

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.29354 of 2011
and
M.P.No.1 of 2011

1.Kovai Medical Centre and Hospital
Investors Association (Regd.)
No.2, Ruckmani Nagar,
Ramanathapuram (P.O.),
Coimbatore - 641 045.
Rep. by its President
Dr.S.Dharmalingam

2.Dr.S.Dharmalingam
3.Dr.S.Perumal
4.Dr.A.P.Jagannathan
5.Dr.R.Palanisamy
6.P.Amsaveni
7.Dr.Thanikumar Cheran
8.Dr.Nanjappa Sadasivam
9.Muthusamy Jayaraman
10.Dr.C.Padmanabhan
11.Dr.P.G.Shanmugharaj

... Petitioners

Vs.

S.Karthikeyan

... Respondent

PRAYER: Petition filed under Section 482 of Cr.P.C., seeking to call for the records relating to C.C.No.536 of 2011 on the file of Judicial Magistrate No.VI, Coimbatore and quash the same.

For Petitioners: Mr.Veerakathiravan
for Mrs.P.T.Ramadevi

For Respondent : Mr.N.Manokaran

O R D E R

This criminal original petition has been filed seeking to call for the records relating to C.C.No.536 of 2011 on the file of Judicial Magistrate No.VI, Coimbatore and quash the same.

2.The case of the petitioner is that the petitioners 2, 3, 4, 5, 8 and 10 are Doctors and the petitioners 7 and 9 are Engineers. The 6th petitioner is the home maker, out of which the petitioners 7 to 10 are Non-Residence Indians, now residing in United States of America and the 11th petitioner is residing in United Kingdom. The 2nd petitioner along with some other Doctors and Engineers promoted a Hospital at Coimbatore in the name and style of Kovai Medical Centre and Hospital [KMCH], which is a Public Limited Company and was having more than 6000 share holders. All the petitioners herein are promoter share holders and are all instrumental in promoting the above venture. While so, the 2nd petitioner Dr.S.Dharmalingam who is one of the promoter shareholders from USA is holding 34276 shares since 1990. He has completed MBBS in Stanley Medical College, Chennai in 1971 and went to USA and became a Specialist in General Anaesthesia [GI] with AB(Med), AB(GI) and practiced in new Jersey from 1980 to 1990. He returned to India in 1990 to join KMCH as Chief of GI and worked till June 2009. Thereafter, resigned from KMCH in protest against the style of Management and joined as Chief Consultant of Medicine in GKNM Hospital, Coimbatore. The other petitioners also hold different shares in the KMCH Hospital.

3. While so, at the time of promoting the venture, one Dr.N.Palanisamy was elected as Chairman and Managing Director of KMCH. After establishment of the Hospital by investing hard earned money from large number of investors it is alleged that, the above said Dr.N.Palanisamy, his wife and son committed lot of irregularities in the Management. Their family had only 1% or 2% of shares in the year 1990 but now they are holding more than 50% of the shares purchased through the siphoned money from the hospital. The income of the hospital was not duly accounted and promoter Doctors were also humiliated by them, hence, they were forced to leave the hospital. In the above circumstances, in order to protect the interest of the shareholders, a Association has been formed by the Investors in the name and style of Kovai Medical Centre and Hospital Investors' Association and Dr.S.Dharmalinam is leading Doctor, the 2nd petitioner holding 34273 shares has been appointed as President of the Association, the 3rd petitioner is Vice President, the other petitioners are holding various posts in the Association.

4. The said Association is a registered Association formed by the Investors with a object to protect their interest and also to bring a good and transparent administration in the Hospital, to have a good financial management, to make the Hospital as a Nil liability Hospital, in order to pay more dividend to the share holders. In order to achieve the above

objects, the Association wrote a letter dated 26.05.2011 to Dr.N.Palanisamy, Chairman and Managing Director of the Hospital, his wife who is a Co-Chairman and son a Director of the Hospital, making as many as nine demands in order to protect the interest of the investors and for proper administration of the Hospital.

5. One of the demands was made against the respondent/complainant herein who is working as Cashier in the KMCH to take appropriate criminal proceedings for the misdeed he committed in the hospital. Alleging that the said demand made against the respondent/ complainant is defaming his reputation, he had filed a complaint under Section 500 and 501 IPC and the learned Judicial Magistrate VI, Coimbatore had taken cognizance and issued summons to the petitioners. Challenging the same the present petition has been filed.

6. Mr.Veerakathiravan, learned counsel appearing for the petitioner would submit that through in the open letter addressed to Dr.S.Palanisamy, Chairman and Managing Director, the 2nd petitioner had made 9 demands and also made allegations against the respondent/complainant to take appropriate criminal action against him, the said letter was only with a good faith and not with an intention to defame the reputation of the complainant. However, the petitioners 1 and 2 are prepared to face the trial before the trial court and the other petitioners herein did not involve in sending the letter, hence, in respect of the the petitioners 3 to 11, this criminal original petition may be allowed. He would further submit that the appearance of the petitioners 1 and 2 before the Trial Court may be dispensed with and would further submit that the petitioners 1 and 2 are ready to appear as and when necessary arise.

7. Mr.N.Manokaran, learned counsel appearing for the respondent would vehemently contend that it is an admitted fact that the 2nd petitioner on behalf of the 1st petitioner sent a open letter to Dr.S.Palanisamy, Chairman and Managing Director and made 9 demands. However, the 2nd petitioner had unnecessarily made allegations against the respondent/complainant without any material and without any iota of evidence. However, the other accused persons viz., petitioners 3 to 11 collected the defamatory pamphlets from the 2nd petitioner and distributed the same to the inmates of the hospital and other persons, thereby, they have directly committed offence against the respondent/ complainant in which this court need not interfere with. For the said defamatory pamphlets, the respondent had sent legal notice to all the petitioners, however, except the petitioners 1 and 2 other petitioners did

not sent any reply which amount to admitting the guilt. Hence, he prays to dismiss this criminal original petition.

8. Considering the facts and circumstances of the case, it is an admitted fact that the said letter sent by the 2nd petitioner on behalf of the 1st petitioner. The learned counsel for the petitioner fairly concedes that the 1st and 2nd petitioner may face the trial but he prays for dispensing with the personal appearance of the 2nd petitioner.

9. On a perusal of the entire records, it could be seen that the allegation made in the complaint is that the 1st accused Kovai Medical Centre and Hospital Investors Association is a registered body, accused 2 to 6 have been working as President, Vice President, Secretary, Joint Secretary and Treasurer respectively for 1st accused and accused 7 to 11 are committee members of 1st accused. Accused 2 to 11 are active members of 1st accused and participate in all the activities of 1st accused. The said averments is not sufficient to implicate the other accused persons to face the trial and there is no material available before this court to force the other accused persons viz., petitioners 3 to 11 to face the trial.

10. In view of the above, the criminal original petition is allowed in respect of the petitioners 3 to 11 alone and the C.C.No.536 of 2011 on the file of the learned Judicial Magistrate VI, Coimbatore is quashed as against the petitioners 3 to 11. With regard to the petitioners 1 and 2, this criminal original petition is dismissed and the petitioners 1 and 2 have to face the trial in C.C.No.536 of 2011. Considering the submissions made by the counsel for the petitioner, and considering the fact that the 1st petitioner is represented by the 2nd petitioner and considering his age, the personal appearance of the 2nd petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the 2nd petitioner for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The learned Judicial Magistrate VI, Coimbatore.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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and
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