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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.Nos.30032 & 30451/2015 & MP.Nos.1&1/2015

[Video Conferencing]

1.S.Kanagaraj

2.K.Santhosh Kumar

... Petitioners / A1
& A3 in Crl.OP.No.30451/2015

S.Suganya

... Petitioner / A2
in Crl.OP.No.30451/2015

Versus

M.Marimuthu

... Respondent in
both petitions

Common Prayer : - Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in CC.No.430/2015 on the file of the learned Judicial Magistrate No.V, Coimbatore, and quash the same as against the petitioners.

For Petitioner in
Crl.OP.No.30032/15 :Mr.N.R.Elango
Senior Counsel for
Mr.R.Vivekananthan

For Petitioners in
Crl.OP.No.30451/15 :Mr.N.R.Elango
Senior Counsel for
M/s.C.Kalaichelvan

For Respondent in
both petitions :Mr.I.Abrar Mohammed Abdullah

COMMON ORDER

- (1) Crl.OP.No.30032/2015 has been filed by A2 and Crl.OP.No.30451/2015 has been filed by A1 and A3 under Section 482 Cr.P.C., seeking interference with further



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- continuation of CC.No.430/2015 now pending on the file of the learned Judicial Magistrate No.5, Coimbatore.
- (2) The said Calendar Case had been taken cognizance by the learned Magistrate pursuant to a complaint filed by the respondent/defacto complainant under Section 200 Cr.P.C., alleging offence under Section 500 IPC as against the petitioners herein/A1 to A3.
- (3) Since common arguments were advanced in both the petitions by the learned Senior Counsel and reply was also advanced in both the petitions, one common order is passed.
- (4) A newspaper publication appears to have been issued in the daily newspaper 'Dina Thanthi' on 26.07.2015, categorised as 'Podhu Arivippu' [பொது அறிவிப்பு]. This was issued by the counsel Mr.P.M.Duraiswamy. In the said notice, which is in vernacular language, it had been stated that the petitioners herein who are residing at Door No.31A, Shanumuga Nagar, TVS Nagar, Coimbatore, have no connection whatsoever with an Institution or an Organization run in the name of Naatu Nala Maiyyam [நாட்டு நல மையம்] which was functioning at Door No.16/32, A2, Auto Nagar, Vadavalli Street, Idayarpalayam at Coimbatore.
- (5) It had been stated in the said public notice that if anybody was under the impression that the petitioners have a remote connection with the said Naatu Nala Maiyyam, such impression is wrong and if they do any acts of omission or commission pursuant to such an impression, then, they would alone be responsible for such acts of omission or commission. In short, the petitioners stated that they have nothing to do with the said Naatu Nala Maiyyam. They have not expanded further as to why they want to disassociate themselves with the said Naatu Nala Maiyyam. They have not imputed that their names would be affected or their reputation would be affected if they were to associate themselves with the said Naatu Nala Maiyyam.
- (6) They have also not stated that the reputation of Naatu Nala Maiyyam is colourable in nature and therefore, they wanted to disassociate themselves with the said Naatu Nala Maiyyam. They have made it crystal clear that they are separate and Naatu Nala Maiyyam is separate. They have also not given the name of the person or any individual or persons or even any Body Corporate which is said to be running Naatu Nala Maiyyam. Only the address is given. From the address nothing further can be deciphered. It only gives a place of identity for Naatu Nala Maiyyam. Nothing more, nothing less.
- (7) However, the respondent/defacto complainant had taken umbrage to such an advertisement and for the first time, reveals himself as a person being incharge of Naatu Nala Maiyyam. He had thought it necessary to, according to



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him, protect his reputation from being damaged by the said publication and therefore, had given a complaint under Section 200 Cr.P.C., before the learned Judicial Magistrate No.5, Coimbatore.

(8) Mr.N.R.Elango, learned Senior counsel appearing for the petitioners took exception at this particular fact, and stated that the notice was only a plain notice without disclosing any imputation as against any individual and the names of individuals were not at all mentioned in the notice. Only the name Naatu Nala Maiyyam was stated and it was also not stated that there was something suspicious about the said Naatu Nala Maiyyam. The notice only stated that the petitioners herein have no connection with Naatu Nala Maiyyam. As a matter of fact, the respondent/defacto complainant could have taken this on a positive note and could have been rest assured that he would not get any interference from the petitioners herein and he could proceed with his business enterprise independent of the petitioners herein having got of them by their own publication.

(9) Learned Senior counsel further pointed out the order of cognizance and read out the actual order of the learned Magistrate, which is as follows:-

ORDER

Heard Complainant side. Records perused. This complaint is filed u/s.200 Cr.P.C., against A1 to A3 for the offence u/s.500 r/w 34 IPC.

In this complaint, complainant sworn statement recorded and two witnesses examined on the side of complainant and they supported the complainant case. The complainant has filed 26 documents to substantiate his claim.

On perusal of records, this Court find that there is a prima facie case made out against the Accused No.1 to 3 for the offence u/s.500 Cr.P.C.

This complainant is ordered to be taken on file for the offence u/s.500 IPC against the accused No.1 to 3 of CC case. Issue fresh summon to A1 to A3 on payment of process fee by complainant. Call on 21.12.2015.

Sd/-----

Judicial Magistrate No.V,
Coimbatore.

(10) Learned Senior counsel stated that when a complaint of this nature is lodged or any complaint under Section 200 Cr.P.C., is lodged, it is imperative on the part of the learned Magistrate to apply his mind to come to a



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subjective satisfaction that the averments made in the complaint make out at least prima facie, an offence and that it necessitates issuance of summons to the named accused. Merely stating that there is a prima facie case without pointing out what are the facts which make out a prima facie case, according to the learned Senior counsel, is not suffice and therefore, the learned Senior counsel also questioned the nature of the order passed.

- (11) It is under these circumstances that the present petitions have been filed seeking interference with CC.No.430/2015 which is the Calendar Case taken cognizance pursuant to the complaint filed by the defacto complainant/respondent herein.
- (12) Mr.Abrar Mohammed Abdullah, learned counsel for the respondent/defacto complainant however stated that if the petitioners have no connection with Naatu Nala Maiyyam, it does not require to be publicised at all. The publication was not required. They may simply stay away from the said Organization. There was no necessity to inform the general public about this particular fact. If the petitioners had a connection with Naatu Nala Maiyyam, then a publication would be required to inform the general public that the petitioners are not involved with the said Organization.
- (13) It has not been brought to notice anywhere that the petitioners had suffered owing to any association with Naatu Nala Maiyyam or by any imputation that they are involved with Naatu Nala Maiyyam. Learned counsel stated that within Coimbatore, since the address has been given, it would be obvious that the publication was aimed at the respondent/defacto complainant since he was running Naatu Nala Maiyyam as he was the Founder and President of the said Naatu Nala Maiyyam. The general public have associated the respondent / defacto complainant with the said Organization. Learned counsel therefore, stated that to protect his reputation, a complaint has been lodged.
- (14) Having heard the arguments advanced and having given anxious consideration, I am of the firm opinion that continuation of prosecution would only be an exercise of futility.
- (15) The publication had been issued way back in the year 2015 nearly more than six years back. It is not known whether, as on date, the petitioners still want to associate themselves with Naatu Nala Maiyyam or want to disassociate themselves with Naatu Nala Maiyyam. It is also not known whether the respondent/defacto complainant still continues to be the President of Naatu Nala Maiyyam and whether he is still aggrieved by the said publication.
- (16) Much water must have flown over the past six years and it would only be advisable that the petitioners and the



2.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.C.Kalaichelvan, Advocate, S.R.No.55316

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SMI (CO)
CB(10/11/2021)