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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2021
PRONOUNCED ON : 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.12830 of 2020 and
Cr1.M.P.Nos.5003 & 5004 of 2020

1.S.Salman, aged 44 years,
Writer, Junior Vikatan,
No.757, Anna Salai,
Chennai-600 002.

2.P.Thirumavelan, aged 50 years,
Editor, Junior Vikatan,
No.757, Anna Salai,
Chennai-600 002.

3.Junior Vikatan,
Rep by its Managing Director,
S.Srinivasan,
757, Anna Salai, Chennai-600 002.

... Petitioners

Versus

Mukanchand Bothra (deceased),
Rep by P.O.A.,
M.Gagan Bothra,
No.43, Veerappan Street,
Sowcarpet, Chennai-600 079.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of C.C.No.145 of 2018 on the file of the XV Metropolitan Magistrate, George Town, Chennai and Quash the same as against the petitioners/accused 2-4 as not maintainable.



For Petitioners : Mr.N.Ramesh

For Respondent : Mr.M.Gagan Bothra
Party-in-Person

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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.145 of 2018 pending on the file of the XV Metropolitan Magistrate Court, George Town, Chennai.

2.The petitioners/A2 to A4 are facing trial in C.C.No.145 of 2018 for offence under Section 499 r/w 500 IPC before the learned XV Metropolitan Magistrate, George Town, Chennai on the complaint given by the respondent.

3.The gist of the case is that on 29.11.2017, the respondent (M.Gagan Bothra), son of Mukanchand Bothra went to George Town Court Complex, where he heard some persons talking about his father referring to some derogatory/adverse/defamatory/ill statement due to a publish of A1 in bi-weekly magazine 'Junior Vikatan'. The 1st petitioner/A2 is the person, who had written the article, the 2nd petitioner/A3 is the Editor of the article and the 3rd petitioner/A4 is the 'Junior Vikatan' magazine represented by its Managing Director Srinivasan. The respondent immediately purchased a copy of the 'Junior Vikatan' magazine from nearby shop and handed over the same to his father Mukanchand Bothra. The respondent's father read the article, wherein he is referred as financier to Tamil movies, he and one Anbuchezeian are bad persons, against whom the Government of Tamil Nadu had taken action. According to the respondent's father, the accused persons purposefully, deliberately, wantedly made that statement to harm, damage and to scale down the reputation of the respondent's father in the eyes of the general public and wantonly impeached the familiarity, reputation of the respondent's father to gain popularity by making such a derogatory statement. The accused persons herein are the media persons in collusion with A1 spread this false, derogatory message among the general public. The respondent's father had never met A1 and had no business transaction with him and not even a single pie was borrowed by A1 from the respondent's father. This being the fact, A1 addressing media with derogatory remarks is false and motivated.



4.Further, the petitioners printed and circulated the article in the magazine without verifying the truthfulness or otherwise of the message. The statement made by A1 is with an intention to defame and damage the reputation of the respondent's father. The petitioners herein knowing well that such imputation will harm the reputation of such person in the eyes of the general public, had published the article. Hence, Mukanchand Bothra through his power agent (his son) Gagan Bothra/respondent filed a private complaint before the learned XV Metropolitan Magistrate, George Town, Chennai, since Mukanchand Bothra was unable to present the complaint in person at that time. The complaint was taken on file as C.C.No.145 of 2018.

5.The learned counsel for the petitioners submitted that the person who was defamed has not filed the complaint and no petition filed seeking leave from the trial Court as per Section 199(1) Cr.P.C., to file a complaint by the power agent and no reason was given as to why the power agent has filed the complaint. As such, the person, who has filed the complaint is not an aggrieved person in this case. He further submitted in this case, since the respondent's father died on 17.04.2017, a petition was filed under Section 302 Cr.P.C., in CrI.M.P.No.7946 of 2019 by his son/respondent Gagan Bothra before the trial Court seeking permission to continue with the prosecution in the above case. Section 302 Cr.P.C., is an enabling provision to conduct prosecution by victim or aggrieved party. As per Section 199 of Cr.P.C., only an aggrieved can file and conduct the trial in respect of the offence of defamation. Had the aggrieved person filed the complaint himself, the situation might be different. In the present case, the respondent, who is presently prosecuting is neither a victim nor an aggrieved party. Hence, the provision under Section 302 Cr.P.C., is not applicable on the facts of the present case.

6.The learned counsel for the petitioners further submitted that when the complaint was originally filed, the 3rd petitioner/A4 was without any representation. Thereafter, the respondent filed amendment petition in CrI.M.P.No.563 of 2018 before the trial Court and the same was allowed by order dated 26.02.2020 without giving notice to the accused persons, the cause title in the complaint was amended. The learned counsel further submitted that the 'Junior Vikatan' group of



publications has been in forefront responsible and in ethical reporting for several decades. The 'Junior Vikatan' group strives to achieve excellence in the field of journalism and has never resorted to sinister methods for the sake of increasing circulation.

7.The 'Junior Vikatan' commenced its publication in the year 1983 as a weekly and later, published bi-weekly. In the magazine, dated 29.11.2017, interview of A1 was published, wherein it is mentioned that “அதில் அன்பு செழியனும் போத்ராவும் தான் மோசமானவர்கள். போத்ரா மீது சமீபத்தில் அரசு நடவடிக்கை எடுத்தது”. This according to the respondent's father is a defamatory one. On plain reading of entire report as a whole and the complaint, it would reveal that there is no defamatory statement against the respondent's father. It is reproduction of the interview and not an opinion of the magazine. The publication fall under Exception 1 of 499 IPC, wherein the exception recognizes the publication of truth as a sufficient justification if it is made for public good. It is a known fact that the interview of A1 was subsequent to the death of his colleague by suicide due to undue pressure exerted by the financier. In this context during the funeral, the atmosphere was emotional and several film personalities addressed the media condemning the pressure exerted by the financiers and showing solidarity. Tall personalities like G.Venkataraman, a prominent producer, was also a victim who committed suicide due to the threat and pressure exerted by the financiers. During that time, the State took serious view of the same and arrested several financiers, who were fleecing innocent borrowers.

8.The learned counsel for the petitioner further submitted that several cases are pending against the respondent. On one occasion, the respondent's father was detained under the Goondas Act. The respondent's father apart from facing prosecution under the Indian Penal Code was also facing prosecution under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Further, the respondent/power agent (Gagan Bothra) and his father had filed a Writ Petition in W.P.No.35927 of 2019 seeking compensation for detaining him and his father under the Goondas Act. This Court, by order, dated 05.03.2020 dismissed the Writ Petition with cost of Rs.10,000/-. On bare perusal of the sworn statement, it is seen that the sworn statement was given in first person as though he heard



some persons conversing about the article. It is not the present respondent as individual or as power agent read the article and it is only hearsay. The respondent admitted that he does not know to read or write Tamil. In the complaint except the respondent, no other person was cited as witness. Thus, from reading of the complaint, sworn statement and other materials, it is clear that no offence is made out against the petitioners. In this case, admittedly, the respondent filed the complaint under Section 500 IPC and not under Section 501 IPC.

9. In support of the submissions, the learned counsel for the petitioners relied on the followed decisions:-

(i) Placed reliance on the judgment of the Hon'ble Apex Court in the case of "Fr. Thomas Maniankerikalam Versus Thomas J Padiyath reported in 2005 (3) CTC 567" for the proposition that the power of attorney holder, who filed a complaint must be aware of the facts of the case and ought to have taken leave of the Court before filing the complaint under Section 199(i) Cr.P.C. In this case, admittedly, the respondent/power of attorney did not know to read or write Tamil. Nowhere, in the complaint it is stated that he knew and aware of the contents in the complaint and the article published.

(ii) Placed reliance on the judgment of the Panjab and Haryana High Court in the case of "Ram Singh and others Versus Gurbachan Singh dated 20.02.2014" for the proposition that the complaint to be filed by the aggrieved person. In this case, admittedly, the respondent/power agent is the son of the aggrieved person and he does not know to read or write Tamil and he was not aware of the facts of the case.

(iii) In "K.E. Gnanavel Raja Versus K. Mukanchand Bothra in CrI.O.P.No.4528 of 2018, dated 30.06.2021" the above proceedings in C.C.No.145 of 2018 was quashed against A1 on the ground that the cognizance taken by the learned Magistrate on the complaint is wholly unsustainable and deserves to be set aside as being devoid of merits and liable to be quashed. Since the cognizance taken against A1 was found to be bad in C.C.No.145 of 2018 in CrI.O.P.No.4528 of 2018, nothing survives as against the petitioners/A2 to A4 herein.



10. Thus, the learned counsel for the petitioners prayed for quashing of the proceedings against the petitioners.

11. The respondent/Party-in-Person submitted that his father assigned and gave power to him. A complaint was lodged by the respondent as power agent along with the power of attorney document. The trial Court on perusal of the power of attorney, granted leave and recorded the sworn statement of the respondent/power agent on 12.01.2013 and took the case on file. Hence, the petitioners cannot now raise the ground that the leave ought not to have been granted. The complaint taken on file is proper. The learned counsel further submitted that the article published is per se defamatory and the respondent purchased the magazine, handed over to his father. The respondent's father who was convalescing, read the magazine and got dejected. In the magazine, the respondent's father was shown in a bad light to defame him.

12. It is further submitted that the respondent's father had no financial dealing with Gnanavel Raja/A1 and there is no reason for unnecessarily referring the respondent's father as though he is a bad financier and used to charge exorbitant interest and not handed over the security documents which are pledged even after the clearance of loans. In the sworn statement, the respondent clearly narrated the sequence and happenings and its consequence and also elaborated how his father got defamed due to the article. The petitioners herein are responsible for publishing the article in 'Junior Vikatan' and they ought to have taken proper steps to confirm the contents of the interview of Gnanavel Raja/A1 about the respondent's father and publish the article. Hence, for the purpose of gaining popularity and to increase circulation, such defamed articles were published in 'Junior Vikatan', knowing it is per se defamatory.

13. It is further submitted that in yet another defamation case in C.C.No.1397 of 2017 pending on the file of the XV Metropolitan Magistrate Court, George Town, Chennai, the respondent as power agent for his father Mukanchand Bothra, was granted permission to continue with the prosecution. Thus, the petitioner is legally entitled to continue with the prosecution. As regards quashing of the proceedings in CrI.O.P.No.4528 of 2018 the respondent had already filed appeal before the Hon'ble Supreme Court and Diary Number assigned.



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14.The points raised by the petitioner are disputed and factual in nature which is to be decided only during the trial and not in the quash petition and prayed for dismissal of the same.

15.In support of his submissions, the respondent relied on the following decisions:-

(i)In the case of "J.Jayalalitha Versus Arcot N.Veerasingam in CrI.R.C.No.273 of 1997 in CrI.R.C.No.273 of 1997, dated 30.04.1997", it had held that the power agent can file the complaint and give sworn statement, which is not improper.

(ii)The Hon'ble Apex Court in the case of "Mohammed Abdulla Khan Versus Prakash in CrI.A.No.2059 of 2017, dated 04.12.2017" had held that "Where defamatory matter is printed (in a newspaper or a book etc.) and sold or offered for sale, whether the owner thereof can be heard to say that he cannot be made vicariously liable for the defamatory material carried by his newspaper etc. requires a critical examination." On the same breadth, it had also observed that "the owner of a newspaper employs people to print, publish and sell the newspaper to make a financial gain out of the said activity. Each of the above mentioned activities is carried on by persons employed by the owner." In this case, the 1st and 2nd petitioners prepared the article and published for the benefit of the 3rd petitioner/A4.

(iii)In the case of "Karur Murali Versus Public Prosecutor, Tiruvenveli in CrI.O.P.No.13182 of 2018" it had held that "it will be possible for a person to continue with the defamation proceedings, despite death of the original complainant, if the person is able to satisfy the expression? Person aggrieved?."

(iv)In the case of "Abdul Hakim and another Versus State of Allahabad dated 02.09.1972" it held that "on the allegations made against the complainant the reputation of the entire family is at stake, his close relations who are directly or indirectly affected thereby, will be covered by the expression 'aggrieved person'".

16.This Court considered the rival submissions and perused the materials available on record.



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17.Original complaint was lodged by the respondent as power agent of his father S.Mukundchand Bothra. On receipt of the complaint, the sworn statement was recorded by the trial Court and the complaint was taken on file as C.C.No.145 of 2018.

18.On perusal of the complaint, it is seen that the power of attorney has been annexed as a document. In the cause title of the complaint, it is mentioned that the complainant is S.Mukanchand Bothra represented by his power agent Gagan Bothra/respondent. The trial Court had accepted the complaint, recorded the sworn statement of the power agent, taken the case on file and issued summons. Thus, it is to be construed that the leave was granted under Section 199(1) Cr.P.C., to file a complaint under Section 500 IPC on behalf of Mukanchand Bothra. Later finding that the 3rd petitioner/A4 was not represented by any one, a petition was filed in CrI.M.P.No.563 of 2018 in C.C.No.145 of 2018 before the trial Court to amend the cause title and the same was allowed and S.Srinivasan, Managing Director's name has been incorporated to represent the 3rd petitioner/A4. In the case of "U.P. Pollution Control Board vs. Modi Distillery And Ors., (1987) 3 SCC 684" the Hon'ble Apex Court had held that such amendment "it is only a curable infirmity and can be corrected by a formal amendment".

19.With regard to the publication of the article, it is to be seen that A1 had addressed the media persons while attending the funeral of his colleague who committed suicide due to the financial constraint of the financiers. While addressing the media persons, A1 mentioned that there are 50 financiers, out of which one Anbuchezeian and Bothra are bad financiers in character, who refused to hand back the security documents even after clearance of the loan. This is the crux of the issue. In the complaint, the admitted fact is that when the respondent's son had gone to George Town Court Complex on 29.11.2017, he overheard some persons referring his father is projected in a bad light in the magazine 'Junior Vikatan'. The respondent enquired them, purchased the magazine and handed over the same to his father. The respondent's father, who was convalescing, read the same and got defamed. In the complaint, nowhere it is stated that who are the persons read the article and questioned the respondent about the imputations. In the list of witnesses, except the respondent, none are cited as witness. Thus the certain case of the original respondent is that his father read



the article from the magazine himself and got shocked and was surprised, which will not get attracted under Sections 499 and 500 IPC.

WEB COPY 20. It is seen that the respondent did not take any steps to raise objection for the article and to ask the publisher to publish a refutation. The sworn statement reflects that it is recorded from the respondent directly in first person. The respondent admits that he does not know to read or write Tamil. Hence, the version of the respondent is hearsay and inadmissible. There is no averment that the defamatory article is read by others, questioned the same with the respondent and his father.

21. On going through the imputation, it is seen that nowhere the name of Mukanchand Bothra is mentioned and it is referred as Anbuchezeian and Bothra. Bothra is a common community name and not denoting or identifying any individual. In the absence of any specific mention about Mukunchand Bothra, he cannot claim that the imputation in the article had defamed him. It would be beneficial to extract the relevant portion of the judgment of the Hon'ble Apex Court in the case of "S.Khusboo Versus Kanniammal & another reported in 2010 AIR SCW 2494" and the same is extracted as follows:-

"23. We now turn to the question whether the appellant's remarks could reasonably amount to offence of defamation as defined under Section 499 IPC. In the impugned judgment dated 30.4.2008, the High Court observed that as to whether the appellant could claim a defence against the allegations of defamation was a factual question and thus would be decided by a trial Court. However, even before examining whether the appellant can claim any of the statutory defences in this regard, the operative question is whether the allegations in the impugned complaints support a prima facie case of defamation in the first place. It is our considered view that there is no prima facie case of defamation in the present case. This will become self-evident if we draw attention to the key ingredients of the offence contemplated by Section 499 IPC, which reads as follows:

499. Defamation.- Whoever, by words either spoken or intended to be read, or by



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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.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. ..."

(emphasis supplied) The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499 further states that 'It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.'

24. With regard to the complaints in question, there is neither any intent on part of the appellant to



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cause harm to the reputation of the complainants nor can we discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. As mentioned earlier, the appellant's statement published in 'India Today' (in September 2005) is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a 'company or an association or collection of persons'. It is difficult to fathom how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if we refer to the remarks published in 'Dhina Thanthi' (dated 24.9.2005) which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if we consider these remarks in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. That imputation can only be found in the complaints that were filed by the various respondents. It is a clear case of the complainants reading in too much into the appellant's remarks.

25. This takes us to the question of whether the impugned complaints were made in a bona fide manner. As we have already noted, most of the complainants are associated with the PMK, a political party which is active in the State of Tamil Nadu. This fact does add weight to the suggestion that the impugned complaints have been filed with the intention of gaining undue political mileage. It may be reiterated here that in respect of the offence of defamation, Section 199 Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for



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instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.PC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala & Ors.*, (2000) 7 SCC 552, this Court observed as under:

"The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."

26. We can also approvingly refer to an earlier decision of this Court in *G. Narasimhan & Ors. Vs. T.V. Chokappa*, AIR 1972 SC 2609. In that case a controversy had arisen after 'The Hindu', a leading newspaper had published a report about a resolution passed by the Dravida Kazhaghham, a political party, in its conference held on January 23-24, 1971. Among other issues, the resolution also included the following words:

"It should not be made an offence for a person's wife to desire another man."

The Hindu, in its report, gave publicity to this resolution by using the following words:

"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under the Indian Penal Code."

A complaint under Sections 499, 500 and 501 IPC was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a



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complaint. The Court did examine Section 198 of the Code of Criminal Procedure, 1898 (analogous to Section 199 of the Cr.PC. 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. This Court further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of Section 198 CrPC, 1898. The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed.

While deciding the case, this Court placed reliance on the judgment of the House of Lords in Knupffer Vs. London Express Newspaper Ltd. (1944) 1 ALL ER 495, wherein it had been held that it is an essential element of the cause of action for defamation that the words complained of should be published "of the complainant/plaintiff". Where he is not named, the



test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to.

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In fact, it is the reputation of an individual person which must be in question and only such a person can claim to have "a legal peg for a justifiable claim to hang on".

22.Thus, looking the case at any angle, no case is made out against the petitioners.

23.Hence, this Criminal Original Petition is allowed and the proceedings in C.C.No.145 of 2015 on the file of the XV Metropolitan Magistrate Court, George Town, Chennai is hereby quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

The XV Metropolitan Magistrate Court,
George Town, Chennai.

Cr1.O.P.No.12830 of 2020

AJS(CO)

B.VC (27/08/2021)