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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.OP.NO.9880/2015 & MP.NO.1/2015

[Video Conferencing]

1.K.Santhosh Kumar
2.S.Kanakaraj
3.K.Suganya

...Petitioners/Accused

Versus

M.Marimuthu

...Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the criminal proceeding pending against them in C.C.No.275/2015 on the file of learned Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : No appearance

ORDER

- (1) The respondent/defacto complainant is running an Organisation called 'Naatu Nala Maiyyam' in Coimbatore.
- (2) The 1st petitioner had necessity to go over to the Family Court in view of marital discords with his wife. Petitioners 2 and 3 are his parents.
- (3) It is informed by Mr.P.M.Duraiswamy, learned counsel for the petitioners that subsequently, the marital dispute came to be resolved and divorce had also been granted between the two parties. One of the conditions was that the off-shoot criminal complaints should be withdrawn. This particular complaint in CC.No.275/2015 now pending on the file of the learned Judicial Magistrate No.II. Coimbatore is one such off-shoot complaints which had been preferred by the respondent/defacto complainant herein, complaining



that the petitioners have committed an offence under Section 499 IPC.

- (4) The respondent in the matrimonial dispute had a maternal uncle Mr. Ravichandran who is said to have sent a letter on 10.10.2012 to a common relative and in that, it had been stated the respondent/defacto complainant herein would always act on the advise of the said Mr. Ravichandran. Taking umbrage at such a suggestion and also the further fact that when he confronted the petitioners herein with respect to that particular statement, they appeared to have abused the him, he had filed a private complaint under Section 200 Cr.P.C., alleging offence under Section 499 IPC.
- (5) A small portion of about 10 lines in that particular letter had been extracted in the petition herein. But a copy of the letter does not seem to have been filed along with the petition complaining defamation before the Trial Court. The cover in which the letter had been sent, had been filed as 1st document. The 2nd document, is the petition in H.M.O.P.No.1412/2014 which involved the 1st petitioner herein and his now estranged wife. Documents 3 and 4, filed along with the complaint are pamphlets with respect to ''Naatu Nala Maiyyam'' run by the respondent herein/defacto complainant. They are insignificant materials so far as making out a case under Section 499 IPC is concerned.
- (6) The learned Magistrate appears to have examined the respondent/defacto complainant and taken down his sworn statement. He also examined another witness V. Shanmuga Sundaram, whose sworn statement was also recorded/examined.
- (7) While taking cognizance, the learned Magistrate had stated that on perusal of the averments in the complaint and the deposition in the sworn statement on record, the learned Magistrate had found that there was a prima facie case for offence punishable under Section 500 IPC. But, however it would had been appropriate if the learned Magistrate had actually stated as to what was the nature of defamation and whether it would be covered under any one of the explanations to Section 499 IPC. There should be a discussion on the nature of the allegations, on the nature of the defamation and how it had actually affected the respondent/defacto complainant before the Magistrate Court.
- (8) In Pepsi Foods Ltd Vs. Special Judicial Magistrate, reported in 1998 [5] SCC 749, the Hon'ble Supreme Court had



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occasion to examine the guidelines which a learned Magistrate should resort before taking the cognizance of an offence. In the absence of the same, naturally the cognizance taken, will have to be interfered with by the Court.

- (9) It is relevant to extract paragraph No.28 of the above cited judgment:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or ant of the accused.'"

(emphasis supplied)

- (10) In the instant case, the letter in which the defamatory materials contained has not been produced. The cover had however been produced. That can hardly forward the case of the respondent. Only a plain statement had been given by the respondent/defacto complainant. He has not been directly involved in the matrimonial case. He is not directly involved with either the petitioners herein or with their maternal uncle. He is an independent person running an Organization called Naatu Nala Maiyyam''.
- (11) It is complained by Mr.P.M.Duraiswamy, learned counsel for the petitioners that among the various conditions which were put for grant of divorce, one of the conditions was that all the criminal complaints would be withdrawn.



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(12) It would only be appropriate that this Court interferes with the further progress in C.C.No.275/2015 now pending on the file of the Judicial Magistrate No.II, Coimbatore as no case has been made out for defamation, much less criminal defamation.

(13) In the result, the Criminal Original Petition stands allowed and the further progress in C.C.No.275/2015 now pending on the file of the Judicial Magistrate No.II, Coimbatore, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Judicial Magistrate No.II, Coimbatore.
2. -do- Through The Chief Judicial Magistrate, Coimbatore.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.57336

CrI.OP.No.9880/2015 & MP.No.1/2015

SSI(CO)

RLP(08/12/2021)