



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.349 OF 2016

R.Varadaraj

...Petitioner

Vs

Mr.K.Vaidyanathan

...Respondent

PRAYER : This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., against the order dated 01.02.2016 in Crl.M.P.No.108 of 2016 passed by the learned Chief Metropolitan Magistrate, Chennai.

For Petitioner : Mr.R.Varadaraj (Party in Person)

For Respondent : Mr.S.Ramesh

O R D E R

This Criminal Revision Case has been filed challenging the order of the learned Chief Metropolitan Magistrate, Allikulam, Chennai dated 01.02.2016 in Crl.M.P.No.108 of 2016, wherein, the complaint filed by the petitioner under Section 199 r/w.200 Cr.P.C., for punishing the respondent for the offence under Sections 499 and 500 IPC was rejected.

2. The petitioner being the private complainant before the Chief Metropolitan Magistrate Court had filed a complaint for taking action against the respondent for the alleged commission of the offence punishable under Sections 499 and 500 IPC.

3. The allegation of the petitioner is that a news was published in the journal named 'Kumudham Reporter' on 21.08.2015 about a land grabbing activity. In the said news item, it is alleged that the respondent has actively involved in grabbing the lands of those persons, who do not have any legal heirs. Aggrieved by the said news, the respondent gave a legal notice to the Kumudham Reporter journal on 19.08.2015. In the said notice, a reference has been made about a person by name Varadarajan and it is alleged that the photographs in the news item pertained to him.



4. The defacto complainant had got the information from Kumudham Reporter and stated that the reference of a name Varadarajan relates to him only. So he sent a Defamation notice to the respondent on 15.10.2015 and for which the respondent also sent a reply on 22.10.2015. Having not satisfied with the reply notice dated 22.10.2015, the petitioner preferred a complaint against the respondent for punishing him for the offence of defamation under Section 499 r/w. 500 IPC.

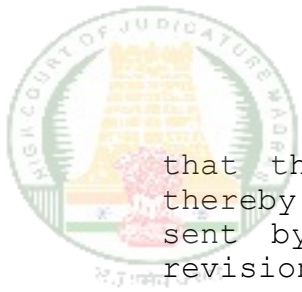
5. The learned Metropolitan Magistrate had chosen to dismiss the complaint on 01.12.2016, on the observation that the complainant had failed to prove the two requirements for defamation and there is no prima facie materials available on record to take cognizance of the complaint under Section 499 r/w. 500 IPC.

6. The learned Magistrate has observed that the image shown in the journal viz., Kumudham Reporter is about a fictitious person and it has got no reference about the present revision petitioner; further the image did not hit against the complainant.

7. It is to be noted that the revision petitioner has taken the cause of action not from the news item published in the Kumudham Reporter but merely from the notice sent by the respondent to the Kumudham Reporter on 19.08.2015. On perusal of the said notice, it is seen that the respondent has made the following averments:

'5. In one of the photographs, at page 38 of this magazine you have depicted as if a person is trying to open the door forcibly using his legs and a caption is affixed in the photo saying ''Vadakaithararkalidam Arajagam''. An impression is sought to be given by all of you to the public as if my client is trying to open the doors forcibly. My client places on record that the person who has posed for photograph is one Varadarajan and is party to litigations against my client before various courts. He has posed to the photograph to create an illusion to reader as if my client is trying to open the door forcibly. Third of you has colluded with the said Varadarajan to capture the said photograph and publish it in such a manner so as to defame my client in the eye of the general public by giving an impression to general public that my client is the person found in photograph.'

8. On coming to know about the above content, the revision petitioner had chosen to send a defamatory notice by stating



that the respondent had mentioned his name unnecessarily and thereby defamed him. The impugned notice dated 19.08.2015 was sent by the respondent to Kumudham Reporter and not to the revision petitioner herein.

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9. The learned counsel for the petitioner relied on the decision of the Andhra High Court passed in CrI.R.C.No.1780 of 2017 dated 06.07.2018 in the case of P.S.Meherhomji vs.K.T.Vijay Kumar and others in support of his contention that once defamatory notice has been sent to third person that itself would amount to defamation. In the above judgment, it is held as under:

'13. Thus, from the above, it is clear that to complete the offence of defamation, publication has to be made by the offender to the third person other than the person intended to be defamed. The reason is that the offender would generally intend to lower the reputation of a particular person in the esteem of world at large. He may send the defamatory letters to the third parties as well as the person defamed in such cases, the offence under Section 499 IPC may be attracted. However, if the offender sends the letter of scurrilous remarks to the person defamed alone, it will not attract the offence under Section 499 IPC though such act may amount to intentional insult and attract the offence under Section 504 IPC.'

10. The learned counsel for the respondent submitted that the revision petitioner has not produced prima facie materials before the Court in order to establish that there was a imputation by word either spoken, written or it had been published. He attracted the attention of this Court to a decision of the Hon'ble Supreme Court in the case of Mohd.Abdulla Khan v. Prakash K., reported in (2018) 1 SCC 615, wherein, the relevant portion reads as under:

'9. Section 499 IPC defines the offence of defamation. It contains 10 exceptions and 4 explanations. The relevant portion reads;

"499. Defamation.— 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."

10. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other



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person;

- (i) Such imputation must be made either
 - (a) With intention, or
 - (b) Knowledge, or
 - (c) Having a reason to believe

that such an imputation will harm the reputation of the person against whom the imputation is made.

- (ii) Imputation could be, by
 - (a) Words, either spoken or written, or
 - (b) By making signs, or
 - (c) Visible representations

(iii) Imputation could be either made or published. The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal - 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal - 'X' publishes the imputation.

The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.'

11. By citing the above decision, it is claimed by the learned counsel for the respondent that the learned Magistrate is right in rejecting the petition on the ground that prima facie materials are not placed before the Court for taking cognizance.

12. It is already stated that the revision petitioner did not challenge the news item published in the Kumudham Reporter and he has based his case only on the notice sent by the respondent on 19.08.2015 to Kumudham Reporter. Admittedly, there is some reference about a person by name Varadarajan. It is the grievance of the revision petitioner that such contention contains the defamatory imputation and the act of publishing gets completed at the moment, the Kumudham Reporter received the notice and saw its contents.

13. The facts like whether the respondent has made a reference about the revision petitioner by mentioning the name of Varadarajan in his notice dated 19.08.2015; if so, whether they are defamatory in nature or it was only a fact of truth etc., are all to be proved before the trial Court at the time of trial. So far as the requirement of prima facie materials is



concerned, it is sufficient for the revision petitioner to show before the Court that there is some imputation against him and that has been made in the form of words written or spoken and that it has been published. By producing a news item and the notice sent by the respondent to the Kumudham Reporter, the revision petitioner has sufficiently produced the prima facie materials to make out a case under Sections 499 and 500 IPC.

14. The learned Metropolitan Magistrate has dealt about the merits of those materials. Such kind of evaluation are not required at this level. If the complainant is able to produce prima facie case before the Court, his case should be taken on file. Only at the time of trial, the court should venture to make a rowing enquiry about the merits of those materials. The learned Metropolitan Magistrate had appreciated the merits of the materials at a pre-matured stage of taking the case on file. Since the learned Chief Metropolitan Magistrate omitted to take the case on file, considering the prima facie materials, it warrants the interference of the Court. In view of the same, the impugned order is liable to be set aside.

15. In the result, this Criminal Revision Case is allowed and the order dated 01.02.2016 in CrI.M.P.No.108 of 2016 passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai is set aside. The learned Magistrate is directed to take the case on file within a period of two weeks from the date of receipt of a copy of this order and deal with the matter in accordance with law.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

ssn

To

1.The Chief Metropolitan Magistrate,
Allikulam, Chennai.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.S.Ramesh, Advocate Sr.No.62126

+1cc to Mr.R.Varadaraj, Party-in-Person Sr.No.62466

CrI.R.C.No.349 of 2016

MJ(CO)
RVM(15/02/2022)