

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1889 of 2018
and Crl.M.P.Nos.720 & 721 of 2018

S.M.Govindasami

.. Petitioner

Vs.

1.K.P.Arumugam

2.R.Stephen Raj

3.Thiru Crime Raj

4. The Proprietor,
Velankanni Printers,
53, Dr.Besauth Road,
Royapettai, Chennai - 14.

5. S.Kumaravadivel

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in Crl.M.P.No.8589/2014 on the file of Judicial Magistrate- III, Erode and set aside the order dated 07/11/2014 taking cognizance in Crl.M.P.No.8589/2014.

For Petitioner : Mr.P.G.Thiyagu

For Respondent : Mr.T.Gowthaman for R1

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.8589 of 2014 taking cognizance of the complaint filed by the 1st respondent for the offence of defamation.

2.The 1st respondent has filed a private complaint against five accused persons for the offence of defamation and the petitioner has been arrayed as A5. A reading of the complaint shows that the defamatory publication was made by A1 to A3 and the petitioner who has been arrayed A5 has been added as an accused only on the ground that he also distributed the copies of the magazine published by A1 to A3 and caused dis-repute to the 1st respondent. The Court below by an order dated 07.11.2014 has taken cognizance of the

complaint against all the accused persons and issued summons to them under Section 204 Cr.P.C.

3.Heard Mr.P.G.Thiyagu, learned counsel for the petitioner and Mr.T.Gowthaman, learned counsel appearing on behalf of the 1st respondent.

4.A careful reading of the complaint filed by the 1st respondent shows that defamatory publication was made only by A1 to A3. The allegation against the petitioner is that he is a business rival to the 1st respondent and he has also distributed copies of the magazine which contained the defamatory publication.

5.The only issue that arises for consideration in the present case is as to whether a magazine which has already been published and is distributed by another person will make such distributor also an accused punishable for the offence of defamation.

6.Before answering the issue that has arisen in this case, it will be beneficial to take note of the sworn statement recorded from the 1st respondent by the Court below. In the sworn statement, the 1st respondent has made a statement as if all the five accused persons have made defamatory allegation against the 1st respondent in the magazine that was published. This stand taken by the 1st respondent goes contrary to the allegation made in the complaint.

7.It is also seen from records that there is a prior enmity between the petitioner and the 1st respondent and another complaint that was given against the petitioner by the 1st respondent which resulted in criminal proceedings in C.C.No.350 of 2011, ended in favour of the petitioner and he was acquitted by the learned Judicial Magistrate No.III, Erode by judgment dated 26.09.2017.

8.In the present case, admittedly the publication was made by A1 to A3 in a magazine. Once the magazine comes into the market and it gets distributed, thereafter, all those persons who are involved in the distribution of the magazine cannot be roped in as accused persons for the offence of defamation. Such distributors have nothing to do with the alleged defamatory publication. The 1st respondent had an axe to grind against the petitioner because of the previous rivalry between both of them and therefore, he has been unnecessarily added as an accused by making a vague allegation that the petitioner was distributing the magazine published by A1 to A3. This allegation does not make out an offence of defamation against the petitioner.

9.In view of the above, this Court has absolutely no hesitation to interfere with the criminal complaint, insofar as the petitioner is concerned. Accordingly, the cognizance

taken by the Court below in Crl.M.P.No.8589 of 2014, by an order dated 07.11.2014 is hereby quashed, insofar as the petitioner is concerned.

10.This criminal original petition is accordingly allowed. Consequently, connected miscellaneous petitions are closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

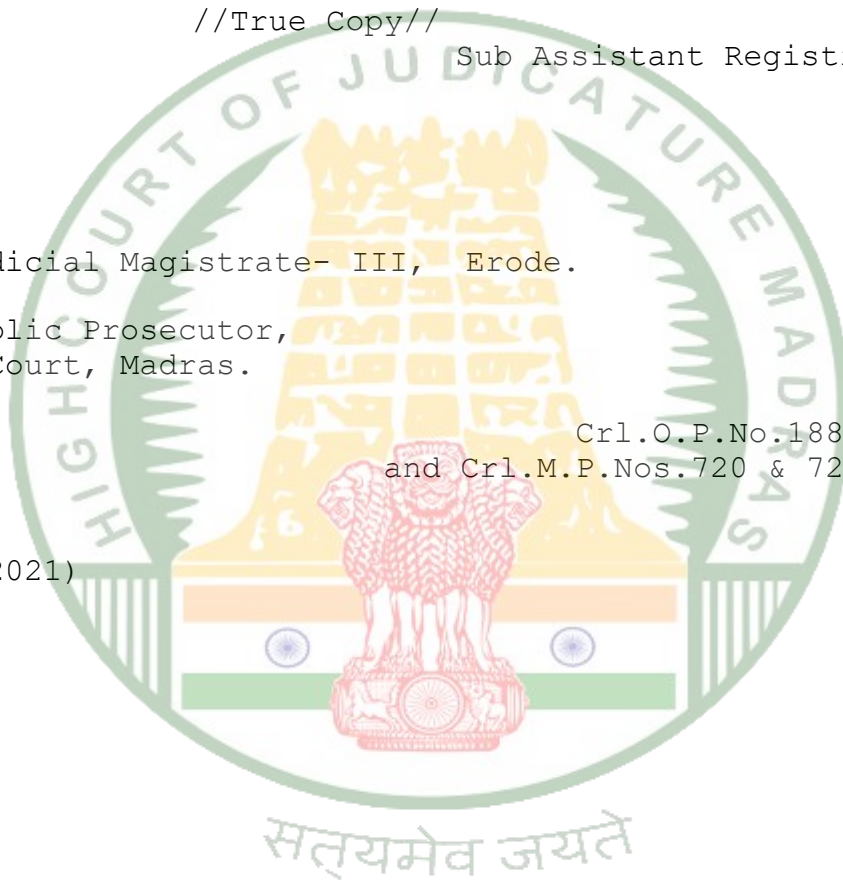
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To

1. The Judicial Magistrate- III, Erode.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.1889 of 2018
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SS(CO)
CB(12/03/2021)



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