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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.03.2019
PRONOUNCED ON :15.05.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.2493 of 2016
and
CRL MP(MD)Nos.1229, 1230 and 4484 of 2016

1.Periyasamy

2.R.M.Murugan ... Petitioners/ Accused Nos.1 and 2

Vs.

T.Rajan ... Respondent

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in CC No.251 of 2015, on the file of the District Munsif cum Judicial Magistrate -I, Madurai District and quash the same.

For Petitioners : Mr.G.K.Karuppasamy Pandian for Mr.A.K.Azagarsamy
For Respondent : No appearance

ORDER

Seeking to quash the proceedings in CC No.251 of 2015 pending on the file of the Judicial Magistrate -I, Madurai, this Criminal Original Petition has been filed by the Accused Nos.1 and 2 in CC No.251 of 2015.

2.The respondent herein filed a complaint under Section 200 CrPC, against the petitioners, for the offence under Section 499, before the learned Judicial Magistrate-I, Madurai, which was taken on file in CC No.251 of 2015.

3.The gist of the complaint in CC No.251 of 2015 is as follows:

3.1. The 1st accused assured the complainant to grant him Sub Agency in Gas Distribution. However, the complainant came to know that the 1st accused had no power or authority to grant such Sub Agency. Thus, the 1st accused had cheated the complaint, which amounts to criminal breach of trust. In this connection, the complainant/respondent made a complaint before the Usilampatti Town Police Station on 28.03.2012. But, as a case in counter, the 1st accused/1st petitioner lodged a complaint against the complainant /

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respondent, before the Usilampatti Police Station as well as the Superintendent of Police, Madurai that the complainant had collected Rs.1,25,000/- from the public and misappropriated the same. While so, the 2nd accused, who is the Editor of the Tamil Daily viz. Dinakaran, without verifying the genuineness of the complaint, published the same in Dinakaran Tamil Daily, Madurai Edition on 12.08.2012.

3.2.On reading of the defamatory imputation, his relatives and friends and everyone known to the complainant, 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 and spoiled his reputation and image in their minds. He was put to severe mental agony. Though, the damage caused to the complainant's name and reputation by the false complainant and the subsequent paper publication cannot be valued in terms of money, the modest estimation of the same is Rs. 25,00,000/-. Hence, the complainant issued a legal notice dated 02.05.2015 calling upon him to pay the above said amount and the 2nd respondent was called upon to tender unconditional apology for such defamatory publication.

3.3.The 1st accused, gave a reply notice dated 26.05.2014 stating that the 2nd accused published the news item on their own, on the basis of the information given by the Police and he had no connection with such publication. Hence, the complainant gave a complaint against the 1st accused, before the Usilampatti Town Police Station, however, no action was taken on the same. Hence, the complaint in CC No.251 of 2015 was filed before the Judicial Magistrate No-I, Madurai.

4.The learned Judicial Magistrate, Madurai has also taken cognizance of the complaint and issued summons to the petitioners. Aggrieved over the same, the petitioners have filed the present petition to quash the proceedings in CC No.251 of 2015.

5.At the time of admitting this Criminal Original Petition, this Court ordered notice to the respondent / complainant. The notice was served to the respondent on 09.03.2016 and he also acknowledged the same. However, when the matter was taken on 19.02.2019 and 22.02.2019 and on 01.03.2019 there was no representation for the respondent.

6.Considering the Criminal Original Petition is pending from the year 2016 and also no purpose would be served, in keeping the matter pending, this Court is inclined to dispose the case on merits.

7.Heard the learned Counsel for the petitioners and carefully perused the materials placed before this Court.

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8.The learned Counsel for the petitioners has raised the following grounds:

I.The 1st petitioner has been running a Gas Distribution Agency namely, Usha Gas Agency, wherein the complainant was working as a part time Clerk.

ii.The complainant misappropriated Rs.1,30,000/- Hence, the 1st petitioner lodged a complaint against the respondent under Section 457 and 380 IPC and FIR was registered in Crime No.122 of 2008.

iii.Based on the case, the alleged news item has been published, only at the instance of the Police and not at the instance of the petitioner. Even according to the respondent, the alleged news item was published on 12.08.2012 and the respondent / complainant came to know the same only on 20.04.214 after a lapse of 20 months.

iv. The petitioners neither directly nor indirectly intended to cause imputation to harm the reputation of the complainant and so, the offence under Section 499 IPC cannot be attracted. It is only based on the registration of criminal case against the respondent, the news was published. It is well settled that no statement could be defamatory, if it is based on truth.

iv. The alleged offence of defamation has not been made out and it attracts exception No.1 of Section 499 IPC. 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.

vi.The learned Magistrate without ascertaining, whether the imputations referred by the complainant fall within any of the exceptions under Section 499 and 500 IPC, took the complainant on file. The learned Counsel for the petitioner relied on the following judgments:

1.Murugan Vs Subramania Swamy, reported in 2016(2) Mwn (Cr) 284, wherein this Court has held as follows:

> "7.The learned Judicial Magistrate has examined the petitioner and recorded the statement and came to the conclusion that he was not the author of the News item and in the News item, it is stated one astrologer was having illicit intimacy with his wife and hence, he has given a complaint before the Police and the Respondent has not Published the News item. Neither the Editors nor the Correspondents of the dailies were impleaded as Accused for publishing the news item. The Trial Court has correctly held that the Complaint has been given before the Police by the Respondent and the Respondent has not published the News item. Merely, the Respondent has given a Complaint to the lawful

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authority, there is no offence would come since the Respondent is entitled for the Eighth Exception of Section 499 IPC."

2.Mohammed Israth, Editor, Printer & Publisher, Dinakaran, Coimbatore Vs. The Public Prosecutor, District and Sessions Judge Court, Tiruppur, reported in 2017-2-L.W.(Crl)393, this Court has held as follows:

"11.It is needless to mention that the freedom to publish about such incident in a newspaper is the prerogative of the press and there is nothing therein to indicate that ton such publication of the news item of serving half eggs in one Tribal School in Udumalai, the same will harm the reputation of the then Chief Minister of Tamil Nadu. Reporting of a factual incident based on a statement made by witnesses cannot be termed as a defamatory article. If the arguments of the learned Government Advocate is to be accepted, then most of the articles complaining about discrepancies in various welfare schemes of the Government would have been termed as defamatory and the independence of the media to report such articles would curtail the democratic set up of our country."

Hence, the learned Counsel for the petitioner prayed to quash the proceedings in CC No.251 of 2015, on the file of the District Munsif cum Judicial Magistrate -I, Madurai District

9.Considering the materials placed before this Court decides the case as follows:

10.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.

11.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.

12.Considering the publication, which has been made in this case, it appears that the publication has been made based on the information provided by the Police and the respondent was also terminated from this employment.

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13.Here in this case, the news item regarding the complaint made against the respondent by the first petitioner is published. There is no dispute with regard to the complainant made before the Police against the respondent.

14.The Eighth Exception to Section 499 IPC postulates that it is not demfation 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 the accusation.

15.Admittedly, the 1st petitioner preferred the complaint against the respondent, before the Police, who is the lawful authority. This will also fall under exception 8. Further the complaint has also been filed after two years.

16.Under such circumstances, applying the principles laid down in the cases cited supra, this Court is of the view that the complaint filed as against this petitioners will fall under exceptions 1 and 10 to Section 499 and accordingly, the complaint against these petitioners is liable to be quashed.

17.In view of the above discussion and also in view of the judgments referred to supra, the proceedings in CC No.251 of 2015, on the file of the District Munsif cum Judicial Magistrate -I, Madurai is hereby quashed. The Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To
The District Munsif cum Judicial Magistrate -I,
Madurai.

COPY TO:

The Section Officer,VR Section,(2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.K.AZAGAR SAMI, Advocate (SR-66058[F] dated 16/05/2019)

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