



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.12.2021

CORAM :

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THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.22759 & 22778 of 2017
and
Crl.M.P.Nos.13270 & 13283 of 2017

M/s.Vijay TV Pvt. Ltd.
Represented by its Authorized Signatory
Bhaskar.M.,
No.15, Jaganathan Street,
Nungambakkam, Chennai - 600 034.

... Petitioner
in Crl.O.P.No.22759 of 2017

M/s.Endemol India Pvt. Ltd.
Represented by its Managing Director,
16th Floor, Grandeur,
Veera Desai Road Extn.,
Andheri (W), Mumbai - 400 053.

... Petitioner
in Crl.O.P.No.22778 of 2017

Vs.

K.R.Kukesh
President,
Tamil Nadu Isai Vellalar Illaignar Nala Sangam,
1/271, 1st Floor, Kalamegu Salai,
Mugappair West, Chennai - 600 037.

... Respondents
in both petitions

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.No.7625 of 2017 on the file of the XIV Metropolitan Magistrate Court at Allikulam, and quash the same.

For Petitioner : Mr. Shanmuga Velayudham
Senior Counsel
for Mr. Harishankar Mani
in Crl.O.P.No.22759 of 2017

: Mr. N.R. Elango
Senior Counsel
for Mr. S.V. Pravin Rathinam
in Crl.O.P.No.22778 of 2017



For Respondent : No appearance
in both petitions

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These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.7625 of 2017 on the file of the XIV Metropolitan Magistrate Court at Allikulam.

2.Crl.O.P.No.22759 of 2017 has been filed by A1 and Crl.O.P.No.22778 of 2017 has been filed by A4, who have been arrayed as accused in a private complaint filed for defamation.

3.The case of the complainant is that, A1 was telecasting a TV Programme by name "Bigg Boss" produced by A4, conducted by A2 as a Host, and A3 acted in the Programme as a participant. In the above Programme telecasted on 14.07.2017, A3 was acting as a 'Naathaswara Vidwan' holding Naathaswaram (musical instrument) and dancing with the Naathaswaram and also throwing the Naathaswaram from one hand to other hand in a very cavalier manner. Thereafter, the above instrument was kept on the dining table and the participants were sitting and having their food items. Hence, it is the case of the complainant that, handling the said musical instrument Naathaswaram in such a cavalier manner damages the mindset of Isaivellalar Community all over the world. It is the further contention of the complainant that the musical instrument Naathaswaram is used by the Community for their livelihood and they also cherish the value of the instrument as a whole with all reverence and the people of Isaivellalar Community treat the said musical instrument Naathaswaram as a divine instrument given to their Community and the instrument is being used in a very respectful manner by the people of their Community. Hence, it is the contention of the complainant that, handling of the instrument in such a cavalier manner in a TV show, has caused imputation and lowered the reputation of the entire Isaivellalar Community. Therefore, the complainant has initiated prosecution as against the accused for defamation.

4.The petitioners before this Court are A1 and A4. Based on the above complaint, summons have been issued.

5.The learned Senior Counsel appearing for the petitioners contended that the complaint is nothing but an abuse of process of law and there is no material in the complaint to show that the petitioners have intended to cause imputation, harming any person or community. Except stating that the instrument was handled in a very cavalier manner, no other allegations have



been made as against the petitioners for causing imputation, which harmed the reputation of the Community in general. Therefore, it is their contention that, handling the instrument itself is not an imputation to lower the reputation of anyone. They further contended that, no harm whatsoever has been made to any identifiable group or person. The learned Senior Counsel further contended that, though the instrument might have been used by the Community predominantly, it cannot be said that the instrument absolutely belongs to the particular Community. In any event, the entire allegations in the complaint, when taken on its face value, would not constitute any offence of defamation. In support of their contentions, the learned Senior Counsel placed reliance on the following judgments of the Hon'ble Supreme Court :

i. S.Khushboo v. Kanniammal and another [(2010) 2 SCC (Cri) 1299]

ii. G.Narasimhan and others v. T.V.Chokkappa [AIR 1972 SC 2609]

The learned Senior Counsel concluded their arguments by stating that the entire complaint is devoid of materials to attract the offence of defamation and hence, the same is liable to be quashed.

6. There is no representation on behalf of the de facto complainant, despite his name being printed in the cause list.

7. Heard the learned Senior Counsel appearing for the petitioners and also perused the entire materials available on record.

8. The crux of the allegations made in the complaint are as follows :

"6. The complainant submits that the above said BIGG BOSS telecasted on 14.7.2017 in the Vijay TV, the 3rd accused was acting as a Nadasvaram (Nagasvaram) Vidwan holding the Nadasvaram and dancing with Nadasvaram and also throwing the Nadasvaram from one hand to the other in a very cavalier manner. Thereafter the Nadasvaram was kept on the dining table and the participants were sitting and having their food items. All these things have insulted and damaged the mindset of Isai Vellalar community all over the word."

The above allegations are said to be the defamatory statements, which lowered the reputation of the Isaivellalar Community.

9. It is relevant to extract the definition of defamation under Section 499 IPC :

"499. Defamation — Whoever, by words either spoken or intended to be read, or by signs or by visible



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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."

10.To attract an offence of defamation, there must be statement(s) or words either spoken or intended to be read, or by signs or by visible representations, which 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. Though Explanation (2) indicates that the imputation concerning a company or an association or collection of persons would also amount to defamation, the statements in the present complaint, alleged to be the defamatory statements referred above, indicate that there was no intent or motive whatsoever to cause harm to any person or community. The only grievance of the complainant is that the instrument was handled in a very cavalier manner and the actors were sitting around and the instrument was kept in the dining table and the actors were having food at the relevant point of time.

11.This Court is of the view that, mere handling of an instrument by a person in a cavalier manner, cannot be construed as an act causing imputation with an intention to lower the reputation of any person or Community. It is to be noted that, merely because the said instrument was predominantly used by a particular community, non-handling of such instrument by some others with the same spirit as the community handles the



instrument, cannot be called as an act causing defamation to lower the reputation of that particular community. Moreover, the statements made in the complaint would also indicate that they are not targeted against any person or community.

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12.The only allegation is that the instrument was handled in a cavalier manner as stated above. Handling of an instrument may differ from one person to another. Some may be experts in handling the instrument and some may not be. Therefore, mere handling of a particular instrument by a person in a cavalier manner, who is not an expert in handling such instrument, cannot be construed to be a defamation, which lowers the reputation of a particular community. If such an interpretation is given or accepted, there is no end for filing such type of complaints for every instrument. Handling of an instrument always depends upon a person's skills, etc. Therefore, when a person is said to have not handled an instrument properly, merely because such instrument was predominantly used by one particular community, at no stretch of imagination it can be said that such handling had caused imputation to lower the reputation of that particular community.

13.In this regard, it is also useful to refer to the judgments relied upon by the learned Senior Counsel appearing for the petitioners :

In G.Narasimhan and others v. T.V.Chokkappa (supra), the Hon'ble Apex Court has held as follows :

"7.It may be recalled that though the complaint alleged that the impugned news item contained imputations against the sponsors of the said resolution, no such imputations, either against the respondent or the sponsors of the resolution, are to be found therein. A perusal of the news items shows that it concerned itself with the protest demonstration against the procession taken, out on that occasion and the tableau presented in the procession, the resolution in question passed at the conference held there after and the fact of the said E.V.Ramaswami Naicker having presided over that conference. The news item, thus, did not mention either the respondent or any of the alleged sponsors of the said resolution either by name or otherwise."

14.In S.Khushboo v. Kanniammal (supra), the Hon'ble Apex Court has held as follows :

"37.It may be reiterated here that in respect of the offence of defamation, Section 199 Cr.P.C mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is



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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 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) Cr.P.C. 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."

15.Keeping in mind the ratio laid down in the above judgments, as the statements averred in the complaint do not target against any individual or group of persons or community or readily identifiable group of people, when such allegations are pressed into service, it will not attract the offence of defamation under Section 499 IPC.

16.In the light of the narrative supra, this Court is of the view that, continuance of prosecution based on the present complaint is a futile exercise and abuse of process of law. Therefore, this Court is inclined to quash the entire complaint.

17.Accordingly, the proceedings in C.C.No.7625 of 2017 on the file of the XIV Metropolitan Magistrate Court at Allikulam, is quashed in entirety and as a sequel, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

18.It is also stated that the other accused A3 has not filed any quash petition. When the entire complaint in C.C.No.7625 of 2017 itself is quashed, it applies to all the other accused also.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mkn



To

The XIV Metropolitan Magistrate,
Allikulam.

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+2 ccs to Mr.B.Karthikeyan, Advocate Sr.NO. 62944

+2 ccs to Mr.S.V.Pravin Rathinam, Advocate Sr.NO. 62943

CrI.O.P.Nos.22759 & 22778 of 2017

PMK (CO)

A.SK (21.12.2021)