

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2020

CORAM :

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7716 of 2015
and M.P.No.1 of 2015

1.Batcha
2.Tamil Selvi

.. Petitioners /Accused

/versus/

N.Kumar

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.No.415 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : M/s.M.Ravi Bharathi

For Respondent : Mr.A.Ashwin Kumar
Legal Aid Counsel

O R D E R

(The case has been heard through video conference)

The petitioners are the accused in C.C.No.415 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai. The respondent has filed a private complaint for the offence under Sections 499 and 500 of Indian Penal Code.

2.The respondent was represented by their counsel Mrs.P.Meenakshi and Mr.V.Kannan and filed a memo of appearance on 17.04.2015. Subsequently, when the case was listed, there was no representation for the respondent. Since the case was pending before the lower Court from the year 2015, due to the pendency of the above criminal original petition, this Court by order dated 11.03.2020 appointed Mr.A.Ashwin Kumar, as Legal Aid counsel for the respondent.

3.The brief facts of the nutshell are thus :

(i) The first petitioner is the father-in-law and the

second petitioner is the wife of the respondent. The marriage between the second petitioner and the respondent was held on 08.09.1994 at Mylapore, Chennai and out of their wedlock they have two children. The respondent along with his brother Dhanasekaran are distributing Aavin milk sachets in and around Besant Nagar for the past 35 years. Apart from that, they are auto drivers by profession. The said Dhanasekaran is the younger brother of the respondent/complainant, who got married to one Manimegalai, who is the 2nd daughter of the 1st petitioner and sister of the 2nd petitioner in the year 1997 and out of their wedlock they had got three children.

(ii) The 1st petitioner in the year 2006 requested the respondent to shift his residence to Vadapalani to take care of him. The respondent, initially refused and later agreed to live in the house of the 1st petitioner. This being so, the respondent brother's wife Manimegalai visited the house of the 1st petitioner on 22.10.2011, at that time, the respondent was not present in the house. On the next day on 23.10.2011 the said Manimegalai attempted to commit suicide by consuming poisonous seeds. When the respondent's brother came to know about the same, he rushed her to the Malar Hospital, where she succumbed and a case under Section 174(3) Cr.P.C. of suspicious death was registered. The body of the said Manimegalai was taken to the Royapettah Hospital, for postmortem. At that time, the first petitioner along with his another son-in-law, one Ganesan, came to the place had quarreled with the respondent, his brother and his mother, abused and assaulted them. Thereafter, the 1st petitioner had taken the three minor children of Manimekalai to his house, for which the said Dhanasekaran filed a petition under Guardianship and Wards Act in G.W.O.P.No.522 of 2013 before this Court. The 1st petitioner was making allegations against the respondent as well as his brother, later turned to be false. In G.W.O.P.No.522 of 2013, the 1st petitioner filed a counter, wherein it is stated as follows :

"The respondent/complaint and his brother Dhanasekaran are habitual drinkers and drinking is the regular activity right from the morning till late in the night and they also involve themselves in immoral activities"

According to the respondent, the imputation made in the counter are per se defamatory, hence, the case for defamation was filed against the petitioners.

4.The learned counsel for the petitioners submitted that the petitioners are father-in-law and wife of the respondent. The respondent's brother Dhanasekaran married the 1st petitioner's 2nd daughter Manimegalai, who died under suspicious circumstances and her body was kept for postmortem in the Royapettah Hospital, there was a commotion between

each other and exchange of words. Thereafter, the minor children were taken by the 1st petitioner for better care. G.W.O.P.No.522 of 2013 was filed by the brother of the respondent before this Court. In the said proceedings, the 1st petitioner, was shown as a respondent, who filed a counter, wherein, certain averments were made, which according to the respondent/complainant is per se defamatory. The learned counsel for the petitioners further submitted that as regard to the 2nd petitioner, there is reference stating that the 2nd petitioner intentionally instigated the first petitioner to harm the respondent and there is no material to substantiate the same. Further, the counter was filed only before the judicial proceedings. He further submitted that in the meanwhile the brother of the respondent Dhanasekaran had given a police complaint and taken back his three minor children with him. Thereafter the matter has been settled between them, they have not pursued the G.W.O.P.No.522 of 2013 before this Court, which was dismissed for default.

5. The learned counsel for the petitioners further submitted that on the reading of the complaint, it is seen that no offence has been made out. He further submitted that as per Section 499 IPC (Explanation-4) it is clearly stated that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person. From the complaint, it seems that no where it is mentioned that the said imputation had a publication and due to which, the reputation of the respondent has been lowered in the estimation of others. He further submitted that as far as the 2nd petitioner is concerned, she is not a party in G.W.O.P.No.522 of 2013 and she has not filed any counter and by no stretch of imagination, it could be said that the 2nd petitioner had instigated the 1st petitioner to harm the respondent and hence, he prayed for quashing of the complaint.

6.Mr.A.Ashwin Kumar, learned Legal Aid Counsel for the respondent submitted that this Court in several judgments clearly held that there is no legal bar for filing a private complaint based on imputations in the pleadings before the Civil Court, which are per se defamatory. The imputation made in the complaint against the respondent are per se defamatory. The respondent and his brother are distributing Aavin milk sachets in and around Besant Nagar for the past 35 years and in that business they are to commence their work at 3.00 a.m. If a person who accustom to liquor and that too, drinks till late night cannot wake up early in the morning, which would show that the allegation of imputation made by the 1st petitioner is false and per se defamatory. Further, there is no criminal prosecution pending as against the respondent and his brother before or after filing of this petition and hence,

it cannot be said that the respondent and his brother are engaged in immoral activities. Further, against the 2nd petitioner, the respondent has filed F.C.O.P.No.1637 of 2014 on the file of the II Additional Family Court, Chennai, on the ground of desertion and cruelty. Further, it is to be shown that the imputation made in the Civil cases are relevant for the Civil Court to decide the issue. The imputation made herein are no way connected to the civil case. Hence, the petitioners wantonly and deliberately made imputation, which are per se defamatory. Further, the learned counsel relied upon the decisions of this Court in the case of Allirani Joseph Mathew Vs. P.Arun Kumar, reported in 2013 (1) CTC 661 and Mohana Devi Vs. C.V.Rajan, reported in 2015 SCC online Mad 395 and hence, he prayed for dismissal of the quash petition.

7.Considering the rival submissions and on perusal of the materials, it is seen that the petitioners are father-in-law and wife of the respondent. It seems that there is some dispute between them with regard to the custody of the minor children of the respondent's brother Dhanasekaran, for which G.W.O.P.No.522 of 2013 was filed before this Court. In the said G.W.O.P some imputation is said to be made.

8.No doubt, there is no legal bar for filing of a private complaint, alleging that a party to the civil proceedings has made certain imputation in the pleadings before the Civil Court, which are per se defamatory. The relevant factors to be considered is that whether the averments made are relevant to the issue. It is a common knowledge that in the civil suits there cannot be any evidence let in without relevant pleadings. Whether the averments made in are totally unconnected or unwarranted for the issues involved in the civil suit are to be decided in the civil case. In this case, admittedly, the civil suit is dismissed for default, thereby, the Civil Court had no occasion to consider the bonafide of the averments which is said to be the imputation. As stated earlier, there is nothing to show that the imputation is per se defamatory, further in the absence of any publication and no averments to show reputation of the respondent has been directly or indirectly lowered in estimation of others. Further, there is no iota of material as against the 2nd petitioner. In such circumstances, it cannot be said the offence of defamation is made out in this case.

9.In view of the same, the prosecution is nothing but abuse of process of law and the same cannot be allowed to go further. Hence, the complaint in C.C.No.415 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, is quashed.

10. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

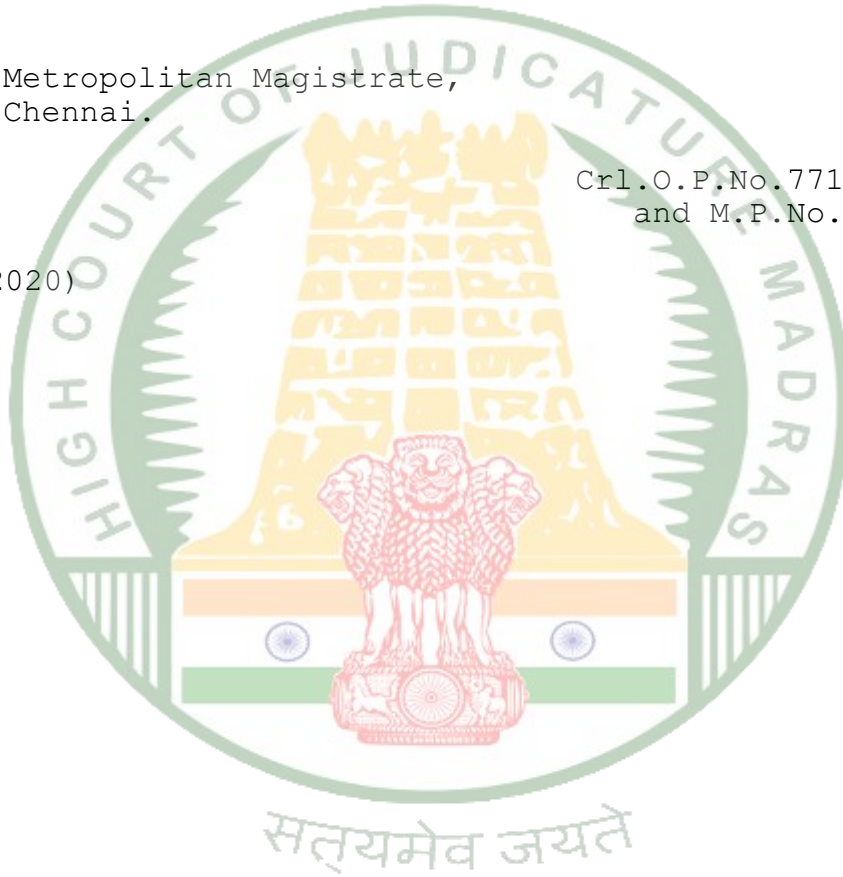
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To

The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

CrI.O.P.No.7716 of 2015
and M.P.No.1 of 2015

NR(CO)
CB(28/10/2020)



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