

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.OP.No.3422 of 2020 and
Crl.MP.Nos.2022 & 2023 of 2020

Sarala
D/o.Rayappan,
No.2/95, K.S.S.Nagar,
Kelambakkam,
Kancheepuram 603 103. Petitioner

Vs.

G.Venkatesan,
S/o.Ganesan,
No.2/301, MGR Street,
Kelambakkam,
Kancheepuram 603 103. ... Respondent

Prayer :- This Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records relating in CC.No.674 of 2019 on the file of the Judicial Magistrate Court-1, Chengalpet and quash the same.

For Petitioner : G.Mohammed Aseef

For Respondent : No Appearance

ORDER

The criminal original petition has been filed to quash the proceedings in CC.No.674 of 2019 on the file of the Judicial Magistrate Court-1, Chengalpet having been taken cognizance for the offences under Sections 499 and 500 of IPC.

2. The learned counsel for the petitioner would submit that the petitioner filed writ petition in WP.No.27789 of 2017 before this Court as against for removal of encroachment in the land in survey No.292, Thankuppam Village extent of 7.50 acres, THAZHANGAL Lake Survey No.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres, 316/12, Kalam Promboke land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 - extent 3 acres, K.S.S.Nagar Poromboke Survey No.162/A, Survey No., Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey

No.81-extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107 etc., etc which was illegally converted by the seventh respondent. In support of the writ petition, the petitioner filed affidavit stating that the second respondent therein being the President of the Kelambakkam Panchayat Union continuously doing corruptive and deceptive methods and abusing and misusing his official powers thereby he misappropriated, mismanaged and looted the Panchayat Union public money as well as the public lands as per his whims and fancies, thereby he caused heavy loss to the Government Exchequer. These statements made by the petitioner amount to defamation and as such the respondent filed private complaint and the same has been taken cognizance for the offences punishable under Section 499, 500 of IPC.

3. He further submitted that in fact, the writ petition filed by the petitioner was allowed by this Court by order dated 19.02.2018 by the Hon'ble Division Bench of this Court. Thereafter the revenue officials also had taken proper steps to remove the encroachment of the above mentioned land. Therefore, the averments in the affidavit never attracted any offence as alleged by the respondent herein. Therefore, he sought for quashment of entire proceedings.

4. Heard Mr.G.Mohammed Aseef, learned counsel for the petitioner. Though notice was served to the respondent and name was printed in the cause list, no one is appearing on behalf of the respondent by person or through pleader.

5. The petitioner is the sole accused in CC.No.674 of 2019 on the file of the Judicial Magistrate-I, Chengalpet having been taken cognizance for the offences punishable under Sections 499 and 500 of IPC on the complaint lodged by the respondent herein. The respondent has alleged in the complaint that the respondent was elected President of Kelambakkam Panchayat Union for the period from 2011 to 2016. He acted for the welfare of the general public and he implemented so many welfare schemes to general public. While being so, only to damage the image of the defacto complainant and to tarnish his name among the public, the petitioner filed the writ petition in W.P.No.27789 of 2017 with the defamation statement, thereby he caused serious aspersions and allegations in the affidavit and had touched the complainant's integrity and all the statements are defamatory in nature. Because of the statement made in the affidavit, the complainant has lost his reputation among the village people, relatives, friends and community people who live in and around Kelambakkam. He is also put to severe mental agony and suffered severe hardship.

6. On perusal of the complaint, the petitioner made following statement in the affidavit filed in support of

writ petition in WP.No.27789 of 2017 before this Court. The averments made in the affidavit is as follows:

"2. I respectfully submit that I am a councillor of 3rd ward of Kelambakkam Panchayat, Thiruporur Taluk, Kancheepuram District, 603 103. I respectfully submit that the Panchayat Union President of the Kelambakkam Mr.Venkatesan is continuously doing corruptive and deceptive methods and abusing and misusing of his Presidential Powers.

3. I respectfully submit that the 7th respondent Mr.Venkatesan, the Panchayat Union President misappropriated, mismanaged and looted the Panchayat Union Public money as well the public lands, as per his whims and fancies and thereby caused a heavy loss to the Government exchequer. I respectfully submit that with the help and collusion of revenue officials and other officials who ought to be controlled the Panchayat Union Office and its funds, the Panchayat Union President Mr.Venkatesan looted many public welfare scheme funds as well as the Public Funds as per his choice.

5.I respectfully submit that in SATHANKUPPAM Village Survey No.292 - Thoppu Poromboke land extent of 7.50 acres land was leased out to so many persons illegally and thereby illegally got a lump sum amount. I further submit that most of the Government Benefits Scheme for the Poor and downtrodden people's Welfare Scheme are misused and mismanaged by the Panchayat Union President as per his choice and thereby poor people not got the Welfare Schemes Benefits of the Governments.

6.I respectfully submit that without following the Government Orders, without having any powers, he misused his powers and approved so many real estate lay outs as per his choice and got a lump sum amount from the real estate parties and also illegally approved building plans as per his choice without following legal procedures. Moreover, so many land encroachers occupied the school place, public utility places, parks etc., which is specially allotted for the public purposes and Mr.Venkatesan, the Panchayat Union President illegally allowed all the encroachments and approved house building plans illegally for the same.

7. I respectfully submit that THAZHANGAL Lake Survey No.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres, 316/12, Kalam Promboke land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 - extent 3 acres, K.S.S.Nagar Poromboke Survey No.162/A, Survey No., Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey No.81-extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107 etc., etc of the Government lands are illegally allowed by President Mr.Venkatesan to the Land grabbers and thereby got so many illegal amount from the land encroachers and caused a very heavy loss to the Government Exchequer."

The above writ petition came up before the Hon'ble Division

Bench of this Court and by an order dated 19.02.2018, the Hon'ble Division Bench passed the following order.

"8. Considering the fact that the 5th Respondent has only prayed for time to remove the encroachments in question and also on behalf of Respondents 1 to 6, reasonable time is sought for to remove the encroachments in the Government Poramboke land at Pudupakkam and Kelambakkam, more particularly referred to in the Government Poramboke areas mentioned in the Writ Petition, this Court, without traversing upon the merits and contents of the matter, at this stage, simply directs the Respondents 1 to 6 to look into the complaint of the Petitioner and others, dated 17.07.2015, within a period of two weeks from the date of receipt of a copy of this order. If the Respondents 1 to 6 find any substance in the complaint of the Petitioner and others, dated 17.07.2015, then, without any haziness or hesitation, they are directed to take immediate action with regard to the removal of encroachments in S.No.292, Thankuppam Village, of an extent of 7.50 acres, Thazhangal Lake Survey Nos.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres, 316/12, Kalam Poramboke Land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 extent 3 acres, K.S.S.Nagar Poramboke Survey No.162/A, Survey No.4, Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey No.81-extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107, etc., on or before 10.06.2017 and submit a complete and comprehensive Report viz. Status Report before this Court on 02.07.2018." Accordingly, the revenue officials have taken effective steps to remove the encroachment of the lands as alleged by the petitioner herein.

7.It is relevant to extract the provision under Section 499 of 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 expected, to defame that person. Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.—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, or lowers the character

of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. Illustrations

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.”

From the above, it is clear that the merits of the case decided in the Court or conduct of witnesses and other concerned is not defamation to express in good faith any opinion whatever respecting the merits of any case.

8.In the case on hand, the petitioner filed writ petition before this Court in WP.No.27789 of 2017 and the same was also disposed of by order dated 19.02.2018. Therefore, the offence under Section 499 IPC is not at all made out as against the petitioner herein.

9.In view of the above discussion, the entire proceedings is nothing but clear abuse of process of court and it cannot be sustained as against the petitioner herein. Accordingly, this Criminal Original Petition is allowed and the entire proceedings in CC.No.674 of 2019 on the file of the Judicial Magistrate Court-1, Chengalpet is quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No-1,
Chengalpet.

Cr1.OP.No.3422 of 2020

SKS (CO)
CB (09/10/2020)