



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P(MD) No.8333 of 2018

and

Crl.M.P.(MD)No.3739 & 3740 of 2018

K.A.Krishnan

... Petitioner/Accused No.1

Vs.

M.Preston

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the in S.T.C.No. 495 of 2010 on the file of the learned Judicial Magistrate No.1, Tirunelveli and quash the same.

For Petitioner : Mr.O.R.Mahes varen

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No. 495 of 2010 on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2. Heard the learned counsel for the petitioner.

3. The respondent herein filed a private complaint for the offences under Sections 499 and 500 I.P.C., alleging that the respondent herein / petitioner therein filed a complaint before the District Consumer Disputes Redressal Forum, Tirunelveli, in Consumer Complaint No.16 of 2010, as against three persons, who are respondents 1 to 3 therein, in which the petitioner herein is an Authorised Signatory of the second and third respondents and filed counter. In the said counter, there is a defamation statement as against the respondent herein and as such, he filed a complaint under Sections 499 and 500 I.P.C as against the petitioner. It is seen from the complaint it does not disclose any defamatory statement at any point of time by the petitioner. Further, the petitioner herein is not responsible for making any statements in the counter filed on behalf of the second and third respondents, in the Consumer complaint. Further, the petitioner did not file any counter on his personal capacity.

4. That apart, any statement allegedly made by the petitioner in the counter is not amount to defamation since it would not fulfill the requirements for the offence under Section 499 I.P.C. In this regard, the learned counsel for the petitioner relied upon the order of this Court passed in Crl.O.P.(MD)No. 6290 of 2006,



dated 16.11.2007, which held as follows:

"10. One of the basic legal requirements of Section 499 IPC is that the imputation should be either made directly to the knowledge of third parties or the same should be published to the knowledge of third parties. In this case, even as per the allegations made in the complaint, it is not as if the imputation said to have been made by the petitioner was published either directly or indirectly. Thus, in my considered opinion, the act of the petitioner does not satisfy the requirement of Section 499 IPC so as to attract the offence punishable under Section 500 IPC.

11. The contention of the learned counsel for the respondent that the counter filed in the lower Court is accessible to third parties and in such a way there is publication of defamatory statement, is only to be rejected. Pleadings filed before the Courts of law are not public documents to which any body can have free access. Further, as per Section 499 IPC, the publication should be made by the accused to third parties. It is true that it is handled by the court staff and copy is furnished to the respondent herein, which can be made public even by the respondent. But these things would not amount to publication by the accused.

12. Thus, in my considered opinion, in the absence of the satisfaction of the basic requirement of publication of imputation by the accused, the complaint is liable to be quashed.

13. Learned counsel for the petitioner relied on the judgment in C.H.Kader and another v. Munnalakath Valappil Fousia (1990 Cri L.J.2356), wherein a the learned single Judge of the Kerala High Court, has taken a similar view.

14. The next contention of the learned counsel for the petitioner is that the statement contained in the counter reflects only the truth and making such a statement would not amount to defamation. But I do not want to go into this question at this stage for the reason that whether the statement is true or not is a matter to be either proved or disproved on evidence before the lower Court by the respective parties.

15. The question of good faith pleaded by the petitioner has also got no relevance at this stage. Since good faith is a question of fact to be proved before the



lower Court, I do not deem it proper to go into the question whether the statement contained in the counter affidavit is true or not and whether the allegation was made in good faith or not. However, I am inclined to quash the case on the sole ground that making certain allegations in the counter filed before the Court would not satisfy the requirements of Section 499 IPC at all."

5.The above case is squarely applied in the case on hand, since the allegations made in the counter filed by the petitioner herein before the Consumer Court would not satisfy the requirement of the offence under Section 499 I.P.C.

6. In view of the above discussion, the proceedings in S.T.C. No. 495 of 2010 on the file of the learned Judicial Magistrate No.1, Tirunelveli, is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To:

1.The Judicial Magistrate No.1,
Tirunelveli.

2.The Chief Judicial Magistrate, Tirunelveli.

+1CC TO MR.B.JAMEEL ARASU, Advocate Sr. No. 96589

CRL.O.P(MD) No.8333 of 2018
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TR(14.11.2019) 3P 4C