

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.796 of 2014 and
M.P.No.1 of 2014

1.P.Bhavani
2.R.Kumar

... Petitioners/Accused 1 & 2

Vs.

V.Kalyanam

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.3701 of 2013 on the file of the VII Metropolitan Magistrate George Town, Chennai, quash the proceedings therein.

For Petitioners : Mr.N.R.Elango,
Senior Counsel
for Mr.T.Ravichandran

For Respondent : Mr.A.M.Amutha Ganesh

ORDER

This petition has been filed to quash the proceedings in C.C.No.3701 of 2013 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai having been taken cognizance for the offences under Section 500 I.P.C.

2. The learned Senior Counsel for the petitioners submitted that the respondent filed a complaint for the offences under Section 500 I.P.C. and the same has been taken cognizance by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.3701 of 2013 as against the petitioners and the petitioners are arrayed as A1 and A2. The crux of the complaint is that the petitioners have filed their written statement in C.S.No.764 of 2008 on the file of this Court and made some statements which are highly derogatory and perse libelous, which read as follows:

"The first plaintiff illegally tried to make millions of rupees by stealthily auctioning the manuscript papers of the father of the nation Shri.Mahathma Gandhijee and the Government of India had to take various proceedings to stop the illegal

auction at Sotheby's London. The first plaintiff had stealthily retained the said papers manuscripts knowing fully well that the Government of India had declared that all the properties of the father of the nation as National properties".

Hence, the complaint. The learned Senior Counsel further submitted that the present complaint has been directly hit under Section 468 (2) (c) Cr.P.C., since the complaint has been filed for the offence under Section 500 I.P.C. is punishable with imprisonment extending by upto two years. The complaint has been filed on 29.12.2010 and the sworn statement of the respondent was recorded on 26.08.2011. The cognizance for the offence under Section 500 I.P.C. has been taken by the learned Magistrate only on 24.09.2013. The complaint ought to have been filed on or before 28.11.2012. Therefore, the complaint is barred by limitation.

2.1. He further submitted that the Government of India has already taken action by way of abstaining the auction of manuscripts of the Father of the Nation. Therefore, the petitioners are protected by the exceptions 1, 8 and 9 of Section 499 I.P.C. Further the manuscripts of the Father of the Nation has been declared as national properties and the same has already been directed to be returned to motherland. He further submitted that there is absolutely no averments in the complaint that the petitioners have intention to harm the reputation of the respondent. In the absence of any averment in the complaint, no ingredients is there to attract the offences under Section 500 I.P.C. Therefore, he prayed for quashment of the proceedings in C.C.No.3701 of 2013.

3. Per contra, the learned counsel for the respondent would submit that the petitioners filed their written statement in C.S.No.764 of 2008 on the file of this Court in which they made derogatory and perse libelous statements. They stated without even verifying the truth they themselves assumed that the respondent has stealthily tried to make millions of rupees by selling the manuscripts of Shri. Mahatma Gandhi through auction. There is nothing to prove that the respondent had gifted the papers to Swamiji and the respondent had neither any hand in bringing the manuscripts to auction nor would he received a single paise from the sale. Therefore, the complaint is very much maintainable as against the petitioners and they are liable to be punished. Hence, he prayed for dismissal of this quash petition.

4. Heard the learned Senior Counsel for the petitioners and the learned counsel for the respondent.

5. The respondent and another filed a suit in C.S.No.764 of 2008 before this Court as against the petitioners for recovery of money. The said suit was filed on 04.07.2008. In the said suit, the petitioners filed their written statement in the month of October 2008 whereas the complaint impugned was filed only on 29.12.2010 after a period of two years. There is no explanation from the respondent complainant for belated complaint. Further it is also seen that the complaint was filed on 29.12.2010 and sworn statement of the respondent / defacto complainant was recorded on 26.08.2011. The learned Senior Counsel rightly pointed out that the very complaint itself is barred by limitation and it is directly hit by Section 468(2) (c) Cr.P.C. It is relevant to extract the provisions under Section 468 (2) (c) Cr.P.C. as follows:

"the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years"

6. For the offence under Section 500 I.P.C. is punishable with imprisonment extending upto two years. The written statement with the alleged statement of defamation filed in the month of October 2008. After filing the complaint, the sworn statement of the respondent defacto complainant was recorded on 26.08.2011 and thereafter the learned Magistrate have taken cognizance only on 24.09.2013. The complaint ought to have been taken cognizance on or before 28.11.2012. Therefore, the complaint is not maintainable and is directly hit under Section 468 (2) (c) Cr.P.C.

7. The Government of India has already taken action by way of abstaining the auction of manuscripts of the Father of the nation, namely Shri.Mahatma Gandhijee. Therefore, the exceptions 1, 8 and 9 of Section 499 I.P.C. are applicable to the petitioners. It is relevant to extract the exceptions 1, 8 and 9 under Section 499 I.P.C. as follows:

"First Exception -Imputation of truth which public good requires to be made or published.-It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Eight Exception -Accusation preferred in good faith to authorised person.-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception-Imputation made in good faith by person for protection of his or other's interests.-It is not defamation to make an imputation."

Therefore, the complaint cannot be sustained as against the petitioners and it is liable to be quashed.

8. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.3701 of 2013 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The VII Metropolitan Magistrate,
George Town,
Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.T.Ravichandran, Advocate Sr.40208
+lcc to M/S.Norton & Grant, Advocate Sr.40473

Cr1.O.P.No.796 of 2014

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srg 20/06/2019

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