



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2019
PRONOUNCED ON : 30.08.2019

CORAM

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.(MD).Nos.10471 of 2014 and 5191 of 2015
and
Crl.M.P.(MD)No.1 of 2014 and 1 of 2015

1.M.Shahul Hameed @ Abdul Hameed
2.J.Saifullahan
3.A.Sirajudeen
4.M.Hayathutheen
5.A.Lukkuman
6.I.Syed Pukari
7.I.Seeni

: Petitioners in Crl.O.P.(MD)No.
10471 of 2014

1.N.Mohammed Ali @ Ali
2.Himaun Kabeer

: Petitioners in Crl.O.P.(MD)No.
5191 of 2015

Vs.

M.Thaskeer

: Respondent in both petitions

COMMON PRAYER: Petition is filed under Section 482 of Criminal Procedure Code praying to call for records pertaining to the private complaint in C.C.No.41 of 2014 on the file of the Judicial Magistrate Court No.I, Ramanathapuram, Ramanathapuram District under Sections 120(b), 500 IPC and Section 67 and 68 of Information Technology Act and quash the same as illegal with regard to the petitioners.

For Petitioner : Mr.T.Seeni Syed Amma
For Mr.T.Lajapathi Roy,
(in both cases)

For Respondent : Mr.K.Kumaravel
(in both cases)

ORDER

These petitions have been filed to quash the private complaint in C.C.No.41 of 2006 pending on the file of the Judicial Magistrate Court No.1, Ramanathapuram, Ramanathapuram District. The petitioners stood charges for the offences under Sections 120(b), 500 IPC and Sections 67 and 68 of the Information Technology Act.

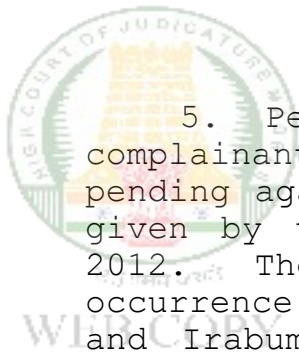


2. The brief facts of the complaint in this case is as follows:-

The first accused was maintaining a website in the name of Ramnad TNTJ.com. The other accused are the President and Members of one Tamil Nadu Tawheet Jamath. On 17.11.2012, there was a marriage between the daughter of the seventh accused, and the son of the sixth accused. On that date, there was a wordy quarrel, and the petitioners said to have attacked the defacto complainant and other Jamathars. With regard to the same, a complaint has been lodged before the Thiruppalaikudi Police Station and a FIR in Crime No.171 of 2012 has been registered for the offence punishable under Sections 147, 148, 294(b) and 506(ii) IPC. Subsequently, the first accused published a false news in the website maintaining by him as if the complainant along with 200 rowdy elements in an intoxicated mood attacked the petitioners herein and also published some obscene words against the defacto complainant, thereby defamed him. Hence, a private complaint has been filed by the defacto complainant before the learned Magistrate No.I, Ramanathapuram and the learned Magistrate took cognizance of the offence same and issued summons to the petitioner. Now to quash the same, the present petitions have been filed.

3. The learned counsel for the petitioner would contend that there is a case and case in counter, regarding the incident mentioned in the private complaint. Earlier the petitioners have given a complaint against the respondent / complainant in this case and others, based on that a FIR in Crime No.170 of 2012 for the offence under Sections 147, 148, 294(b), 323, 324, 506(i) and Section 3(1) of TNPPDL Act has been registered. As a counter blast, a false complaint has been filed against the petitioners by the respondent, which was registered in Crime No.171 of 2012. In the complaint filed by the petitioners in Crime No.170 of 2012, it has been specifically mentioned that the complainant and others have attacked the petitioners herein. The above matter has been published in the website maintained by the first petitioner / first accused. It is only the contents of the FIR has been published in the website, with good faith which is squarely falls under the Exception 1 to Section 499 IPC.

4. That apart publication has been made only by the first petitioner / first accused, and absolutely there is no allegation against the other accused. They have been falsely implicated with the aid of 120(b) IPC and there is no material available to establish that there is an agreement between the petitioners for the alleged illegal act. Other accused are falsely implicated in this case. In the above circumstances, as no prima facie case has been made against the petitioners to take cognizance of the offence and hence, the present criminal proceedings is liable to be quashed.



5. Per contra the learned counsel for the respondent / complainant would submit that, there is a case and case in counter pending against the petitioners and the complainant. The complaint given by the petitioners has been registered in Crime No.170 of 2012. The allegations stated therein was that, on the date of occurrence 20 persons lead by one Ramalan, Syed Abudahir, Ravuthar and Irabumusa entered into the marriage hall and attacked the petitioners and others and caused injuries to so many persons. At that time, the respondent / complainant, abetted the said persons to attack them. The allegation against the complainant is only abetment, whereas the first petitioner / first accused has published defamatory statements in the website maintained by him as if the defacto complainant along with 200 rowdy elements in an intoxicated mood attacked the petitioners and others. The respondent / complainant has been described as rowdy element in the publication, in total contrary to the complaint given before the police, and the publication made by the first accused is per se defamatory. So far as the other petitioners are concerned they also have conspired together and published the defamatory statements hence, all the accused are liable to be punished for the said offence.

6. I have heard the rival submissions made on either side and also perused the records carefully.

7. The petitioners are made as accused for the offence under Sections 120(b), 500 IPC and Sections 67 and 68 of the Information Technology Act. The allegations in the complaint is that the first petitioner / A1, who is maintaining the website in the name of Ramnad TNTJ.Com had published defamatory statements against the respondent / complainant and the other accused have been implicated with the aid of Section 120(b) IPC.

8. It is the case of the petitioner that the first accused published the contents of the FIR, which is registered against the defacto complainant and others in Crime No.170 of 2012, and hence, it clearly comes under the Explanation 1 to Section 499 IPC.

9. Section 499 of the Indian Penal Code defines defamation, it contains 10 Exceptions and 4 Explanations. The relevant portion reads:-

" 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 expected, to defame that person.

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."

10. To constitute an offence of defamation, it requires a person to make some imputation concerning any other person. Such imputation must be made either with intention or knowledge or having a reason to believe that such an imputation will harm the reputation of the person against whom the imputation is made. Imputation could be by words, either spoken or written or by making signs or visible representations. Imputation could be either made or published. The essence or publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.

11. This exception requires that the imputation should be true, and it is not defamation, if the imputation is true. If the statement proved as not true statement, the 1 exception will not get attracted. Even if the part of the statement is true, and further makes false or uncalled for statements against any person, he cannot be considered as acting in good faith, and that benefit cannot be pleaded at this stage.

12. In the instant case, the contention of the petitioners is that A1 published the contents of the FIR and it has been published in public good in good faith. Perusal of the alleged defamatory statements, it could be seen that, in the FIR there is no allegations that the respondent / complainant, lead the group of 200 persons and attacked the petitioners and others. As per FIR the complainant only abetted the other persons and he was a member of the lawful assembly.

13. But in the alleged defamatory statements published by the first accused, it is stated that, the respondent / complainant lead the group of 200 persons with an intoxicated mood and attacked the persons in the marriage hall and also described him as rowdy element, which is totally contrary to the contention of the FIR. Hence, A1, at this stage, cannot pleaded that imputation falls under the Exception 1, to Section 499 IPC and it is matter for trial and he has to prove it.

14. So far as the other accused are concerned they have been robed in this case with the aid of 120 (b) IPC. Section 120 (b) IPC deals with Criminal conspiracy. The necessary ingredients for the offence is an agreement between two or more persons to commit the illegal act. In the instant case there is no material available on record to show that there is an agreement between the first accused and the other accused. The mere statement in the complaint that the other accused have conspired with the first accused and published



the defamation statement in the website is not sufficient to bring the offence under Section 120(b) IPC. There is no prima facie material available against the other accused to change them for an offence under Section 120(b) IPC.

15. In such circumstances, I am of the considered view that there are material available on record to *prima facie* constitute the offence against the first accused, and absolutely there is no material against the petitioners 2 to 9 to constitute an offence under Section 120(b) IPC. Accordingly, the private complaint filed by the complainant in C.C.No.41 of 2014 stands quashed in respect of the accused 2 to 9. The learned Judicial Magistrate is directed to proceed with the case in respect of the first accused.

16. In the result Crl.O.P.(MD)No.10471 of 2014 is allowed in respect of the accused Nos.2 to 6 and 10 and dismissed in respect of the first accused / first petitioner herein and Crl.O.P.(MD)No.5191 of 2015 stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court No.I, Ramanathapuram,
Ramanathapuram District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2. C.C. to M/S.T.LAJAPATHI ROY, Advocate SR.No. 84831 & 84832

CRL.O.P.(MD).Nos.10471 of 2014 and 5191 of 2015

Dated:
30.08.2019

TA
JM/25.09.2019/5P/5C