



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

Reserved on : 17.09.2020

Pronounced on : 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.7040 of 2020

and

Crl.M.P.(MD)No.3490 of 2020

1.Ajmal Khan,
S/o.Sahul Hameed

2.Thoulath Noorya,
W/o.Ajmal Khan

3.Halik Alavudeen,
S/o.Ajmal Khan

4.Mohamed Pakker Oli,
S/o.Asmathullah

...Petitioners /
Accused 1 to 4

versus

1.State by Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(Crime No.320 of 2020)

...1st respondent /
complainant

2.Noor Mohamed,
S/o.Mohamed Meeran Kani

...2nd respondent /
de facto complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the entire records pertaining to the case in Crime No.320 of 2020 pending on the file of the Inspector of Police, Kenikkarai Police Station, Ramanathapuram District and quash the same as against the petitioners.

For Petitioners	:	Mr.R.Anand
For Respondent No.1	:	Mr.S.Chandrasekar, Additional Public Prosecutor
For Respondent No.2	:	Mr.R.Alagumani

O R D E R

This Criminal Original Petition has been filed seeking the relief to quash the F.I.R. registered in Crime No.320 of 2020 on the file of the first respondent police.



2. Heard Mr.R.Anand, learned counsel appearing for the petitioners, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the first respondent and Mr.R.Alagumani, learned counsel appearing for the second respondent.

WEB COPY 3. The case of the prosecution is that the second respondent is the former Panchayat Board President of Sakkarai-kottai Village at Ramanathapuram District. On 30.04.2020 at 10.18a.m., one Sathik Basha, who is the son of the *de facto* complainant / second respondent had received a message through social network, for example, Whatsapp messenger from a group named as 'Sri Rama Bakthan RSS', in which, the *de facto* complainant was described as an Islamic Terrorist and he had also grabbed the land from the people belong to the Hindu Religion. The *de facto* complainant has also raped and killed a married woman, namely, Renuka in the same locality.

4. Further case of the prosecution is that, the *de facto* complainant had also involved in selling of the cow meat in the locality of the Hindu people, who follows the tradition and the morality of the Hindu Religion in order to disturb the religion bounding and secular society for the past several years and the message also consist of filthy languages and to defame the name and dignity of the *de facto* complainant in the society.

5. On receipt of the said message, the same was informed to the second respondent by his son and afterwards, the second respondent herein lodged a written complaint before the first respondent police and on receipt of the said complaint, the first respondent police herein registered the First Information Report in Crime No.320 of 2020 for the offences punishable under Sections 505 (1)(b), 505(1)(c), 506(2), 384, 120B of IPC r/w Section 67 of Information Technology Act, 2000, in which, the petitioners are arrayed as accused nos.1 to 4.

6. Now, in respect to the prayer sought by the petitioners, the learned counsel appearing for the petitioners would submit that the message received by the son of the second respondent, nothing was mentioned in respect to the involvement of the petitioners. Further, if the message was forwarded from the group, it is easy for the Investigating Officer to find out the number of persons, who are all involved in the alleged occurrence. He would further submit that the averments found in the First Information Report did not disclose the nexus between the petitioners with the alleged crime. In fact, the complaint has been falsely given before the first respondent, in order to wreck vengeance against the petitioners, for the reason that before the petition mentioned occurrence, the second petitioner herein lodged a complaint against the petitioners and his son for the offences under Sections 465, 468, 471, 420 and 120B of IPC alleging that they had fraudulently created a document and sold out the property which belongs to the second petitioner. Accordingly,



he prayed to quash the First Information Report, which has been registered in Crime No.320 of 2020.

7. In response to the submissions made by the learned counsel appearing for the petitioners, the learned counsel appearing for the second respondent would contend that the previous enmity being the double edged weapon, only in order to defame the name of the second respondent, the petitioners herein sent a false message in the name of Sri Rama Bakthan RSS group, the second respondent being the Panchayat Board President, except the petitioners, nobody is having any enmity with the second respondent. He would specifically contend that only during the time of investigation, the number of persons, who are all involved in the alleged occurrence have to be identified and therefore, this is not a stage to quash the F.I.R.

8. Upon considering the rival submissions made by the learned counsel appearing on either side, it is not in dispute that before the date on which the petition mentioned occurrence had happened, a case has been registered against the second respondent upon the complaint given by the second petitioner in Crime No.11 of 2020 for the offences under Sections 465, 468, 471, 420 and 120B of IPC.

9. In the above referred offences, the second petitioner made allegations against the second respondent that the second respondent herein created a forged document and on the strength of the same, he sold out the property, which belongs to the second petitioner.

10. In the said circumstances, in the case of **STATE OF HARYANA AND OTHERS vs. CH. BHAJAN LAL** reported in **1992 Supp (1) Supreme Court Cases 335**, our Hon'ble Apex Court has given guidelines in respect to the category of cases, which is necessarily to be quashed by using the inherent powers vested with the Court under Article 226 of the Constitution of India and Section 482 of Cr.P.C. In this regard, illustration 7 reads as follows;

"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. Accordingly, if the case is registered maliciously instituted with an ulterior motive for wrecking vengeance, the same is liable to be quashed.

12. Now, in this case as already observed, the second petitioner is having the vengeance over the petitioners. Further, on



going through the averments found in the F.I.R., on whole reading of the message shown by the son of the second respondent, nothing was mentioned about the petitioners. It is an admitted fact that the said message was sent from one Sri Rama Bakthan RSS group. Therefore, it is necessary for the second respondent to show *prima facie* evidence in respect to the nexus having by the petitioners with the said Sri Rama Bakthan RSS group.

13. The petitioners being the muslim community, we cannot imagine that they are created a group in the name and style of Sri Rama Bakthan RSS. More than that, the alleged abusive message is not forwarded to the second respondent. Therefore, in the said circumstances, nobody prevented the son of the second respondent to lodge a complaint before the first respondent directly.

14. Therefore, in the absence of nexus between the petitioners and the alleged defame news, this Court is of the opinion that the petitioners are no way responsible for the said message.

15. One another aspect, which is necessary to decide in this case is, even assuming the message received by the son of the second respondent, the said message is defamatory in nature and it attract the ingredients of Section 505 of IPC alone. Therefore, the offence under Section 505 of IPC being the non-cognizable offence, it is necessary for the Investigating Officer to hold an enquiry before registering the F.I.R. But in this case, without any enquiry as stipulated by our Hon'ble Apex Court in **LALITA KUMARI vs. GOVERNMENT OF UTTAR PRADESH AND OTHERS** reported in **(2014) 2 SCC 1**, immediately after receipt of the complaint, the first respondent herein registered a case against the petitioners.

16. Therefore, in the light of the above discussions, the petition filed by the petitioners is having the merits in twofold; one is, the message received by the son of the second respondent, nothing was indicated in respect to the involvement of the petitioners. Accordingly, there is no nexus between the petitioners on the alleged crime. Secondly, without conducting any enquiry about the involvement of the petitioners in the alleged occurrence, the first respondent registered a case and therefore, as already observed, the said circumstances falls within the category no.7 of the guidelines given by our Hon'ble Apex Court in **Bhajan Lal's** case and therefore, the F.I.R. registered in Crime No.320 of 2020 is liable to be quashed. Accordingly, it is quashed.



17. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Sri

To

- 1.State by the Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
- 2.The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.7040 of 2020
and
Crl.M.P. (MD)No.3490 of 2020
19.11.2020

SV2 (CO)
KB (03.12.2020) 5P 3C