



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.03.2019
PRONOUNCED ON : 21.06.2019

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.1684 of 2016

and

CRL MP(MD)No.858 of 2016

The Editor,
Dinamalar Daily,
Madurai Edition.

... Petitioner/Accused No.3

Vs.

P.Murugan

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and to quash the proceedings in CC No.220 of 2015 pending on the file of the Judicial Magistrate No.1, Sivagangai.

For Petitioner : Mr.S.Elambharathi

For Respondent : No appearance

ORDER

Seeking to quash the proceedings in CC No.220 of 2015 pending on the file of the Judicial Magistrate No.1, Sivagangai, this Criminal Original Petition has been filed by the Accused No.3 in CC No.220 of 2015.

2.The respondent herein filed a complaint under Sections 199 and 200 CrPC, against the petitioner and three others, for the offence under Sections 499 and 500, before the learned Judicial Magistrate, which was taken on file in CC No.220 of 2015.

3.The brief facts of the complaint are as follows:

3.1.The complainant was an employee of a TASMAL outlet at Muthananendhal, Manamadurai Taluk, Sivagangai District. Accused No.1 and Accused No.2 are the District Manager and the Senior Regional Manager of the TASMAL respectively. The third accused is the Editor of Dinakaran. On 23.06.2013, the TASMAL officials conducted a surprise inspection in TASMAL outlet at Muthanendhal, Manamadurai Taluk, Sivagangai District. During the inspection it was found that a bottle was sold in excess of Rs.15 above the Maximum Retail Price (MRP) and pursuant to the same, the Salesman and the Supervisor of the said TASMAL outlet were placed under suspension. The said incident was published in Dinakaran and Dinamalar, Tamil Dailies, in Madurai Edition on 26.06.2013, under the caption the TASMAL Supervisor and Salesman suspended.



3.2.The respondent /complainant aggrieved against such news publication filed a complaint before the Judicial Magistrate -I, Sivagangai that at the time of the alleged surprise inspection, he was not available in the said outlet and only on receiving the information from the Salesman, he went to the shop and the District Manager of the TASMAC without verifying any particulars placed him under suspension on 23.06.2013 and as against that suspension order, he filed an appeal before the appellate authority, who in turn, set aside the said suspension order.

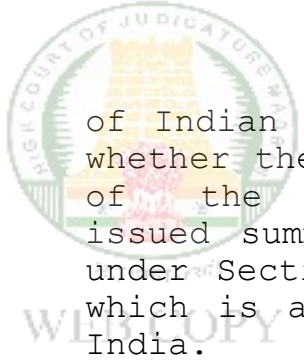
3.3.Without even verifying as to whether the petitioner was present or not at the TASMAC shop, during the inspection, the defamatory publication was made by the petitioner herein. On reading of the defamatory imputation, his relatives and friends one Veeraiah, S/O. Raman, K.P.Murugesan, S/O.Periasamy and few others enquired him and his family members with reference to the defamation and they felt bad about the complainant and his family members. According to the complainant, the defamation lowered his reputation in their minds and credit was brought down.

3.4.The learned Judicial Magistrate took cognizance of the complaint in CC No.220 of 2015 and issued summons to the petitioner on 30.12.2015 and hence, the petitioner has filed the present Criminal Original Petition seeking to quash the proceedings pending against him in CC No.220 of 2015.

4.At the time of admitting this Criminal Original Petition, this Court ordered notice to the respondent / complainant. Since notice was not served upon the complainant, by order dated 22.02.2019, this Court permitted the petitioner to take private notice to the respondent / complainant. Pursuant to the order, the petitioner has also sent private notice to the respondent/complainant and the same was delivered on 25.03.2019. The petitioner has also filed a proof of service along with track consignment details.

5.When the matter was listed for hearing on 18.03.2019, there was no representation for the respondent. Hence, the name of the respondent was directed to be printed in the cause list. Though name of the respondent / complainant was printed on 22.03.2019, there was no representation for the respondent. Taking into account, the criminal original petition is of the year 2016 and the respondent is not interested in contesting the case, this Court is inclined to proceed further on merits. Heard the learned Counsel for the petitioner.

6.The learned Counsel for the petitioner submitted that the news item was published without any malice and in good faith. It is the duty of the press to publish the news item with its view on any particular matter in *bona fide* and fearless manner. A reading of the news item does not make out the offence punishable under Chapter XXI



of Indian Penal Code. The learned Magistrate without ascertaining, whether the imputations referred by the complainant fall within any of the exceptions under Section 499 and 500 IPC, issued summon in a mechanical manner. This exception is provided under Sections 499 and 500 IPC as right of freedom of expression, which is also protected under Article 19(1)(a) of Constitution of India.

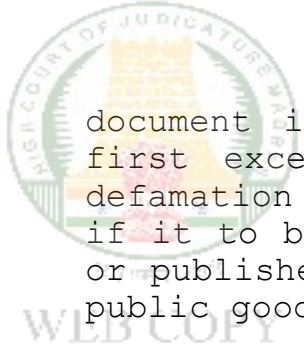
7.The freedom of speech and expression in Article 19(1)(a) is not an absolute freedom. If any imputation are made with malicious and reckless manner and not for public good, tranquillity or peace or public security, or are not made in good in faith, which fall under Section 499 IPC punishable under Section 500 IPC. Constitution does not grant any immunity from Sections 499 and 500 IPC.

8.To constitute an offence of defamation requires three ingredients viz., (i) Making or publishing any imputation concerning any person; (ii) Such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations; and (iii) such imputations must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

9.Considering the publication, which has been made in this case, it appears that the publication has been made based on the information given by one Gopinath, District Manager and Assistant Manager Muruhanandham. The said Gopinath and Muruhanandham along with their team made a surprise inspection in the TASMAL outlets in Sivagangai District. During such surprise inspection at TASMAL outlsth, Muthanandhal, a bottle was sold in excess of the Maximum Retail Price. Subsequently, the Salesman and the respondent were placed under suspension, which was referred to in the news item.

10.If anybody, publishes any imputation concerning a person without reason to believe that such imputation will harm the reputation of such person is an offence of defamation, which is an exception under Section 499 IPC. The imputations of the truth, which public good requires or publication is not defamation as per first exception.

11.Here in this case, the Salesman of Muthanendhal TASMAL shop sold a liquor bottle for more than the Maximum Retail Price fixed for the product, which was detected by the inspection team consisting of District Manager and Senior Regional Manager and another. The respondent / complainant the Supervisor of the Muthanendhal TASMAL shop and the Salesman of the said TASMAL shop were placed under suspension on 23.06.2013. This fact has not been disputed by the complainant. According to him, without verifying the particulars, he was placed under suspension. He also filed appeal against the suspension order, which was set aside by the appellate authority. The suspension order with postal cover is also cited as a



document in the list of documents filed by the complainant. The first exception to Section 499 IPC postulates that it is not defamation to impute, anything, which is true concerning any person, if it to be for the public good that the imputation should be made or published. However, whether the imputation was published for the public good is a question of fact.

12. The surprise inspection made by the TASMAC Manger as well as the order of suspension dated 23.06.2013, has been admitted by the respondent / complainant. This will also fall under exception 10. Further the complaint has also been filed after two years.

13. Under such circumstances, this Court is of the view that the complaint filed as against this petitioner and three others for the offence under Section 500 IPC, will fall under exceptions 1 and 10 to Section 499 and accordingly, the complaint against this petitioner is liable to be quashed.

14. In view of the above discussion, the proceedings in CC No.220 of 2015, on the file of the Judicial Magistrate No.1, Sivagangai is hereby quashed as against this petitioner. The Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.1,
Sivagangai.

Crl.O.P. (MD)No.1684 of 2016
21.06.2019

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