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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.09.2021

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.OP.No.18512/2015 & MP.No.1/2015

[Video Conferencing]

1.J.P.Vijayaraj

2.S.Murugavel

... Petitioners

Versus

P.Mohan

... Respondent

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and quash the respondent/complainant's complaint in CC.No.83/2015 pending on the file of the learned Judicial Magistrate-I, Kancheepuram.

For Petitioners : Mr.R.Thanjan
For Respondent : Mr.K.M.Balaji

ORDER

- (1) Mr.K.Jothiraman, aged 60 years, working as a Document Writer, in Chinna Kancheepuram, had given a complaint to the Superintendent of Police, Kancheepuram District and thereafter, on that basis, the Superintendent of Police, Kancheepuram District, had, by communication in K2/844/42254/2013 directed, G.Anjalatchi, Sub-Inspector of Police, Crime Branch, in Kancheepuram District to examine and register a FIR. A FIR in Crime No.74/2013 was registered on 26.09.2013 under Sections 406, 420, 467, 468E and 471 of IPC by the District Crime Branch, Kancheepuram, against Mohan, Sridhar and Raghu, on the basis of the said complaint given by K.Jothiraman.
- (2) I have no intention of examining the contents of the complaint. That is not relevant to the discussion now required to dispose of this Original Petition.
- (3) After the FIR had been registered, the newspapers particularly in Kancheepuram, thought that it contained information which could be disseminated to the general public and accordingly, the fact that the FIR had been so registered, had been published in various newspapers, among others, by the Daily Thanthi newspaper. The Daily Thanthi



newspaper published the same on 10.10.2013. They reduced the facts mentioned in the FIR. Thereafter, they put a small sub heading that the police are in search of three persons, obviously, the aforementioned three individuals against whom the FIR had been registered. It had been further stated in the vernacular version as follows:-

3 பேருக்கு வலைவீச்சு

“ மாவட்ட போலீஸ் சூப்பிரண்டு விஜயகுமார் உத்தரவின் பேரில் மாவட்ட குற்றப்பிரிவு, போலீஸ் துணை சூப்பிரண்டு மாணிக்கவேலு மேற்பார்வையில் சப் இனிஸ்பெக்டர் அஞ்சலாட்சி வழக்குப்பதிவுசெய்து பட்டு தொழிலதிபர் மோகன் உள்பட 3 பேரை வலைவீசி தேடிவருகிறார்,”

- (4) The free translation of the above is that Mr.Vijayakumar, Superintendent of Police, Kancheepuram District, had given directions and under the supervision of Mr.Manickavelu, District Crime Branch Deputy Superintendent of Police, Ms.Anjalatchi, Sub Inspector of Police, had registered the FIR and had spread a dragnet to secure the first named individual, silk cloth businessman, Mohan and others.
- (5) This particular information given in the Daily Thanthi newspaper on 10.10.2013 had been considered to be a defamatory material by the said Mohan, who in turn, had given a private complaint in that regard which was taken cognizance as CC.No.83/2015 by the learned Judicial Magistrate No.1, Kancheepuram. Seeking to quash the said Calendar Case, the petitioners herein, viz., Vijayaraj, Author and Publisher of Daily Thanthi and Murugavel, Reporter of the said News Daily, have filed the present Original Petition.
- (6) It is contended by Mr.R.Thanjan, learned counsel for the petitioners that the newspaper item was only a reflection of the FIR which was already in the public domain. It was not a secret document. It was a document which necessitated information to be given to the general public about the occurrence of a particular incident and according to the learned counsel for the petitioners, this information was adjudged to be newsworthy and therefore, it was published in the newspapers. It is also contended that there was no mala fide behind the publication and the report was not handpicked with an intention to defame anybody, much less the respondent herein and that, a fact alone was stated and while stating as a fact that the FIR had been lodged and registered, the contents of the FIR had been reduced and thereafter, since on that particular date, the named individuals against whom the FIR had been lodged, were not taken into custody it had been stated that the police had spread a net to secure them. The learned counsel for the petitioner therefore stated that by no stretch of imagination can the said publication be termed



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as defamatory.

- (7) This contention of the learned counsel for the petitioners is very seriously disputed and challenged by Mr.K.M.Balaji, learned counsel for the respondent. The learned counsel stated that if the news item was restricted to a reduction of the facts as stated in the FIR, the respondent herein would have had no grievance since that was a document which was in the public glare and can be brought out to the knowledge of the general public. However, the last portion of the vernacular version of the news item, which had been extracted above and the free translation had also been stated above, is what has aggrieved the respondent herein, necessitating him to give a private complaint before the jurisdictional Magistrate Court. It is stated that the reputation of the respondent had been damaged and he has been portrayed as somebody who is on the run and who is avoiding police net and therefore, it is stated that as a respectable citizen, the respondent has a right to question this particular publication by filing a private complaint for making out the offences under Sections 499 read with 500, 501 and 502 of IPC.
- (8) In this connection, the learned counsel for the respondent also relied upon the decision reported in 2018 [1] SCC 615 [Mohd.Abdulla Khan V. Prakash.K.], wherein the Hon'ble Apex Court had examined Sections 499, 500, 501 and 502 of IPC and stated the difference between making of an imputation and publishing the same. It had also been stated that printing and engraving a defamatory material and offering the same for sale, is an offence.
- (9) The learned counsel also relied on the decision reported in 2000 [9] SCC 87 [Vivek Goenka and Others V. Y.R.Patil] wherein, the Hon'ble Supreme Court of India had actually directed prosecution to be continued against A1 and A4 and had however, directed that A2 and A3 need not be retained in the array of accused. It had been stated that it is for the accused to show that they are protected by any one of the exceptions to Section 499 of IPC as the publication was not disputed. It is that particular portion which is relied on by the learned counsel for the respondent, who stated that the during the course of trial, the petitioners herein can establish that they come under any one of the exceptions under Section 499 of IPC and that, at this preliminary stage, the Calendar Case cannot be interfered with.
- (10) Further reliance has been placed by the learned counsel for the respondent on the decision reported in 2020 [4] SCC 162 [Google India Private Limited V. Visaka Industries] and the learned counsel drew the specific attention of this Court to paragraph No.139, wherein it had been stated that if defamatory matter is published, as to who published it, is



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a question of fact. It had been stated that publication involves bringing defamatory matter to the knowledge of a person or persons other than the one who is defamed. Pointing out this particular portion, the learned counsel pointed out that the reputation of the respondent herein had been seriously affected by the said publication and therefore, urged that the Calendar Case should continue in its normal course and does not warrant interference by this Court.

- (11) I have carefully considered the arguments advanced on either side.
- (12) The fact that the petitioners herein had published in the Daily Thanthi newspaper on 10.10.2013 a report about the registration of a FIR against respondent herein, cannot be denied or disputed. It is a fact. A copy of the said publication had been produced for reading of this Court. The article proceeds on the line of speaking about the registration of the FIR and the contents of the FIR, which contents are not now examined by this Court. It is further stated that Anjalatchi, Sub Inspector of Police, under the direct supervision of Manickavelu, Deputy Superintendent of Police, who acted under the direct instructions of Vijayakumar, Superintendent of Police, Kancheepuram District, was spreading a net to catch the three persons named in the FIR.
- (13) Whether this statement would constitute defamation, is the issue now to be examined by this Court.
- (14) If this is not a fact, then the primary persons who should object to the same, are the officials named, viz., [1] Anjalatchi, Sub Inspector of Police, [2] Manickavelu, Deputy Superintendent of Police and [3] Vijayakumar, Superintendent of Police. They have been named as being the officers involved in searching for the accused herein.
- (15) On registration of any FIR, naturally, if a cognizable offence had been made out, the police would concentrate their efforts in securing the accused.
- (16) It is also pointed out across the Bar by both the learned counsels that on that particular date, the respondent herein was not in custody, nor had been taken into custody and had obtained bail. He had actually filed an application seeking anticipatory bail which also implies that he had avoided getting into the custody of the Investigating Agency on that particular date. Therefore, there was a cat and mouse drama being enacted. On the one hand, the respondent herein had approached this Court and filed an application for anticipatory bail. Simultaneously, whether they had the knowledge or not of the same, the Investigating Agency was also searching for him to take him into custody with respect to the allegations in the FIR. That any Investigating Agency



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would take steps to secure any accused is a logical step to be presumed by any individual pursuant to the registration of the FIR, particularly, which brings out a cognizable offence in the Report. The specific names of the police officials have been given. It had also been further stated that they were searching out for a person by name Mohan, who is doing silk business and others. It is to be mentioned that the said Mohan is the respondent herein. He has filed a complaint stating that because his name has been introduced as if he is absconding from the police, defamatory material had been published.

- (17) Now, let me examine what actually constitutes a publication and when it is considered to be defamatory.
- (18) Section 499 of IPC speaks about defamation. It includes publication and it also says that any publication would amount to defamation if it imputes and if such imputation harms the reputation of a particular person who is living. The exception for that is the imputation of truth which public good requires to be made published.
- (19) For better appreciation, Section 499 of IPC is extracted thus:-

'Section 499 IPC:-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.....

Explanation 2.....

Explanation 3.....

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

(a).....

(b).....

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall



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within one of the exceptions.

First Exception-Imputation of truth which public good requires to be made or published: --It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.'

- (20) It is to be examined now whether this particular publication can be brought under the first exception to Explanation 4 of Section 499 of IPC. What has been published is merely a report indicating that the named police officials were searching for an individual named in a FIR, which FIR, as repeatedly pointed out, disclosed a cognizable offence. This, in my view, cannot be categorised as being defamatory. It is a fact that the police were on the look out for the respondent on that particular date.
- (21) Let me now re-examine that particular view on the basis of the judgments now produced by the learned counsel for the respondent.
- (22) In paragraph No.17 of the decision reported in Mohd. Abdullah Khan's case reported in 2018 [1] SCC 615, the Hon'ble Supreme Court of India had stated as follows:-
- ''17. Whether the content of the appellant's complaint constitutes an offence punishable under any one or all or some of the abovementioned sections was not examined by the High Court for quashing the complaint against the respondent. So we need not trouble ourselves to deal with that question. We presume for the purpose of this appeal that the content of the appellant's complaint does disclose the facts necessary to establish the commission of one or all of the offences mentioned above. Whether there is sufficient evidence to establish the guilt of the respondent for any one of the abovementioned three offences is a matter that can be examined only after recording evidence at the time of trial. That can never be a subject-matter of a proceeding under Section 482 CrPC.''
- (23) In that case, the High Court, while quashing the complaint, had not examined whether the contents of the complaint constitutes offence punishable under any one or all of Section 499 or 500 of IPC. Here, when we examine the first exception, which is imputation of truth which public good



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requires to be disclosed, the fact is that the police were searching for the respondent. The fact is that the respondent was not under the custody of the police. The fact is that he had filed an anticipatory bail application which in itself reflects that he was not under the custody of the police. All that has been published is that the police are looking out for him. He had also not voluntarily surrendered before the police. He had sought refuge behind an application seeking anticipatory bail which application, he has a right to file and which he had filed before the Court of competent jurisdiction. But that is a fact known only to the respondent and there are no materials to show it was made known to the petitioners herein. Had the petitioners known about the anticipatory bail petition and had still not published about that fact, but had published the fact that the police are searching for the respondent, then defamation can be imputed. Here, that is not the case. The publication or report is only a reduction of the action of the police had taken to search for a named individual in the FIR. The facts in the instant case are therefore distinguishable.

(24) The next judgment relied on by the learned counsel for the respondent, is the decision reported in 2000 [9] SCC 87 [referred supra], wherein the Hon'ble Supreme Court of India had directed that two of the accused need not be retained in the array of accused, but had however, directed that trial can proceed against the other two accused. It had been stated by the Apex Court that it is for the accused to show that they are protected by any one of the exceptions in Section 499 of IPC. In the instant case, it is very obvious that protection is available since search of the respondent is a fact and a true fact alone had been stated in the publication. If that fact, namely that a search operation was on, was not true, then the persons to object to the same in the first instance, should have been the named police officers. They have not come to Court complaining that they have been defamed or that their names have been unnecessarily included in the publication, or that a wrong information had been published. The focus of the publication was the act of the police officials and not the fact that the respondent herein had absconded. It was a fact that the police were searching for him. I would therefore hold that even a cursory glance would indicate that the petitioners are protected under the exception to the charge of defamation.

(25) In the decision reported in 2020 [4] SCC 162 [Google India Private Limited V. Visaka Industries], which again was relied on by the learned counsel for the respondent, it



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had been pointed out by the Hon'ble Supreme Court of India that publication involves bringing defamatory matter to the knowledge of a person other than the one who is defamed. The issue, is whether publishing the fact that the police is searching for a named individual in the FIR, can be termed as defamatory. It can be termed as defamatory if such search is not established as a fact. It can be denied as a fact only by the police officials who are actually conducting the search. They have not so denied that fact.

- (26) In view of the above reasons, I hold that further continuation of the Calendar Case would be a futile exercise and I would therefore, interfere with the same.
- (27) I am conscious of the fact that the Hon'ble Supreme Court in the decision reported in 2021 SCC Online SC 315 [Neeharika Infrastructure Pvt Ltd Vs State of Maharashtra and Others], had given comprehensive guidelines with respect to interference of further progress of FIRs/complaints. But, as is seen, in the instant case, by no stretch of imagination, can it be said that a false information had been published or rather, that information had been published with intention to defame the respondent herein.
- (28) A fact has been published. That fact cannot be denied by the respondent. So long as it remains a fact, the petitioners herein have the right to disseminate that particular fact to the general public in the only manner in which they can do so, through their newspaper and that is what they have precisely done.
- (29) I would therefore interfere with the further progress of CC.No.83/2015 now pending on the file of the Court of Judicial Magistrate No.1, Kancheepuram and quash the same.
- (30) In the result, the Criminal Original Petition stands allowed and the complaint in CC.No.83/2015 on the file of the learned Judicial Magistrate No.1, Kancheepuram, is quashed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1
Kancheepuram.

2.The Public Prosecutor
High Court, Chennai.

+lcc to Mr.R.Thanjan, Advocate, S.R.No.44208
+lcc to Mr.K.M.Balaji, Advocate, S.R.No.44190

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NRL (CO)
GN (20/09/2021)