

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2020

PRONOUNCED ON : 24.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.24105 of 2015 & M.P. No.1 of 2015

1 R.Poornalingam
2 S.Nagalsamy
3 S.Rajan Babu
4 V.Kandasamy

Petitioners/A1 to A4

vs.

Prof.P.Kadhirvel

Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to C.C.No.2334 of 2015 pending on the file of the Court of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For petitioners 1,2 & 4 Mr.S.Ashok Kumar
Senior Counsel
for Mr.M.Deivanandam

For 3rd petitioner Mr.G.Ravikumar

For respondent Mr.N.Manokaran
for Mr.T.V.Vineeth
Kumar

ORDER

For the sake of convenience, the parties will be referred to by their names.

2 The eye of the storm in this litigation is the Indian Officers' Association (for brevity "the IOA"), a society registered under the Societies Registration Act and membership in the said association is open only to public servants, subject to the provisions contained in this regard in the by-laws and subject to further satisfaction of the Executive Committee. The dramatis personae in this case are undoubtedly persons of stature having occupied high positions in the executive.

3 Prof. Kadhirvel (complainant/sole respondent herein - for brevity "Kadhirvel") was a teacher of eminence in the Presidency College, Madras. R. Poornalingam (first petitioner/A.1) was a

senior bureaucrat in the State apparatus. Likewise, S. Nagalsamy (second petitioner/A.2), S. Rajan Babu (third petitioner/A.3) and V. Kandasamy (fourth petitioner/A.4) had retired from Government service. Thus, by virtue of their previous service, they all became eligible for membership in the IOA and they joined the IOA as its members.

4 For the period 2012-2013, Poornalingam (A.1) was the President, Nagalsamy (A.2) was the General Secretary, Rajan Babu (A.3) was a member of the Executive Committee, Kandasamy (A.4) was the Joint Secretary and Kadhivel was the Treasurer. There were also others in the Executive Committee who have not been roped in to this litigation. There was no dearth of funds for the IOA and it even owns a commercial complex named 'Justice Pratap Singh Building' in the heart of Chennai city.

5 At this juncture, it is worth referring to the saying that, wealth is usually accompanied by its younger sister "envy", which sows the seed for infighting. The IOA is not an exception to this eternal rule. Without going into the allegations and counter-allegations traded by both sides, this Court confines itself to narrate the germane facts as they transpired.

6 Some allegations of financial irregularities against Kadhivel surfaced and so, the Executive Committee of the IOA met on 23.02.2013 at 5.00 p.m. at the Committee Hall, in which, around 13 Executive Committee members, including Kadhivel, participated. In that meeting, certain other subjects were deliberated upon and resolutions passed. When the subject relating to the allegations against Kadhivel was taken up for discussion, he was requested to withdraw from the meeting and accordingly, like a true gentleman, he did so. The other members of the Executive Committee discussed the subject and unanimously resolved to issue a show cause notice to Kadhivel on six items of irregularities under clauses 11(v) and clause 16(i) of the by-laws of the IOA. For the purpose of avoiding further embarrassment to Kadhivel, this Court consciously refrains from reproducing those allegations as this order will remain in public domain after it is pronounced.

7 Pursuant to the resolution, Nagalsamy (A.2) issued a show cause notice dated 25.02.2013 calling upon Kadhivel to give his explanation for the six indictments set out therein. Kadhivel sent a reply dated 10.04.2013 requesting the Executive Committee to furnish him certain documents. Immediately thereafter, Kadhivel filed a suit in O.S.No.2350 of 2013 on the file of the XIII Assistant Court, City Civil Court, Chennai, on 23.04.2013, in which, the IOA, Poornalingam (A.1), Nagalsamy (A.2), Rajan Babu (A.3) and Kandasamy (A.4) were shown as

defendants. Along with the plaint, he enclosed the show cause notice dated 25.02.2013, containing the allegations against him, as document no.3.

8 Apart from claiming other reliefs in the suit, Kadhirvel prayed for a declaration that the letter dated 25.02.2013 (show cause notice) is unenforceable in law and cannot be acted upon. In the said suit, he also sought an order of interim injunction in I.A. No.14602 of 2013 restraining the defendants from discussing or publishing any issue relating to the allegations against him in the Annual General Body Meeting. The civil Court did not grant him the said interim relief. The Annual General Body Meeting of the IOA was convened on 02.10.2013 in the IOA Centenary Building Auditorium and the annual report was presented to the members. In the annual report, all the resolutions, including the resolution dated 23.02.2013 relating to the allegations leveled against Kadhirvel, passed by the Executive Committee from time to time, were incorporated and was read by Poornalingam (A.1).

9 For better appreciation of the dispute at hand, it may be apposite to extract the relevant paragraph from the annual report:

"Mr.P.Kadhirvel, Treasurer was asked to withdraw from the meeting, Mr.P.Kadhirvel then withdrew from the meeting and the subject was discussed. All the irregularities were explained by the Secretary and discussed in detail. Er.K.A.Mariappan, E.C.Member observed that such an embarrassing situation had happened because all the works were entrusted to a single person. Mr.P.Vadivel, E.C.Member pointed out that all cheques irrespective of the amount should be made after the voucher is signed/approved by the G.S. Mr.Velumani recalled that Mr.Ponniah had raised the issue of single person signing the cheque in the previous Executive Committee, Mr.R.Sellamuthu, V.P. suggested that in the show cause notice to be issued to Mr.P.Kadhirvel the work "charge" may be referred to as "irregularity". The E.C. after deliberation, unanimously approved the proposal to issue show cause notice to be issued to Mr.P.Kadhirvel, the word 'charge' may be referred to as "irregularity". Mr.P.Kadhirvel, Treasurer, on the following 6 irregularities under clause 11(v) and clause 16(i) of the bye laws of Indian Officers' Association.

Irregularity No.1.....

Irregularity No.2.....

Irregularity No.3.....

Irregularity No.4.....

Irregularity No.5.....

Irregularity No.6.....”

10 Kadhirvel's grievance is that he was also present on the dais along with the other office bearers of the IOA during the Annual General Body Meeting when the annual report containing the allegations levelled against him was presented to the members of the IOA, but, he was not allowed to give his explanation to the said allegations against him nor was the reply letter dated 10.04.2013 given by him printed in the annual report.

11 Hence, in the said background, Kadhirvel issued a legal notice dated 07.11.2013 to the petitioners/accused and followed it up by filing a complaint in C.C. No.2334 of 2015 in the Court of the Chief Metropolitan Magistrate, Egmore, Chennai, for the offence under Section 499 IPC, punishable under Section 500 IPC, against Poornalingam (A.1), Nagalsamy (A.2), Rajan Babu (A.3) and Kandasamy (A.4), for quashing which, the four accused are before this Court invoking Section 482 Cr.P.C.

12 Heard Mr. S. Ashok Kumar, learned Senior Counsel represented by Mr.M.Deivanandam, learned counsel on record for Poornalingam (A.1), Nagalsamy (A.2) and Kandasamy (A.4), Mr. G. Ravikumar, learned counsel for Rajan Babu (A.3) and Mr. N. Manokaran, learned counsel representing Mr. T.V. Vineeth Kumar, learned counsel on record for Kadhirvel. Long drawn arguments were advanced by both sides in support of their stands.

13 Mr. Ashok Kumar made the following submissions:

- a) the show cause notice dated 25.02.2013 was issued to Kadhirvel pursuant to the resolution dated 23.02.2013 of the Executive Committee and not based on anyone's individual whim;
- b) the show cause notice was issued by Nagalsamy (A.2) only to Kadhirvel and was not placed in the public domain;
- c) it was Kadhirvel who filed the show cause notice containing the allegations as plaint document in O.S. No.2350 of 2013 and made it public; and
- d) under the provisions of the Societies Registration Act, it is the bounden duty of the Executive Committee to place before the General Body, the annual report containing the resolutions that were passed by the Executive Committee for the approval of the General Body; therefore, it was

imperative for the Executive Committee to incorporate the six heads of allegations against Kadhirvel and place the same, along with other resolutions, before the General Body on 02.10.2013; ergo, for acting within the four corners of the by-laws, the accused cannot be prosecuted for defamation.

14 Refuting the aforesaid contentions, Mr. N. Manokaran, learned counsel for Kadhirvel made the following submissions:

- a) the Court should not quash the proceedings when there are prima facie materials to show that Kadhirvel was defamed by the act of the accused;
- b) the Court should step into the shoes of Kadhirvel and feel the pinch suffered by him on account of the impugned defamatory imputations made against him by the accused; and
- c) enquiry was conducted by a retired District Judge on the allegations made in the show cause notice and Kadhirvel has been completely and honourably exonerated of all the charges by report dated 21.12.2015.

15 Mr. Manokaran also took this Court through the portions of the enquiry report commending the services of Kadhirvel.

16 This Court gave its anxious consideration to the rival submissions.

17 To appreciate the rival contentions, it will be useful to extract the definition of the word "defamation" in Section 499 IPC as follows:

"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 excepted, to defame that person." (emphasis supplied)

This Court has consciously omitted to extract the explanation and exceptions to the aforesaid provision, the reason for which will become evident later.

18 It is pertinent to reiterate that Kadhirvel is not categorizing the decision taken in the Executive Committee on 23.02.2013 as defamatory nor is it his case that the show cause notice dated 25.02.2013 had given him the cause of action for filing the present complaint, because, admittedly, it was he who made the show cause notice dated 25.02.2013 public, by filing it as a suit document in O.S. No.2350 of 2013. So, what is his grievance? His grievance is available in paragraph no. 10 of

the complaint which reads as follows:

"The complainant states that the accused have printed and published the defamatory allegations against the complainant with the intention of harming him knowing full well that such imputation could harm the reputation of the complainant. The complainant states that his reputation has been seriously affected. He is being looked down upon by the members of the Indian Officers' Association and general public who happened to see the annual report for the year 2012-2013, as a corrupt and undesirable person and the same has caused mental and physical suffering cruelty and agony, which cannot be adequately compensated by money. The complainant is entitled to be cleared of the false and defamatory allegations made by the accused against him. The imputation made against the complainant by the accused has lowered the dignity, character and credit of the complainant."

It is also his grievance that the reply given by him to the show cause notice was not published in the annual report and that he was not given an opportunity to defend himself in the Annual General Body Meeting.

19 Be it noted that none forced Kadhivel to become a member of the IOA nor contest the elections to become its Treasurer. Neither the heavens would have fallen nor the world would have come to a standstill had Kadhivel not joined the IOA or occupied the post of its Treasurer. He voluntarily joined the IOA as a member, contested the election and became its Treasurer. When a person becomes a member of an association, it is presumed that he submits himself to its rules, regulations and by-laws. At this juncture, it may be apposite to extract clauses 11(v) and 16(i) of the by-laws of the IOA which have been referred to in the resolution of the Executive Committee:

"11 Disqualification for being a member:

Any member mentioned in Clause 9(ii) (a) & (b) above shall not be eligible to be a member of the Association, if:

(v) He has at any time conducted himself against the interest of the Association as may be decided by Executive Committee.

16 Disqualification for being a member of the Executive Committee:

(i) If any member of the Executive Committee after election suffers any of the disqualifications mentioned in Clause 11 above, he shall be removed from

the membership of the said Committee by a resolution passed in the Executive Committee after providing a reasonable opportunity to the member concerned for defending himself. After such removal, if any, the President may co-opt any member in his place."

20 Thus, when allegations of financial mismanagement by Kadhivel surfaced, the accused did not gossip or slander about it or insidiously spread rumours. Instead, they called the Executive Committee on 23.02.2013, in which, Kadhivel was present. When the subject as regards the allegations against him was taken up for discussion, he was required to recuse and that has been recorded. The members of the Executive Committee unanimously approved to catalogue six heads of allegations and issue a show cause notice to Kadhivel. Even in the resolution dated 23.02.2013, they have taken care to amend the word "charge" as "irregularity" so as to protect Kadhivel's honour. To say that when allegations against Kadhivel surfaced, the Executive Committee members should have sat idle and done nothing, fearing that doing something may lead to them being hauled up for defamation, would have not only rendered the whole objective of the IOA nugatory, but also, the Executive Committee would have been put to spite.

21 The show cause notice dated 25.02.2013 signed by Nagalsamy (A.2), General Secretary, was sent exclusively to Kadhivel. Admittedly, it was Kadhivel who made it public by filing it as a plaint document in O.S. No.2350 of 2013. Thereafter, when the Annual General Body Meeting was convened, as per the by-laws, it was incumbent on the members of the Executive Committee to print all the resolutions passed by them in the annual report and submit the same for the approval of the General Body. Here again, it is not the case of Kadhivel that the accused published the annual report containing the allegations against him and circulated it to the public at large or had given it to the Press for the purpose of maligning him. On the contrary, it was placed before the General Body of members, who had all become members of the IOA after agreeing to submit and adhere to the rules, regulations and by-laws of the association. The General Body has to be apprised of the various actions taken by the Executive Committee and they cannot be kept in the dark. It is like Cabinet decisions which are executive in nature, being placed before the legislature for its approval. An annual report is required to contain only the resolutions passed by the Executive Committee and not the explanations of the individual members. In this case, the resolution dated 23.02.2013 was only to indict Kadhivel and conduct an enquiry on the indictments and nothing more. It was not a conclusion of guilt arrived at by the Executive Committee of the indictments, because, it is only the Enquiry Officer who can arrive at the conclusion and not the Executive Committee. The grievance of

Kadhirvel that he was not permitted to explain his stand to the General Body can, at the most, be considered as an irregularity in the conduct of the meeting, that too, only if it is shown that the by-laws provide for an indicted person to present his case before the General Body. No such rule has been placed before this Court. There is a prescribed procedure for conducting disciplinary proceedings and the guilt or otherwise of a person cannot be determined by a Mark Antony like oration to the Sabha. Of course, in impeachment proceedings in the Parliament, oration by the indicted or by his representative is permissible and not in in-house proceedings, because, rhetoric cannot take the place of scientific proof. The President of the IOA was duty-bound to read the annual report and a reading of it in the presence of Kadhirvel will undoubtedly be inconvenient to him. All this cannot be termed as "defamation" as defined under Section 499 IPC, because, it was not done

by the officer bearers with the intent to harm him, but, with the intention of placing all the resolutions that were passed by the Executive Committee, to the General Body, for its approval.

22 A person joining in an employment, be it Government or private, is bound by certain disciplinary rules. If an allegation surfaces against an employee, his superior is duty-bound to issue a show cause notice, conduct an enquiry and take action thereafter, depending upon the outcome of the enquiry. In this case, the IOA appointed a retired District Judge as Enquiry Officer, which itself shows that they had no mala fide intention against Kadhirvel. Just because, Kadhirvel has been honourably exonerated subsequently of all the charges, the finding of the Enquiry Officer cannot date back to the day when the Annual General Body meeting was convened, viz., 02.10.2013, to hold that the members of the Executive Committee had defamed Kadhirvel. If the members of the Executive Committee had either preemptorily or subsequently, gone outside the General Body to publish the imputations against Kadhirvel, then, there may be a prima facie case to show that they had done so with the intention to harm his reputation, which is not the case here. There is a peril undoubtedly when one joins an association or body of individuals, of his reputation being besmirched within the contours of the rules, regulations and by-laws of the association, which cannot be helped and least to say when he assumes an office in that body. Notwithstanding this peril, why then do people join various associations? The answer is, it is evolutionary. People voluntarily join a group, be it trade group or caste group or the fan club of a cine star, not for any great altruistic purpose, but, for social security and societal identity. After having voluntarily joined a group, one cannot be heard to complain of victimisation. Social service can be done like Mahatma Gandhi even without joining any body or group.

In fact, the Mahatma quit the Congress and ploughed a lonely furrow during the freedom struggle.

23 Though both sides have drenched this Court with numerous precedents, this Court has deliberately not adverted to them as the aforesaid conclusion has been predicated based on the facts projected by Kadhirvel in his complaint, coupled with the first principles of law. This Court may point out in passing that the difficulty of Societies and Committees in reigning in their members with the sword of defamation hanging over their heads has been noticed by this Court in J. Beckett and Others vs. Mrs. Wendy E. Norris¹, wherein, it was observed as under:

"The only importance the case has is that it shows how extremely difficult it is in a social club for a Committee faced with any form of disciplinary action against members or quasi-members to act with universal approval. It is for that reason that even if wrong Committees deserve and are given that protection (embodied in exception 9) without which it would be impossible for such a body to function. This is most especially so when a complaint has to be issued not to a member himself about his own conduct but to a member relating to the conduct of another person. Honest freedom of expression must be preserved unless Committees are always to have the threat of criminal proceedings hanging over them."

However, this Court is not resting its conclusions on the basis of the aforesaid judgment, except to say that the scenario today is much the same as it was in 1945!!

In view of the foregoing discussion, the prosecution in C.C.No.2334 of 2015 against the petitioners is hereby quashed and ex consequenti, this criminal original petition is allowed. Connected CrI.M.P. stands closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

¹ 1945 MWN 249

cad

To

- 1 The Chief Metropolitan Magistrate
Egmore
Chennai
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to Mr.T.V.Vineeth kumar, Advocate, sr no.37867

Cr1.O.P.No.24105 of 2015

PM(CO)
RMP(15/12/2020)



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