

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

Cr1 O.P. No. 5015 of 2008
and M.P.Nos.1 and 2 of 2008

Giridharilal L.Nagpal ... Petitioner

-vs-

S.Sivapprasadh ... Respondent

Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.5805 of 2006 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same in respect of the petitioner alone.

For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.A.Raghunathan, Senior Counsel
for Mr.K.Aravind

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

Seeking to quash the case in C.C.No.5805 of 2006 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai, the present Criminal Original Petition has been filed.

2.The petitioner has been arrayed as A8 in C.C.No.5805 of 2006 for the alleged offence under Section 500 IPC before the XVII Metropolitan Magistrate Court, Saidapet, Chennai. There are totally eighteen accused arrayed in the complaint.

3. The complaint was given by the respondent with specific allegation against the petitioner and others. The alleged defamatory statement stated to have been made against the respondent as could be seen from the complaint is reproduced hereunder:-

"KNOW WHO IS WHO

TALE OF A BETRAYER OF OUR ASSOCIATION COURT CASE
Contributed by Virus (Guided (Guild?) Blood
Shivprasadh""

Below the edition, it has been mentioned as Coram and
the order of the Hon'ble Court has been extracted. Not
to stop with that, at page 21 of the same bulletin,
the following has been published:

"TALE OF A BETRAYER OF OUR ASSOCIATION -
S.SHIVAPRASADH

Now stands Removed from the Rolls of the Membership of
Television sector of our Guild on 30th January 2002

Who was instrumental to the cause of

Mr.M.Saravanan (Founder of Television Sector of our
Guild)

and other sincere members to leave from the
Association by his sustained disrespectful activities"

GIVEN OPPORTUNITY TO "RESIGN"

T.V.SECTOR SUB-COMMITTEE MEETING

HELD ON 29th JANUARY 2002"

3. Claiming the above as defamatory, the respondent has
filed a complaint which has been taken on file in C.C.No.5805 of
2006. Alleging that the publication of said article would not
amount to defamatory statement, the present quash petition has
been filed.

4. In the earlier petition filed by the accused, namely,
A7, A9, A11, A14, A15 and A16 in Cr.No.32838 of 2007, dated
01.11.2010, this Court passed the following order:-

"5. Considering the facts and circumstances of
the case and arguments submitted by the learned
respondent's counsel, this Court is of the considered
opinion that a trial is imperative, since the
complaint's name was printed as a "tale of a betrayer"
which has affected the complainant, this has to be set
right. Therefore this Court hereby directs the learned
Magistrate to depose the case within a period of four
months from the date of receipt of this notice without
influencing the discussions of this Court.

6. In the result the above Criminal Original
Petition No.32838 of 2007 is disposed of.
Consequently, the connected miscellaneous petitions
are closed. There is no order as to costs."

5. From the aforesaid order as extracted, nothing has been
decided on merit. Secondly, there was no appearance on behalf of
the counsel. Law is quite settled by this time that when there
is no appearance on behalf of the party in the criminal

proceedings, procedurally the notice will have to be issued. However, taking note of the absence of the counsel, the aforesaid order was passed.

6. In a subsequent order passed in CrI.O.P.No. 1325 of 2008 filed by the other five accused persons, another learned single Judge went into the merits of the case and passed the following order:-

"5.The learned counsel for the petitioners would submit that even assuming that these allegations have been made in the bulletin, still, it would not attract an offence punishable under Section 500 IPC, because, there is nothing in the said bulletin which will amount to defamatory statement.

6.But, the learned counsel for the respondent would submit that the statement attributed by "virus blood Shivpprasadh" amounts to defamation.

7.In my considered opinion, a perusal of the entire complaint would go to show that absolutely there is no material to satisfy the ingredients of Sections 499 IPC, so as to allow the petitioners to face the prosecution under Section 500 IPC. The said statement, which I have extracted herein above from the complaint, would go to show that there is nothing in the same which would amount to defamation. Mere statement that "virus blood Shivpprasadh" would not amount to defamation at all. In my considered opinion, this complaint is only a clear abuse of process of court. In view of all the above, I am inclined to quash the said case.

8.In the result, the Criminal Original Petition is allowed and the case in C.C.No.5805 of 2006 on the file of the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai, is hereby quashed as far as the petitioners herein are concerned. Consequently, connected miscellaneous petitions are closed."

7. Since there were two different orders passed by the learned single Judges, the present criminal original petition has been referred to the Division Bench.

8. Though this petition has been filed in the year 2008, it has been posted only now before us. Therefore, we are not inclined to take the matter and pass a final order.

9. The learned counsel appearing for the petitioner has submitted that the complaint made by the respondent against all the accused persons is one and the same. This is with respect

to the publication made. When once, the said complaint is quashed as against the few of the accused persons on merit, the benefit will have to be extended to the petitioner as well. The suit filed by the respondent has also been dismissed, though for non-prosecution. The earlier order passed by this Court was not on merit and, therefore, the subsequent order as noted will have to be followed in the case of the petitioner as well.

10. The learned Senior Counsel appearing for the respondent would submit that on a perusal of the complaint made and with specific reference to the article published, a prima facie case has been made out. The learned single Judge on the first occasion took note of the same and dismissed the petition filed. Therefore, the petitioners will have to be asked to go through the trial.

11. As discussed above, the earlier order was passed in the absence of either the petitioners therein or the counsel. Secondly, the learned single Judge did not go into the merits of the case. On the contrary, in the subsequent order passed, the learned Single Judge went into the merits of the case and found that the publication would not amount to defamatory statement. Though the learned Senior Counsel for the respondent has tried to explain the dictionary meaning of the term 'betrayal', the learned single Judge went one step ahead and took into consideration the statement which is comparatively more stronger than the word 'tale of betrayal'.

12. In such view of the matter, we are of the view that the order passed by the learned single Judge in CrI.O.P.No. 1325 of 2008 will have to be followed. As submitted by the learned counsel for the petitioner, the civil suit has also been dismissed though the same cannot be a sole ground for allowing this petition. Now, the matter has been pending for nearly fourteen years. Admittedly, the respondent has been removed from the membership of the Association more than a decade ago.

13. Considering the above, we are inclined to allow this petition also. Accordingly, the Criminal Original Petition stands allowed and the case in C.C.No.5805 of 2006 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai stands quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

mmi/ssm

To

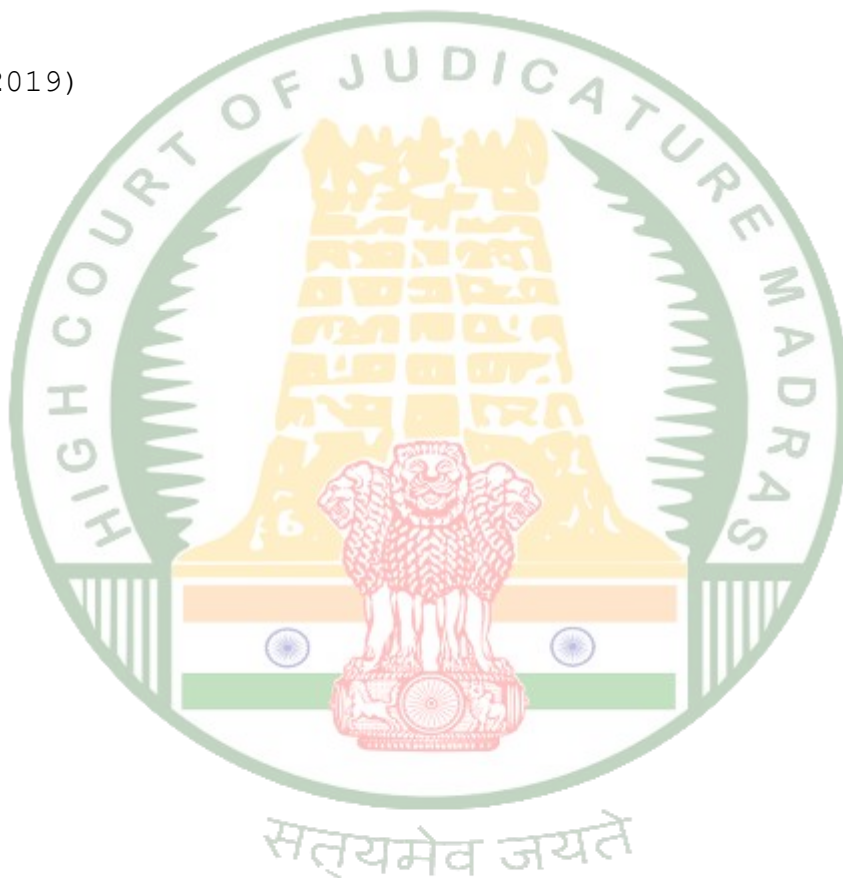
The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.K.Aravind, Advocate SR.90947

+1cc to Mr.M.Vijayakumar, Advocate SR.91029

Crl.O.P. No. 5015 of 2008

RSV(CO)
CB(11/12/2019)



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