



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD) No.5478 of 2015 and

M.P(MD) Nos.1 & 2 of 2015

M.Shankar,
(Editor "Dhina Murasu"),
S/o. Muthukrishnan,
23A, SIPCOT, Konam,
Nagercoil, Kanyakumari District. ... Petitioner/Accused
Vs.

Himam Pathusha ... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C, to call for the records relating to the criminal proceedings pending in S.T.C.No.118 of 2014 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.T.Lajapathi Roy

ORDER

The petitioner is facing trial for criminal defamation in S.T.C.No.118 of 2014 on the file of the Judicial Magistrate, Nagercoil. The respondent is the complainant.

2. The grievance of the respondent is that the petitioner had published a highly defamatory article against him in the newspaper edited by the petitioner herein.

3. To quash the same, this Criminal Original petition has been filed.

4. The petitioner's counsel would point out that one Ansari lodged a complaint against one Mohamed Thaseem and three others including the petitioner herein containing certain serious allegations before the Superintendent of Police, Nagercoil and that the petitioner reproduced verbatim the said allegations in his newspaper on 06.02.2013.

5. Section 499 of I.P.C. gives projection to a person who in good faith makes accusation against another to any of those who have lawful charge over that person with respect to the subject matter of accusation. In this case, admittedly the petitioner did not lodge the complaint in question. If the complaint was not lodged by him, he will not come within the Eighth Exception to Section 499 of I.P.C. Fourth Exception to Section 499 of I.P.C. is about the publication of reports of proceedings of Courts. In this case, the complaint was made not to Court but to police authority. Therefore, the petitioner will have to find refuge in the First Exception. The



First Exception to Section 499 of I.P.C. reads as under:-

"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."

6. Since the contentions urged before me are primarily questions of fact, the inherent powers are not available to be exercised by this Court. Hence, leaving open all the contentions and defences of the petitioner, this Criminal Original petition stands dismissed. However, the personal appearance of the petitioner before the Court below is dispensed with.

7. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through his counsel. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate No.II, Nagercoil.

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

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-90658[F]

+1 CC to M/s.N. DILIP KUMAR, Advocate (SR-90710[F] dated 01/10/2019

CrI.O.P.(MD)No.5478 of 2015

30.09.2019

SMA/07/02/2020/2P/5C