



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.19555 of 2016

and

Crl.MP(MD).No.9835 of 2016

WEB COPY

1.B.Karthikeyan

2.S.Bhuvaneswari

... Petitioners/Accused Nos. 1 & 2

Vs.

E.Nandhakumar

...Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the private complaint in S.T.C.No.3579 of 2010 dated 17.09.2010 filed under Section 500 of IPC on the file of the learned Judicial Magistrate Court No.4, Trichy and quash the same as illegal.

For Petitioners : Mr.I.Pinaygash

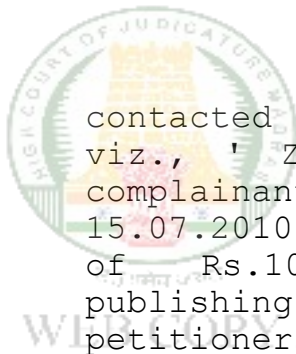
For Respondent : Mr.P.Kamaraj

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.3579 of 2010 on the file of the learned Judicial Magistrate Court No.4, Trichy, dated 17.09.2010.

2.The learned counsel appearing for the petitioner would submit that the respondent filed a complaint for the offence punishable under Sections 500 of IPC, in which, the petitioners are arrayed as accused Nos. 1 & 2 alleging that the petitioners published a general notice in Tamil vernacular against her misappropriation and defamed her name and her service. The act of the petitioner is coming under the Eighth Exception of offence under Section 499 IPC. Therefore, there are no ingredients as against the petitioners to attract the offence under Section 499 of IPC. Further he submitted that the entire dispute between the petitioner and the respondent is civil in nature and therefore, the complaint cannot be sustained as against the petitioners. In support of his contention, he relied upon the judgment in **Murugan Vs Subramania Swamy** reported in **2016 (2) MWN (Cri) 284**, in which, this Court has held that the complaint based on the publication in news paper is not maintainable. Further, the Author, Editor and Correspondent of the News Paper have not been implicated as accused for publishing the news item.

3. The learned counsel for the respondents would submit that the petitioners are brothers. The respondent was working as a Sales Executive in the petitioners' pharmacy. The petitioners issued a general notice through daily news paper stating that the respondent was removed from the petitioners' pharmacy. Therefore, no one



contacted him related to the matters of the petitioners' pharmacy viz., 'Zeus Life Science'. It was issued in the name of the complainant and another person. Therefore, by the notice dated 15.07.2010, the respondent called upon the petitioners to pay a sum of Rs.10,00,000/- for damage caused to him by the petitioners by publishing the general notice in the news paper. Therefore, the petitioners have committed the offence punishable under Section 500 of IPC. Further, he submitted that the grounds raised by the petitioners are mistake of question of fact and it cannot be considered by this Court under 482 of Cr.P.C. Therefore, he sought for dismissal of quash petition.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5. The petitioners are arrayed as accused Nos.1 & 2 and the complaint was lodged by the respondent for the punishable offence under Section 500 IPC. The respondent, while he was working as a Sales Executive in the petitioners' pharmacy, committed irregularities in the petitioners' pharmacy and acted against the interest and rule of memorandum of the petitioners' pharmacy and defamed the good will of the petitioners' pharmacy. Therefore, the petitioners removed the respondent from his service after serving the order of stoppage of payment through the telegram on 17.05.2010. Thereafter, the petitioners issued the general notice through the daily news paper stating that the respondent and another person were removed from the petitioners' pharmacy and further instructed not to contact them with regard to any money transactions in respect of purchase or sales of medicines pertaining to their company. If any one had contacted them with regard to money transactions, the company would not be responsible for any loss caused by the respondent and another.

6. As rightly pointed out by the learned counsel for the petitioners, the public notice issued by the petitioners only in good faith and to protect their company. In this regard, it is relevant to extract Eighth Exception of Section 499 of IPC, which reads as follows:-

"Accusation preferred in good faith to authorized person;-

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation."

7. In the case on hand, the petitioners had sent a telegram to the higher officials to take appropriate action as against the respondent and another for misappropriation done by the respondent with good faith. Therefore, the petitioners never defamed the respondent at any point of time by publishing the general public



notice. It was published in order to safeguard the functioning of petitioners' company and in the interest of the goodwill of the company. Therefore, the petitioners had not created any harm to the respondent's reputation and as such, no offence is made out as against the petitioners herein.

WEB COPY

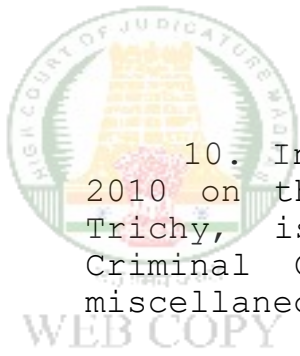
8. In this regard, the learned counsel appearing for the petitioners also relied upon the judgment in **Murugan Vs Subramania Swamy** (cited supra), which reads as follows:-

"7. The learned Judicial Magistrate has examined the Petitioner and recorded the statement and came to the conclusion that he was not the author of the News item and in the News item, it is stated one astrologer was having illicit intimacy with his wife and hence, he has given a Complaint before the police and the Respondent has not published the News item. Neither the Editors nor Correspondents of the dailies were impleaded as Accused for publishing the news item. The Trial Court has correctly held that the complaint has been given before the Police by the Respondent and the Respondent has not published the News item. Merely the Respondent has given a Complaint to the lawful authority, there is no offence would come since the Respondent is entitled the Eighth Exception of Section 499 of I.P.C.

*8. The learned Counsel for the Petitioner has relied on the decision of the Apex Court in **Jeffrey J. Diermeier V. State of West Bengal**, 2010 (6) SCC 243. The said citation is not applicable to the facts of the present case.*

9. Admittedly, the Respondent herein has not given any publication in the Newspaper. He has given a Complaint only before the Police Station. The Respondent is no way connected with the publication of News item. In such circumstances, I am of the view that both the Courts below have considered the aspects in proper perspective and came to the correct conclusion. Hence, I do not find any reason to interfere with the findings of the Court below."

9. In the case on hand, the respondent did not implead the Author, Editor and Correspondent of the news paper as accused for publishing the news item. Further, the petitioners published general notice in good faith. Therefore, the Eighth Exception of offence under Section 499 of IPC would come to rescue the petitioners from the complaint lodged by the respondent herein. Therefore, the complaint lodged by the respondent cannot be sustained as against the petitioners.



10. In view of the above, the proceedings in S.T.C.No.3579 of 2010 on the file of the learned Judicial Magistrate Court No.4, Trichy, is hereby quashed as against the petitioners herein and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate Court No.4,
Trichy,

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.19555 of 2016
and

Crl.MP (MD) .No.9835 of 2016
09.10.2020

na (CO)

KK (05.11.2020) 4P 3C