

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.19644 of 2013 and
M.P.Nos.1 & 2 of 2013

1. R.Elayaselvan
2. C.N.Ramakrishnan
3. D.Prakash

... Petitioners

Vs.

The City Public Prosecutor,
City Civil Court Buildings,
High Court Campus,
Chennai - 600 104.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.25 of 2013 on the file of the learned Principal District and Sessions Judge, Chennai, and quash the same.

For Petitioners: Mr.P.T.Perumal

For Respondent : Mr.A.Nataraja,
State Public Prosecutor
Assisted by M.Mohamed Muzammil,
Government Advocate (Crl.Side)

ORDER

The petitioners herein were arrayed as A1, A2 and A3 respectively in C.C.No.25 of 2013. The respondent herein filed a private complaint under Section 199(2) of Cr.P.C. for the offence under Sections 500 and 501 r/w 101 of IPC before the learned Principal Sessions Judge, Chennai, against these petitioners and three others. A1 to A3 are Chief Reporter, A4 is reporter, A5 is Editor, Printer and Publisher and A6 is Joint Editor, of Nakkheeran Magazine. The learned Sessions Judge, Chennai, has taken cognizance on the complaint in C.C.No.25 of 2013. Pending the said case, A1 to A3 have approached this Court invoking Section 482 of Cr.P.C. to quash the above case against these petitioners.

2 Learned counsel appearing for the petitioners would submit that the petitioners are not held in any way liable for the article published in the Magazine. As per Section 7 of the Press and Registration of Books Act, 1867 (herein after referred

to as "the Act"), the editors of the Magazine alone can be prosecuted and not the Reporters and in support of his contentions, he has placed reliance on the judgment rendered by the Hon'ble Supreme Court reported in (1992) 1 SCC 217 (K.M.Mathew vs. State of Kerala and another), decision rendered by the Delhi High Court in CrI.M.C.No.18862 of 2007 (H.K.Dua vs. Jagat Singh), decision rendered by the Jammu and Kashmir High Court in 561-A No.120 of 2011, Cr.M.P.No.279 of 2011 (Anand Soondas vs. Afroza Qadir & Another) and the judgment of Karnataka High Court reported in 1995 CRI.L.J.1922 (Prabhu Chawla and others vs. A.U.Sheriff). The presumption under Section 7 of the Act is only against the persons, whose name is printed as "editor" as required under Section 5(1) of the Act. Therefore, the petitioners herein are only the Reporters of the Magazine and hence under no stretch of law, they are liable to be prosecuted and the above case against these petitioners has to be quashed.

3 Learned State Public Prosecutor would submit that all the accused are jointly held liable for the publication of defamatory article in the Magazine. He has placed reliance on the decision rendered by the Hon'ble Supreme Court reported in MANU/SC/1520/2017 (Mohammed Abdulla Kahan vs. Prakash K.), wherein, it was held that each and every person who are responsible for publication of defamatory article is held liable to be prosecuted. The learned Public Prosecutor would further submit that once there is prima facie allegations made in the complaint, the accused has to prove his defence during trial. Therefore, the present case against the petitioners need not be quashed.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 A careful reading of the complaint filed by the respondent, it reveal that even though, name of these petitioners, who have been described as Chief Reporters, mentioned in the complaint and stated that they are also jointly liable for prosecution, there is no specific averment mentioning the roll of the Reporters with regard to the publication of defamatory article. It is stated that A4 is the Author, who is the Reporter in the said Magazine and no where in the complaint it is stated that these petitioners played any roll in the publication of the said article. This Court has carefully perused the decisions referred to by the learned counsel for the petitioners and the decision relied on by the learned Public Prosecutor and the complaint and also the Act. On a careful reading of the averment made in the complaint, it reveal that there is no specific allegations or averment in the complaint against these petitioners, except the words that they are also

liable to be prosecuted. In the absence of any specific averment or roll played by these petitioners, this Court is inclined to quash the proceedings in the calender case pending against these petitioners.

6 Accordingly, the criminal original petition is allowed and the case in C.C.No.25 of 2013 against these petitioners pending on the file of the learned Principal District and Sessions Judge, Chennai, is hereby quashed. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District and Sessions Judge, Chennai.
2. The City Public Prosecutor, City Civil Court Buildings, High Court Campus, Chennai - 600 104.
3. The Public Prosecutor, High Court of Madras.

+1 Cc to The Public Prosecutor, sr 104306.

+1 CC to Mr.P.T.Perumal, Advocate sr 103770.

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SP (24/02/2020)