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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.04.2019

Pronounced on : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.4104 of 2016

and

Crl.M.P. (MD)No.2076 of 2016

1.Pr.Sankar

2.Reuben Ellan

...Petitioners/Accused No.1&2

Vs.

Sam Sudhakar

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.51 of 2016, on the file of the learned Judicial Magistrate No.II, Tiruchirappalli and quash the same.

For Petitioners : Mr.N.S.Ponnaiah

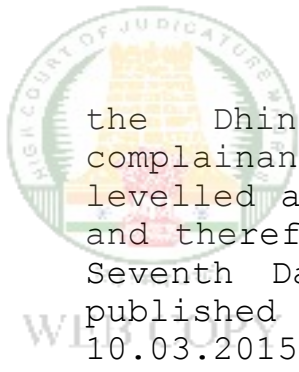
For Respondent : Mr.Veera Kathiravan
Senior Counsel
for Mr.C.Jeganathan

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the private complaint pending against them in C.C.No.51 of 2016 on the file of the learned Judicial Magistrate No.2, Tiruchirappalli. The said complaint was preferred by the respondent / complainant under Sections 190(1)A r/w 200 Cr.P.C for the alleged offence punishable under Sections 500 & 501 IPC.

2. The facts of the case, in a nutshell, are as follows:

2.1. The complainant was the President of the North Tamil Conference of Seventh Day Adventists, the highest body of self governance within the Seventh Day Adventists Church and a world wide Christian denomination controlled by the Apex body called as the General Conference of SDA in America and functioning under the Southern Asia Division (SUD) comprising India and Nepal. The first petitioner was the Assistant Pastor, Trichy Main Church and the second petitioner was the Church Clerk. The first petitioner has been suspended from his post pursuant to a disciplinary proceedings initiated against him by the Head Office on 12.12.2014. Aggrieved over the same, the first petitioner, with the help of the second petitioner, published an advertisement in



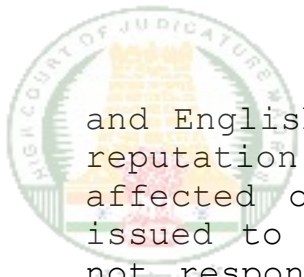
the Dhinamalar Tamil Daily dated 08.03.2015, with the complainant's photo, as if the charges of sexual harassment levelled against the complainant were found to be true and proved and therefore, the complainant was removed from the membership of Seventh Day Adventist Church. The said advertisement was also published in the English Daily - New Indian Express, dated 10.03.2015 with the complainant's photo.

2.2. According to the complainant, he was not a member in the Seventh Day Adventist Main Church, Trichy and he is a member only in the Seventh Day Adventist Church, Gorimedu, Pondicherry. Though the complainant was working at Trichy, he never transferred his membership from Pondicherry to Trichy and he never made any requisition or any application in the Seventh Day Adventist Main Church, Trichy and therefore, the petitioners have no authority to take any decision with regard to his membership and moreover, the first petitioner, who was under suspension, has committed this offence, with the help of the second petitioner / Church Clerk with an intention to defame the complainant. On seeing this publication, the complainant's relatives, friends and members of the Church have reached him over phone, e-mail and SMS and verified about the same and on account of which, the complainant had suffered grave hardship and his reputation in the society was affected badly. Therefore, he filed the present complaint as against the petitioners / accused for the offence punishable under Sections 500 & 501 IPC.

3. Heard Mr.N.S.Ponnaiah, learned Counsel appearing for the petitioners and Mr.Veera Kathiravan, learned Senior Counsel for Mr.C.Jeganathan, learned Counsel appearing for the respondent.

4. According to Mr.N.S.Ponnaiah, learned Counsel for the petitioners, only the resolution of the society has been published in the newspapers and there is no insulting or defamatory words in the publication, as such, it will not fall under the definition as per Section 499 IPC. Moreover, the publication is pursuant to the decision taken by the Executive Committee of the Seventh Day Adventist Church with regard to the removal of the complainant, which is not in the individual capacity of the petitioners, but, this complaint is lodged as against the petitioners alone.

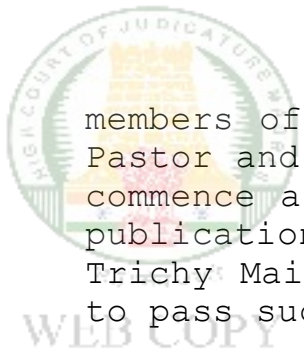
5. He would further submit that the complainant has exploited one Poongothai by his position, for which, Poongothai has lodged a complaint as against the complainant before the All Women Police Station, Cantonment, Trichy, in Crime No.72 of 2009. The said Poongothai has also filed a private complaint as against the complainant and the same is pending before the Judicial Magistrate No.5, Trichy. The complainant's sexual assault and harassment made against Poongothai was widely published in Tamil



and English newspapers throughout the State of Tamil Nadu and the reputation and the dignity of the Seventh Day Adventist Church was affected on account of the same. A show cause notice was also issued to the complainant on 19.02.2015, but the complainant has not responded. Therefore, the Executive Committee of the Seventh Day Adventist Church, Trichy, which met on 07.03.2015, has resolved to ex-communicate / disfellowship the complainant from the Church. The resolution dated 07.03.2015 was published in the Tamil daily newspaper - Dhinamalar and also in the English daily newspaper - New Indian Express. It is a mere communication of the decision taken by the Executive Committee and the decision taken by the Executive Committee was duly complied with by the petitioners. The publication is only a caution made to the members and there is no intention to malign or defame the complainant and there is no defamatory words published in the publication and it clearly falls under the first exception to Section 499 IPC and therefore, the complaint is liable to be quashed.

6. Per Contra, Mr.Veera Kathiraven, learned Senior Counsel appearing for the respondent / complainant would submit that the complainant was the President of the North Tamil Conference of Seventh Day Adventists Church, which is the highest body of self governance within the Seventh Day Adventists Church and he was also re-elected as President of the North Tamil Conference of Seventh Day Adventists Church in July 2007 with a tenure of five years, upto July 2012. When he was about to be promoted as the Bishop of South East India (SEI) Union, in order to defeat his chances, a conspiracy was hatched and false complaint was made as against him through one Poongothai, alleging sexual abuse and other allegations in Crime No.72 of 2009. After thorough enquiry, the said case was closed as mistake of facts and as against the closure report filed by the Inspector of Police, All Women Police Station, Cantonment, Trichy, the said Poongothai had filed a protest petition before the Judicial Magistrate No.2, Trichy, on 28.07.2010. It was transferred to the Judicial Magistrate No.5, Trichy and for taking cognizance on the complaint, the learned Magistrate has provided several opportunities to the said Poongothai, but she has not responded and the Court was also pleased to issue notice to her, which was also returned as insufficient address. After adjourning the petition for several hearings, the learned Magistrate found that there is no material to make out a *prima facie* case, thereby dismissed the complaint on 07.04.2017.

7. While so, the first petitioner, who is an Assistant Pastor of the Seventh Day Adventists Church, Trichy and was also suspended for certain indiscipline activities, has made this publication in order to wreck vengeance against the complainant and to harm his reputation in the Society as well as among the



members of the Church. The first petitioner was only an Assistant Pastor and not the Chairman and he was not having any authority to commence a Board Meeting and to pass resolution as alleged in the publication. Moreover, the complainant was not a member in the Trichy Main Church and therefore, they do not have any authority to pass such resolution.

8. The learned Senior Counsel would further contend that as per the standing orders of the Governing Council for Church organisation and administration, the Conference President is the Chief elder of all the Churches in the conference and he cannot be disfellowshipped. The Church manual prescribes the procedure for disciplinary action only against the members of the Church and not the President of the Conference. As per the Church manual, even the communication of a genuine disfellowship should, wherever possible, be delivered in person by the Church Pastor or by a Church Board Designee and a dismissed member has the right of appeal to the Church for a hearing and the Church should not neglect or refuse to grant such hearing. In case of refusal, the individual has the right to appeal before the Executive Committee of the Conference / mission / field in which the Church is located. The Conference Committee is headed by the President / Complainant and he is the appellate authority, as such, no Church can disfellowship its own President for any reason. The so-called resolution is without any authority and falsely fabricated in order to defame the complainant among the Society, members of the Church and the complainant has also filed the relevant documents in support of his case and the learned Magistrate, after satisfying the materials placed before him, has issued summons to the petitioners, as such, this petition is liable to be dismissed.

9. This Court has heard the submissions made by the learned Counsel on either side and has also perused the materials placed on record.

10. According to the complainant, he was the President of the North Tamil Conference of Seventh Day Adventists Church, the highest body of self governance within the Seventh Day Adventists Church and world wide Christian denomination controlled by the Apex body called as the General Conference of SDA in America and functioning under the Southern Asia Division (SUD) comprising India and Nepal.

11. Admittedly, one Poongothai has levelled a complaint as against the complainant before the Inspector of Police, All Women Police Station, Cantonment, Trichy, in the year 2009 and the same was registered in Crime No.72 of 2009. After investigation, the said complaint was closed as mistake of facts on 11.02.2010. The said Poongothai had filed a protest petition as against the



referred charge sheet, which was taken on file by the learned Judicial Magistrate No.5, Trichy in C.M.P.No.973 of 2014 and the same was also dismissed on 07.04.2017 that there was no material to make out a *prima facie* case as against the complainant.

12. It is the case of the complainant that he was about to be appointed as the Bishop of South East India (SEI) Union and in order to prevent the same, his name was maligned by foisting this false complaint, which was also duly enquired and closed as mistake of facts. While so, this publication have been made in the year 2015 as if there was an Executive Committee meeting held in the Seventh Day Adventist Main Church, Trichy and it was resolved to ex-communicate / disfellowship the complainant from the Church, as the allegations levelled against him were found to be true. These publications have been made in Dhinamalar-Tamil daily, dated 08.03.2015 and also in the New Indian Express-English daily, dated 10.03.2015, with the photograph of the complainant and also with the wording that the complainant shall not be accepted in any Seventh Day Adventists Church as a member, in the Globe, since the allegations levelled against him are true and correct.

13. The complainant claims that as the highest body, he has taken action against the first petitioner for his indisciplinary activity and he was suspended from the Church and during the suspended period, with an intention to malign the complainant, the first petitioner has made these publications with the help of the second petitioner / Church Clerk. The complainant, along with the complaint, has also filed the publication dated 08.03.2015 made in Dhinamalar Tamilly daily and the publication dated 10.03.2015 made in New Indian Express English daily. It is his specific case that in view of the publications, his friends and relatives have reached him over Calls, SMS and Emails and enquired about the incident, out of which, his reputation was lowered among his friends and relatives. He has also filed a message dated 08.03.2015 and an E-mail dated 09.03.2015 along with his complaint, to substantiate his case.

14. This Court is of the view that whether the complainant was a member of the Seventh Day Adventists Church, Trichy or not; whether the first petitioner, who was suspended from the Church on 12.12.2014, has passed the resolution and whether he is having any authority to pass such resolution as against the President of North Tamil Conference of Seventh Day Adventists; and whether the publication falls under the exception as per Section 499 IPC can be established only during the trial by adducing evidences by both parties and it is for the trial Court to decide the same.

15. In such a view of the matter, this Court is not inclined to entertain this criminal original petition and the same



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is accordingly, dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar (CS)

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To

The Judicial Magistrate No.II,
Tiruchirappalli.

Order made in
Crl.O.P. (MD) No.4104 of 2016
and
Crl.M.P. (MD) No.2076 of 2016
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KM/ (23.09.2019) 6P 2C