

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.03.2020
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.19676 of 2016
Crl.MP.Nos. 9212 & 9213 of 2016

Bettiah Lokesh
Managing Director,
Triway Travels Pvt. Ltd.,
Parvathi Plaza, First Floor,
105, Genl.K.S.Thimayya Road,
(Richmond Road)
Bangalore - 560 025

... Petitioner

Vs.

N.Ramesh
Accredited Representative of
Sangam Travels,
2nd Floor, Shop No.7,
Prince Plaza, No.73,
Pantheon Road, Egmore,
Chennai - 600 008.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to quash the complaint in C.C.No.3824 of 2016 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner : Mr.S.Ravi
For M/s.Gupta and Ravi
For Respondent : Mr.H.S.Mohamed Rafi

O R D E R

This Petition has been filed to quash the criminal proceedings pending in C.C.No.3824 of 2016 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offences under Sections 499 & 500 of IPC, as against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as first accused in the complaint lodged by the respondent in C.C.No.3824 of 2016 for the offences under Sections 499 and 500 of IPC, alleging that the petitioner issued show case notice dated 20.02.2016 to the respondent raising false allegations and accusation intentionally and deliberately fully knowing that such imputations will harm the reputation and cause serious damage and injury to the name and reputation of respondent and as such the imputations are highly defamatory in nature. He further

submitted that admittedly it is a show cause notice dated 20.02.2016 and it does not make out any offence under Section 499 of IPC. In fact the petitioner did not issue the show cause notice in his personal capacity and it is the decision of the Managing Committee of the Travel Agents Association of India and the petitioner is a Managing Director and he signed the show cause notice. Further it was issued as per the Article 24 of Memorandum of Article of Association of the Travel Agents Association of India and it is squarely falls under exception VII & VIII of the Section 499 of IPC. In support of his contention he relied upon the following judgments:-

i. (1999) 3 SCC 134 - Rajendra Kumar Sitaram Pande Vs. Uttam and

anr
ii. 2016 (1) MWN (Cr.) 594 - S.Soundarapandian Vs. R.Srinivasan

iii. 2010 (1) MWN (Cr.) 504 - Corona Mary & anr Vs. Sister Vanaselvi

3. Per contra, the learned counsel appearing for the respondent/ defacto complainant submitted that M/s. Sangam Travels having head office at Trichy and branch office at Chennai and both office being accredited travel agent by IATA is an active member of Travel Agents Association of India at Chennai. On 19.02.2016, the respondent did not attend the regional meeting as he was seriously undergone medical treatment for about more than one year. When it being so, the petitioner would not have issued any show cause notice that too defamatory and derogatory statements thereby affecting his name and reputation in the several industries relating to air travel, tourism, hotel and society and in the estimation of others on his image was lowered down. He further submitted that the said show cause notice was challenged by way of suit in O.S.No.1199 of 2016 on the file of the XVI Assistant City Civil Court, Chennai, in which the second accused one Mrs. Devakithiyagarajan defend the suit on behalf of the first accused herein. She deposed in the cross-examination as follows :-

a. On 19.02.2016 Mr.N.Rames (respondent herein) did not attend the meeting.

b. Show cause notice has been issued to Mr.N.Ramesh as well.

c. That it has not been mentioned as 'first of you' or 'second of you' in the show cause notice.

d. That she prepared the Minutes of the meeting held on 19.02.2016 as Acting Secretary.

e. That she knows the rules and regulation of the Articles of Association.

f. That show cause notice has not been issued under Article 24 of the AOA.

g. Thirty days' time should have been given under article 24 of the AOA.

h. The Managing Committee Meeting did not take place from 19.02.2016 to 21.02.2016 in any part of India.

On perusal of the above mentioned deposition, it is crystal clear that the accused made defamatory and derogatory statements against the respondent in the show cause notice. When the respondent never attended the meeting held on 19.02.2016, the entire show cause notice itself false that too with defamatory statement. Further he contended that the points raised by the petitioner cannot be considered under Section 482 of Cr.P.C. and all the points raised by the petitioner have to be considered only during trial and prayed for dismissal of the quash petition.

4. Heard Mr.S.Ravi, learned counsel appearing for the petitioner and Mr.H.S.Mohamed Rafi, learned counsel appearing for the respondent.

5. There are totally two accused in which the petitioner is arrayed as first accused. The respondent lodged complaint for the offences under Sections 499 and 500 of IPC with the allegations that the petitioner issued show cause notice containing false accusations which are highly damaging the reputation of the respondent. Further in the show cause notice they also made accusation intentionally and deliberately fully knowing that such imputations will harm the reputation and cause serious damage and injury to the name and reputation of the respondent and such imputations are highly defamatory in nature. It is relevant to extract the show cause notice dated 20.02.2016 as follows:-

"The Managing Committee of TAAI in its meeting held at Mumbai on 16th Jan 2016 had unanimously resolved to apply Article 24 of the Memorandum and Articles of Association of TAAI, which relates to "Exclusion and Suspension of Member", on your organization, since your accredited representative Mr.H.S.Ashraf Ali, in the opinion of the Managing Committee, has been conducting himself in a manner that is detrimental and against the interest of the Association, bringing disrepute to the Association amounting to unethical conduct on your part. You have used highly

objectionable language against the Managing Committee, damaging its dignity and integrity."

"You have also been causing tremendous confusion and misleading the honorable City Civil Court of Bombay, in Mumbai by filing petitions against the Association and members of the Managing Committee. While the matter is pending in the Hon'ble City Civil Court of Greater Bombay, you continue to behave in unethical manner at all the meetings of South Tamil Nadu Chapter and also at Southern Region."

"It has been reported and brought to the notice of the Managing Committee that at the recently concluded Southern Region Meeting on 19th February 2016, you have behaved in a manner which is detrimental to the reputation of the Association, amounting to unethical conduct on your part. You have done all of these in spite of the covenant as per Article 13 of the Memorandum of Articles of Association, which is binding on you membership with TAAI. You have also violated the code of Ethics of the Association.

This decision of the Managing Committee to apply Article 24 of the Memorandum of Articles of Association of TAAI, to issue show cause notice, applies to your Agency membership in both locations - M/s. Sangam Travels, which is a member of TAAI South Tamilnadu Chapter and also in TAAI Southern Region, which are represented by you.

It is also being pointed out here that during 2012, disciplinary action against you for your unethical and anti TAAI behavior which was aimed to bring disrepute to TAAI, was not only deliberated upon by the Managing Committee but also in the open forum of the General Body of our Association held on 22nd October, 2012, at Mumbai. The members were concerned about your action and it was decided to show cause you as to defend your membership against the application of Section 24 of the Memorandum and Articles of Association. You had pleaded that no

such action must be taken and assured you shall do all possible to refrain from such activities and strengthen the image and reputation of TAAI.

The Managing Committee would like to provide you with an opportunity to show cause and defend yourself as to why Article 24 of the Memorandum and Articles of Association of TAAI should not be applied on your agency membership in TAAI South Tamilnadu Chapter and TAAI Southern Region, which response from you may help the Managing Committee to review its decision.

You are required to reply to this show cause notice within seven days from the date of receipt of this notice and confirm to appeal before the Managing Committee/Committee appointed by Managing Committee on 24th March, 2016, at 1400 hours (2pm) at the Registered Office of TAAI, 2nd Lawrence & Mayo House, 276, Dr.D.N.Road, Fort Mumbai 400 001. If there is a change of location but the venue city continuing to remain in Mumbai, such change will be soon intimated to you.

In case the Association does not receive any satisfactory reply to this Show cause notice within seven days of the receipt of the same, it shall be presumed that the above averments are true and correct and in such eventuality, the Association shall be at liberty to take suitable action against you/your organization at your risk, cost and consequence."

6. The respondent is one of the two Accredited Representatives as approved by the second accused herein in respect of M/s. Sangam Travels for Chennai International Air Transport of Association, location coming under the jurisdiction of Travel Agents Association of India Southern Region. Similarly, the respondent is one of the two accredited representatives for the head office of Sangam Travels at Trichy International Air Transport of Association location coming under Travel Agents Association of India at Trichy.

7. On perusal of show cause notice issued by the petitioner to the respondent, he called upon the respondent to reply for the show cause notice within seven days on receipt of the same under Article 24 of the Travel Memorandum of Article of Travel Agents Association of India. The show cause notice relates to Exclusion and Suspension of Member for the reasons that the respondent's representative has been conducting himself in a manner that is detrimental and against the interest of the Association, bringing disrepute to the Association amounting to unethical conduct on their part. Further alleged that the respondent used highly objectionable language against the Managing Committee damaging its dignity and integrity.

8. Admittedly it is a show cause notice as contemplated under Article 24 of the Memorandum of Article of Association of Travel Agents Association of India in which call upon the respondent to give explanation. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in (1999) 3 SCC 134 in the case of Rajendra Kumar Sitaram Pande and ors Vs. Uttam and anr, which reads as follows:

"7. The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201 can it be said that a prima facie case exist for trial or exception 8 to Section 400 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice.....
... The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation.
....."

9. He also relied upon the judgment reported in 2016(1) MWN (Cr.) 594 in the case of S.Soundarapandian Vs. R.Srinivasan, as follows :-

"10. A reading of the above, it is clear that the respondents/workmen were transferred for the reasons, viz., i) without prior permission of the Manager, conducting the meetings in the premises of the factory; ii) behaving with the Factory Manager in a threatening manner; iii) threatening members of other union and inducing them to do such act and iv) spreading over the defamatory statements about the company. It appears that in order to maintain industrial peace and harmony in the factory premises, the management thought it fit to transfer the respondents/workmen and being the Deputy General Manager, the petitioner having lawful authority over the respondents and as per the Standing Orders of the company, has passed the transfer order narrating the alleged misconduct done by the delinquent employees. Only if there is any personal allegation or defamatory slander or libelous allegation made against the respondents/employees, the question of attracting Section 499 IPC would arise. Merely narrating the misconduct said to have been committed by the respondents/employees during the course of employment will not be considered as an offence of defamation within the meaning of Section 499 IPC. Further, the misconducts narrated in the transfer order said to have arisen during the course of employment and they are not personal in nature. Therefore, the acts committed by the petitioner as alleged by the respondents, in my opinion, purport to be performed by him in the interest of orderly administration and maintenance of discipline among the workers in the factory premises. It is settled law that in order to constitute defamation under Section 499 IPC, mere presence of imputation is not enough, but there should be an intention to harm the reputation of such person against whom the imputation is made. In the present case, the petitioner,

during the course of employment, inflicted transfer orders against the workmen, who were alleged to have committed misconduct and such act cannot be construed as an imputation of defamatory character so as to attract the offence under Section 499 IPC, but his intention is only to avoid anti-establishment activities of the respondents. If at all the respondents feel that the acts of the petitioner would amount to victimization and lead to unfair labour practice, they could very well agitate the same by raising an industrial dispute before the Tribunal.

11. In this regard, it is worthwhile to refer the decision of this Court made in Crl.O.P.Nos.30736 to 30744 of 2006, dated 06.08.2009, wherein, it has been observed as under in para 21:

21. On going through the details and the particulars mentioned in the notice in question and the private complaint filed by the respondent, there can be no doubt that the steps taken by the Management was in the interest of the management and the workmen and if the management had not taken such steps, it would meet utter failure in management of its affairs and would loose the disciplinary control over the workmen. The narration made in the notice are based on the information received by the management and as a result of the proceedings initiated in the civil forum and also before the Assistant Commissioner of Labour. In my view, the management has acted in a justified manner both in its interest and the workmen who may act detrimental to the company in order to warn the workmen to maintain discipline and smooth working of the factory. Therefore, the petitioners were within their rights to prevent the improper conduct of the respondent and the petitioners had lawful authority to deal with the subject matter of the complaint and take proceedings against the persons in their own interest, even if it is said that the said action of the management directly or by its consequences be

injurious or painful to the persons against whom such action has been taken."

10. Further he cited the judgment of this Court reported in 2010(1) MWN (Cr.) 504 in the case of Sr. Corona Mary and anr Vs. Sister Vanaselvi, as follows :-

16. At this juncture, it will be useful to refer to Exception 7 to Section 499 IPC, which reads as follows :-

"Seventh Exception - Censure passed in good faith by person having lawful authority over another. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates."

17. The first petitioner being the person having lawful authority over the Respondent had only passed an order of expulsion pursuant to the resolution passed by the General Body and this will squarely attract Exception 7 to Section 499 IPC. The decision reported in 1972 Cr.L.J.968 also squarely to the facts the case on hand. The words said to have uttered by the Second Petitioner as the correspondent of the said school in which the respondent worked as Head Mistress also will fall under Exception 9 to Section 499 IPC, which will not amount to defamation."

11. The Hon'ble Supreme Court of India and this Court have held that the Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. It is relevant to extract the Exception 7 to Section 499 IPC, which reads as follows:-

"Seventh Exception - Censure passed in good faith by person having lawful authority over another. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in

matters to which such lawful authority relates."

12. In the case on hand, the petitioner is a lawful authority viz., the Managing Director of Travel Agents Association of India and as per Article 24 of the Memorandum of Articles of Association of the Travel Agents Association of India, they have power to issue show cause notice to the respondent herein. Therefore, the above judgments are squarely applicable to the case on hand. This Court is of the considered opinion that entire allegations made in the complaint did not have prima facie case or make out a case against the petitioner to punish him for the offences under Sections 499 and 500 of IPC.

13. In view of the above discussion, this Criminal Original Petition is allowed and the proceeding in C.C.No.3824 of 2016 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. XIV Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to M/s.Gupta Ravi, Advocate, S.R.No.21992

CrI.O.P.No.19676 of 2016
CrI.MP.Nos. 9212 & 9213 of 2016

MG(CO)
nvi/29.05.2020