



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.4367 of 2016

and

Crl.M.P. (MD)Nos.2176 & 2177 of 2016

1.K.Chinnappa
2.R.Gurusamy
3.R.Alagumalai

... Petitioners/ Accused No.1 to 3

Vs.

S.Mariappamurali

... Respondent/ Defacto Complainant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.58 of 2008, on the file of the learned Judicial Magistrate No.II, Madurai District and quash the same.

For Petitioners: Mr.A.K.Azhagarsami

For Respondent : Mr.K.Prabu

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the private complaint pending against them in C.C.No.58 of 2008 on the file of the learned Judicial Magistrate No.II, Madurai. The said complaint was preferred by the respondent / complainant under Sections 195(1)(a) r/w 200 Cr.P.C for the alleged offence punishable under Sections 34 r/w 500 IPC.

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

2.1. The complainant is the life time member of Madurai Tamil Sangam and Committee member of Senthamil College. The first petitioner herein is the Principal of the College, second petitioner is the Secretary of the College and the third petitioner is the Secretary of Tamil Sangam. According to the complainant, his father, namely, Sankarapandian, was the first member of Tamil Sangam, who contributed very much for the development of the Sangam and he passed away on 19.07.2006. In order to honour the said (late) Sankarapandian, being the pioneer of the Sangam, it was resolved to unveil his portrait and a formal function has also been arranged by the Sangam and College, jointly. For the said function, the



complainant took care of the miscellaneous expenses and in addition to the same, he gave a sum of Rs.20,000/- to the petitioners herein on 14.07.2007 towards the expenses for the function.

2.2. After the function, when the complainant verified the account details, he found that the petitioners herein have misappropriated the funds and in this regard, he raised a motion before the Administrative Committee, where it was proposed to take action against the petitioners. In addition to this misappropriation, it is alleged that the petitioners have demanded donation, unlawfully, from the Students who approached the College for admission. In this regard, the complainant has lodged a complaint before the C-4 Police Station, in Crime No.1935 of 2007, dated 23.10.2007 and the same is pending.

2.3. When such being the position, the petitioners herein, on 26.10.2007, made an explanation in the Malai Malar tamil daily, declining the charges levelled against them and further stated that the complainant has cheated several people upto Rs.5 Lakhs under the guise of securing a job in the College and therefore, he has been dismissed from all the posts of the College. According to the complainant, the petitioners herein, triggered by the action of the complainant, without any basis and without any sort of enquiry, have made such a remark about him and because of the same, the complainant has suffered grave hardship and his reputation in the society was affected badly. Therefore, he has filed the present complaint as against the petitioners / accused for the offence punishable under Sections 34 r/w 500 IPC.

3. Heard Mr.A.K.Azhagarsami, learned Counsel appearing for the petitioners and Mr.K.Prabu, learned Counsel appearing for the respondent.

4. Mr.A.K.Azhagarsami, learned Counsel for the petitioners, refuted the allegations of misappropriation as well as demand of donation from the Students. The function was organised by the College and Sangam together, for which, proper accounts were maintained and since the College is a Government aided one, there is no need to collect donations from the Students. He would, therefore, contend that these are all baseless allegations without any evidence and would further contend that the respondent / complainant herein had cheated several people and collected huge sums of amount under the guise of securing a job in the Senthamari College. An enquiry was conducted in this regard and only thereafter, a resolution was passed to remove him from all the posts of the College. The publication is only a caution made to the members and the general public 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 ninth exception and therefore, the complaint is liable to be quashed.

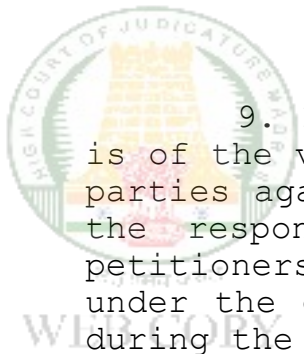


5. Per Contra, Mr.K.Prabu, learned Counsel appearing for the respondent / complainant, would submit that the respondent found the misappropriation committed by the petitioners as well as their unlawful demand of donations from the Students and therefore, he let the law in motion by raising a mention before the Administrative Committee as well as by lodging a case. In order to wreck vengeance against the complainant and to harm his reputation in the Society, the petitioners herein, under the guise of giving an explanation, have given such a statement before the Malai Malar tamil daily. According to the complainant, he is a practising Advocate and because of such defamatory posts, he lost his reputation in the Society and therefore, lodged the complaint 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.

6. This Court has paid its attention to the submissions made by the learned Counsel on either side and also perused the materials placed on record.

7. It is the case of the respondent / complainant that he found the petitioners misappropriated the funds provided by him meant for conducting the function to unveil the portrait of his father, late Sankarapandian, the pioneer of the Sangam. In this regard, he raised a motion before the Administrative Committee and it was resolved to take action against the erring members before the next meet. It is the further case of the respondent / complainant that the petitioners, in addition to this misappropriation, had collected donations from the Students unlawfully and in this regard, he set the criminal law in motion by lodging a case in Crime No.1935 of 2007 and triggered by these actions, the petitioners have made such defamatory remarks against the respondent / complainant under the guise of giving an explanation to the allegations levelled against them.

8. The petitioners, on the other hand, refute the allegations raised against them and would contend that it is the respondent / complainant, who had cheated several peoples under the guise of securing a job in the College and for such malpractice, an enquiry was conducted and after enquiry, he was removed from all the posts of the College. Therefore, he would contend that it is only a caution made to the general public that he was removed from all the posts of the College and as such, it is not an offence as per the definition under Section 499 IPC. In order to substantiate his plea that the respondent / complainant was removed from the College due to the malpractice, the learned Counsel for the petitioners sought time to produce the files. But, despite granting several adjournments, no documents were produced by the petitioners in this regard.



9. In the absence of any such material documents, this Court is of the view that whether the allegations raised by the respective parties against each others are true or not; whether the removal of the respondent / complainant from College, as claimed by the petitioners, is as per law or not; 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.

10. In such a view of the matter, this Court is not inclined to entertain this criminal original petition and the same is accordingly, dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-75590[F] dated 16/07/2019)

Order made in
Crl.O.P. (MD)No.4367 of 2016
and
Crl.M.P. (MD)Nos.2176 & 2177 of 2016
15.07.2019

gk
MS/18.09.2019/4P.3C