

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020
PRONOUNCED ON : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21360 of 2016
and
CRL M.P.Nos.9900 & 9901 of 2016

1.K.Duraisamy
2.C.M.Prakasam
3.C.Thenmozhi Selvi
4.K.Senthil Rajan Petitioners / Accused

Vs.

C.Ramasamy Respondent /Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.50 of 2016, on the file of the learned Judicial Magistrate No.1, Namakkal District and quash the same.

For Petitioners : Mr.C.D.Johnson

For Respondent : Mr.S.Arun

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.50 of 2016, on the file of the learned Judicial Magistrate No.1, Namakkal District.

2. The brief facts of the case is that the Respondent / Complainant retired from the post of Postal Assistant on 13.09.2015. The petitioners herein were working as Postal Assistants in Namakkal District. The Respondent / Complainant was a member of Postal Employees Union. While so, in order to tarnish the image of the respondent / complainant, the petitioners herein sent a Memorandum, dated 24.12.2013, to the Secretary of All India Postal Employee Association, Tamil Nadu Wing and to the Branch President and Secretary. The so called complaint was insinuating in nature and defamed the character and morale of the respondent / complainant. The respondent had sent a legal Notice, dated 24.05.2014. The petitioners 1 to 3 and 5 received the notice and admitted sending of Memorandum in the reply notice. Hence, a private complaint was filed by the

complainant on 07.03.2015, which was taken on file by the learned Judicial Magistrate No.1, Namakkal on 01.04.2016.

3. The learned counsel appearing for the petitioners would submit that the entire reading of the complaint do not make out any case under Sections 499 and 500 of I.P.C., as against the petitioners. He would further submit that there is no allegation as against the petitioners 3 to 5, however, they were made as accused in the present complaint. The respondent was Member of All India Postal Employees Union and also held the post of President of the Union for Namakkal Branch. The respondent's brother's son Karupannan and one Madheswaran, Postal Agents, had misappropriated huge sum of public money, no prosecution was launched against them. On the other hand, many of the Postal Employees were charged, in view of the same, a Memorandum signed by 33 employees was sent to the State Secretary of the Trade Union, on 24.12.2013. This Memorandum is said to have defamed the respondent, which cannot be accepted. There is no defamatory substance in the Memorandum. The respondent had chosen to proceed against the five persons alone, including the petitioners.

4. In the reply to the notice, the petitioners have clearly stated that they had no intention to defame the respondent, on the other hand, acknowledged the leadership of the respondent. Further submitted that from the complaint it is seen that there is no averment, who are the persons who had read the Memorandum and enquired the respondent, thereby, the respondent was defamed, there is nothing to show how it was published. The respondent, as public servant, holding the office of Trade Union, the issue involved was public question of the postal employees. There is no averment to show that the imputation directly or indirectly, in the estimation of others, lowers the moral or character of the respondent. In the absence of any such specific allegation against the accused 3 to 5 in the complaint, the complaint is liable to be quashed.

5. The learned counsel appearing for the respondent / complainant would submit that in order to tarnish the image of the respondent / complainant, the petitioners herein sent a Memorandum to the Secretary of All India Postal Employee Association, Tamil Nadu Wing, on 24.12.2013. The so called Memorandum was insinuating in nature and defamed the character and morale of the respondent / complainant. Hence, Advocate Notice, dated 25.04.2014 was sent, in reply dated 01.05.2014, the explanation given is that the Memorandum is an internal organisational affairs and it is not subject to public document. Hence, the private complaint was filed by the complainant on 07.03.2015, which was taken on file by the learned Judicial Magistrate No.1, Namakkal, on 01.04.2016. The learned counsel for the respondent - complainant submitted that taking such plea, quash petition is not maintainable,

further, in support of his contention, relied on the Judgment of the Hon'ble Supreme Court of India in the M.C.Verghese Vs. P.J.Ponnan & Another reported in (CDJ 1968 SC 205).

6. I have heard the learned counsel appearing on either side and perused the materials produced available on record.

7. On perusal of the Memorandum, dated 24.12.2013 and the reply notice dated 01.05.2014, it is seen respondent's brother's son Karupannan and one Madheswaran, Agents of Postal Department had misappropriated public funds, for which some of the postal employees were facing departmental action, for which, thirty three postal employees and Union Members have sent a Memorandum to the State Secretary of the Union, there is some reference about the respondent, from overall reading of the Memorandum, it cannot be said to be per se defamatory. From the reply notice it is seen that the petitioners have acknowledged the leadership of respondent and admit that the Memorandum, had no imputation against the respondent.

8. Taking the allegations even at their face value, the complaint did not make out or disclose an offence for which the petitioners could be tried. In the facts and circumstances of the case, I am not inclined to take a rigid view of the matter and in my opinion, this is a fit case wherein exercise of the inherent powers can very well be made to prevent the abuse of process of law as also to secure the ends of justice. Looking to the facts and circumstances of the case, the Judgment reported in (CDJ 1968 SC 205) cited supra is not applicable to the facts of the present case.

9. In the instant case, though A5 has not challenged her case, this Court is inclined to quash the proceedings against A5 also, who is similarly placed as that of the petitioners/A1 to A4.

10. In the result, this Criminal Original Petition stands allowed and the proceedings in C.C.No.50 of 2016, on the file of the learned Judicial Magistrate No.1, Namakkal District, is hereby quashed, as against all the accused A1 to A5. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

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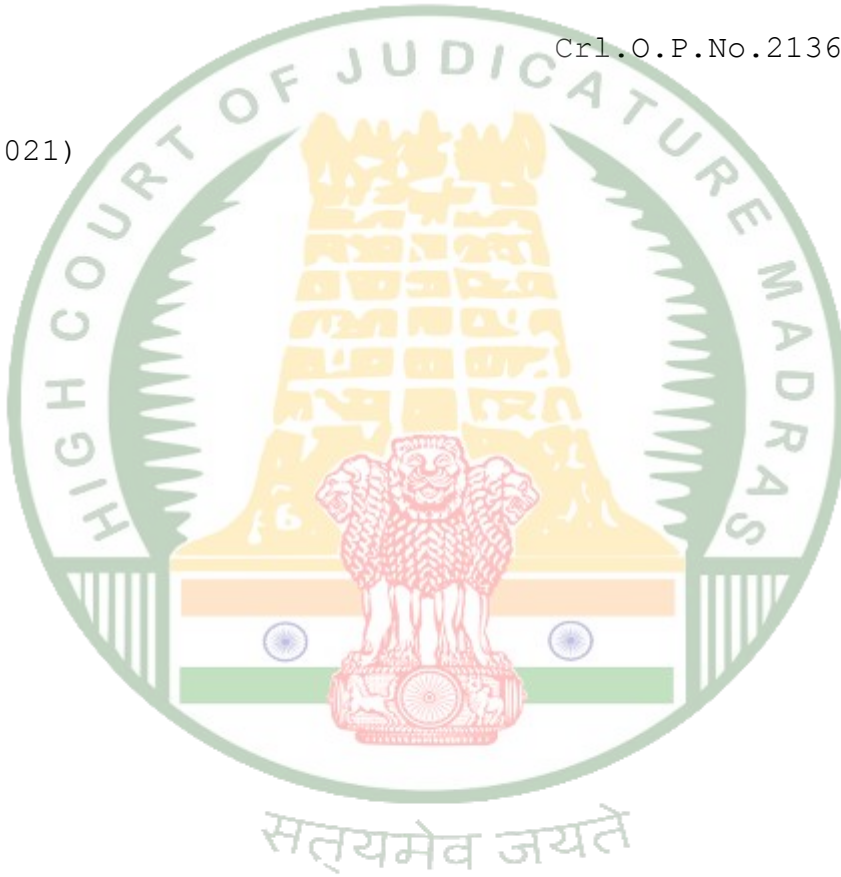
Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.1,
Namakkal District.
- 2.The Inspector of Police,
R-1, Mambalam Police Station,
T.Nagar, Chennai
- 3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.21360 of 2016

VSN II (CO)
CB(19/03/2021)



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