character considered as disgraceful. It is alleged that A4 was also instrumental for the said defamatory, scurrilous and malicious propaganda. It is also seen that this Court in Crl.O.P.No.17268 of 2008 had quashed a similar complaint which was filed by respondents against one Rajagopalan and another. This Court, after going through the materials placed, found that when the publishers were not arrayed as an accused, the case cannot be proceeded with and quashed the same. In this case also, the gravamen is that the accused had given interviews against respondents to 'Kumudham Reporter' and the the same was telecasted in 'Sun News' and 'Polimer News TV' and 'NDTV' channels. None of the editors and publishers have been arrayed as accused. Further, it is seen that on the complaint of A2, a case came to be registered against one G.Palanisamy, Physics Teacher in Mahakavi Bharathiyar Higher Secondary School at Sevalaya. This school is run by first respondent trust. Though both the trial and lower appellate Court have rendered a finding of conviction against the said Palanisamy, this Court, under orders in Crl.R.C.No.287 of 2015 dated 25.10.2017, acquitted him. In such proceedings, A4, being an Advocate, assisted the prosecution. The above clearly would reveal that as a counter blast, respondents have preferred the present complaint arraying the complainant, victim and their Advocate as accused.

For the aforesaid reasons, the Criminal Original Petitions shall stand allowed and the proceedings in C.C.No.417 of 2010 on the file of learned Judicial Magistrate I, Thiruvallur, shall stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

gm

To

The Judicial Magistrate I,
Tiruvallur.

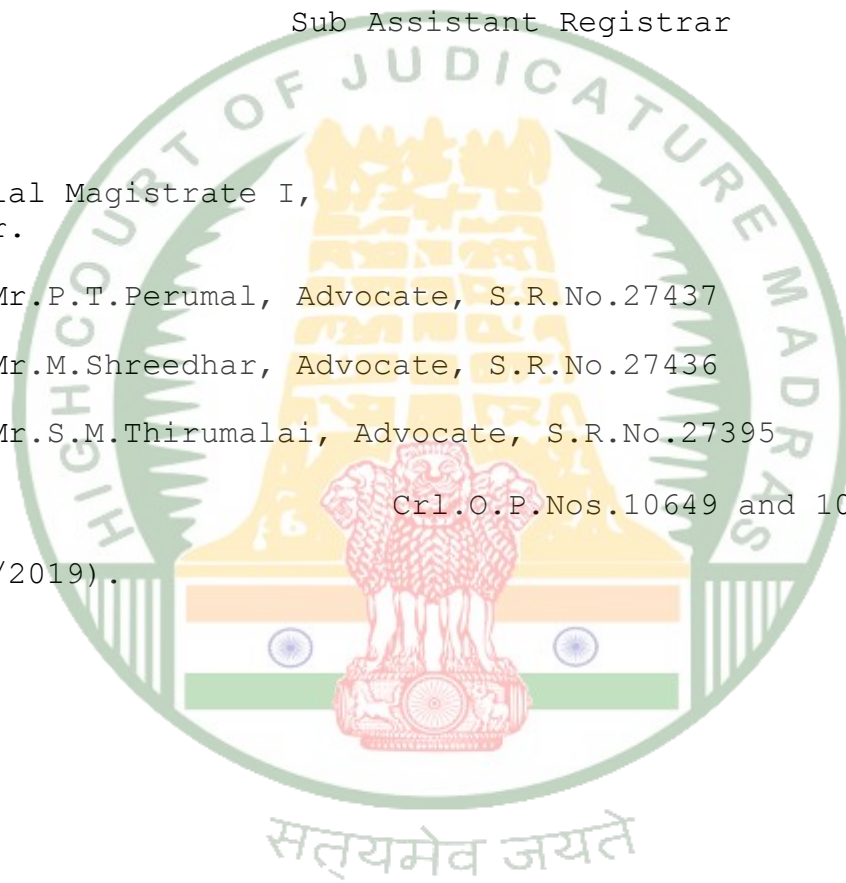
+1 cc to Mr.P.T.Perumal, Advocate, S.R.No.27437

+1 cc to Mr.M.Shreedhar, Advocate, S.R.No.27436

+1 cc to Mr.S.M.Thirumalai, Advocate, S.R.No.27395

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KS(CO)
SSM(30/04/2019).



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