

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2018
DELIVERED ON : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.5890 and 7509 of 2011
and
M.P.No.1 of 2011 in Crl.O.P.No.7509 of 2011

1.A.Jawahar Palaniappan

S/o.S.A.P.Annamalai Chettiyar
Director/Partner of M/s.Kumudam Reporter,
Old No.151, New No.306,
Purasawalkam High Road,
Chennai - 600 010.

2.A.Kothai

W/o.Late S.A.P.Annamalai Chettiyar,
Director/Partner of M/s.Kumudam Reporter,
No.13, Sathya Narayanan Avenue,
Boar Club Road,
R.A.Puram, Chennai - 600 028.

...Petitioner in
Crl.O.P.No.5890/2011
/Accused

M/s.Imprint Pvt. Ltd.

Director/Partner of M/s.Kumudam Reporter
represented by its
Managing Director
New No.21, Old No.6, Krishnaswamy Avenue,
Mylapore,
Chennai - 4.

...Petitioner in
Crl.O.P.No.7509/2011

-Vs-

C.K.Dhandapani
S/o.Karuppasamy Gounder

...Respondent in both petitions/
/Complainant

Crl.O.P. Nos:-

Criminal Original Petitions filed under Section 482
Cr.P.C. praying to call for records in connection with the case
in C.C.No.308 of 2010 on the file of learned Judicial Magistrate
I, Tiruppur and quash the same.

For Petitioners : Mr.C.P.Palanichamy
[Crl.O.P.No.5890/2011]
Mr.R.Amizhdhu
[Crl.O.P.No.7509/2011]

For Respondent : Mr.R.Rajesh Vivekanandan
[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.308 of 2010 on the file of learned Judicial Magistrate I, Tiruppur.

2. Respondent, a member of Rashtriya Swayamsewak Sangh (RSS), has preferred a complaint in C.C.No.308 of 2010 on the file of learned Judicial Magistrate I, Tiruppur, against petitioners and 5 others. Petitioners/A6, A7 and A8, are Directors/Partners of M/s.Kumudam Reporter. The gist of the complaint is that all the accused were responsible for the article, namely, 'Indian Talibans' published on 01.03.2009 in 'Kumudam Reporter'. They explicitly stated that RSS is indulging in the acts done by the Taliban in Pakistan and Afghanistan to treat women as slaves without any material to support the same. The said article has been published only with a view to defame the names of both Rashtriya Swayamsewak Sangh and Bharathiya Janatha Party and RSS, is an organisation, whose aim is to work for the benefit of each and every Indian Public and for the nation. Informing that the name of RSS was defamed and its reputation was ruined owing to publishing of the above article, respondent/complainant issued a notice dated 04.04.2009 calling upon accused to pay a sum of Rs.10,00,000/- to RSS towards damages and to publish an unconditional apology in the immediate issue of bi-weekly newspaper 'Kumudam Reporter'. Despite receipt of notice, the accused have neither paid damages nor published unconditional apology in their newspaper. Hence, respondent/complainant has preferred the complaint alleging commission of offences u/s.499, 500 and 501 IPC. Seeking quash thereof, the present petitions have been filed.

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

4. Learned counsel for petitioners submitted that the complaint against A2 is not maintainable since it is not a legal entity. More over, petitioner company is no way connected with the editorial of the magazine except the fact that the company is a share holder of the company which owns the magazine as evidenced by the declaration under Press and Registration of Book Act, 1867 as well as the imprint in the magazine. As per Section 7 of the Act, no presumption can be drawn against the petitioners. Respondent has no locus standi to prefer the complaint when he is not an aggrieved person, particularly,

where nothing in the alleged article pointing fingers against him. The alleged article refers only the terrorist and illegal activities of persons and some organizations facing several criminal cases and who indulge in violent activities in the name of religion. Petitioners have sent a reply to the respondent's notice on 27.06.2009. The very initiation of proceedings amounts to interference with the freedom of Press guaranteed under Article 19(1)(a) of the Constitution of India. A reading of the entire article would establish that the contents thereof would come within the exception of 1, 3, 6, 9 and 10 of Section 499 IPC and as such would not fall under the category of defamation. Learned counsel relied on the judgments of the Apex Court in S.Khushboo v. Kanniammal and another [Crl.A.No.913 of 2010] and State of Maharashtra v. Dr.R.B.Chowdhary and others [AIR 1968 SC 110].

5. Relying on the counter, learned counsel for respondent submitted that the article indeed was published only to defame the name and reputation of RSS, in which respondent is a member. Submitting as above, learned counsel prays for dismissal of the quash petition. Learned counsel relied on the judgments of Apex Court in Mohammed Abdulla Khan v. K.Prakash [CDJ 2017 SC 1346] and Mathew v. Abraham [CDJ 2002 SC 490].

6. This Court has considered the rival submissions.

7. The contention of petitioners is that as per Section 7 of the Press and Registration of Books Act, 1867, they are liable to be prosecuted and that the editor of the newspaper, whose name is printed on it as the editor of that publication alone is liable to be prosecuted for any of the offence for such libelous publication. The expression 'Editor' has been defined in Section 1 of the Act as : 'Editor' means the person who controls the selection of the matter that is published in a newspaper.' The editor whose name is printed in the newspaper to the effect that he is the editor of such publication and that he is responsible for selecting the matter for publication. Judicial process should not be an instrument of oppression or needless harassment and the Magistrate while taking cognizance should be satisfied that there is a prima facie case against the accused. Respondent relying upon the judgment of the Apex Court in Mohammed Abdulla Khan v. K.Prakash [CDJ 2017 SC 1346] stated that if a complaint contains allegations against persons other than the one who is declared to be editor of the newspaper can be prosecuted if they are alleged to be responsible for publication of such defamatory material.

8. Be that as it may, this Court is to look into the fact whether the act of petitioners' would fall under any of the exemption of Section 499 IPC and whether the respondent is an aggrieved person as per Section 199 Cr.P.C.

9. Section 499 IPC reads thus:

'499. Defamation. - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.'

Section 199 Cr.P.C. reads thus:

'199. Prosecution for defamation. - (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or

any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction -

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affair of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.'

10. On a perusal of the complaint, it is seen that the imputation, which is said to have been made, is a general one and not directed against any individual or company or an association or collection of persons. There is no direct attack on the reputation of anyone in particular. Further, it is seen nowhere the respondent had stated that the imputation, in the estimation of others, lowers the moral or intellectual character considered as disgraceful. Section 199 Cr.P.C. mandates that the Magistrate can take cognizance of the offence upon receiving a complaint by a person, who is aggrieved. In this case, though the respondent claims to be the Secretary of Rashtriya Swayamsewak Sangh, Tiruppur, no material has been produced to substantiate and he is the person, who is representing such organization, aggrieved by such imputation and as such, the respondent is not a 'person aggrieved' within the meaning of Section 199 Cr.P.C. In this case, the said imputation was not on any identifiable body to say with precision that a group of

particular persons, as distinguished from the rest of the community stood defamed. If such a class is indefinite, the complaint cannot be entertained. Further, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed. It is only when the respondents/complainants produce materials that support a prima facie case for a statutory offence, Magistrates can proceed to take cognizance. In this case, there is no prima facie material. Further, commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered and the anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression/imputation should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg'.

For the aforesaid reasons, the Criminal Original Petitions shall stand allowed and the proceedings in C.C.No.308 of 2010 on the file of learned Judicial Magistrate I, Tiruppur, shall stand quashed insofar as the petitioners herein are concerned. Consequently, connected miscellaneous petitions are closed.
gm

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate I,
Tiruppur.

+2cc to Mr.R.Rajesh Vivekanandan Advocate, SR.No.28070 & 28071
+1cc to Mr.R.Amizhdhu, Advocate, SR.No.27562
+1cc to Mr.C.P.Palanichamy, Advocate, SR.No.27538

CrI.O.P.Nos.5890 and 7509 of 2011

Kak(10/05/2019)