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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.O.P.No.19740 of 2017 and  
CRL.M.P.Nos.11908 & 11909 of 2017

R.Vivekanandan ...Petitioner/Accused

Vs

P.Jagan ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the impugned complaint in C.C.No.625/2017 on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.R.Karthikeyan

For Respondent : No appearance

ORDER

This petition has been filed to quash the private complaint filed for the offence under section 500 of IPC in C.C.No.625 of 2017 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

2. It is the contention of the defacto complainant that the petitioner has caused imputation by calling him as impotent in the public and also in front of relatives and not stopping with that, the petitioner has filed an Original Petition in O.P.No.2992 of 2015 before the I Additional Judge, Family Court, Chennai against the defacto complainant and his mother and in that Original Petition, he has filed an interlocutory application in I.A.No.2552 of 2016, wherein he has stated that "Since the first respondent has no potency to have the child on his own."



Hence, it is the contention of the petitioner that the above statement is made in public which damaged his reputation, thereby initiated proceedings under section 500 of IPC.

3. The learned counsel for the petitioner submitted that O.P.No.3992 of 2015 has been filed for custody of the child of the petitioner and he is the father of the child. The defacto complainant is the brother-in-law of the petitioner. After the death of the wife of the petitioner, the respondent and his mother detained the child and the petitioner has filed a petition for custody of the child. Therefore, some allegations made in an interlocutory petition cannot be taken as a defamatory statement. It is his further contention that there is no materials available on record to show that such statement has in fact harmed the reputation of the petitioner. Hence, prayed to quash the proceedings as against the petitioner.

4. Despite service of notice and name printed in the cause list, there is no representation for the respondent.

5. The petitioner is the brother-in-law of the defacto complainant and the defacto complainant has filed a petition before the I Additional Judge, Family Court, Chennai for custody of the child. These facts are not in dispute. The defacto complainant filed a private complaint against the petitioner stating that he has harmed his reputation by calling him as impotent in public and also in front their relatives. Further, he has made a statement in an interlocutory application filed before the I Additional Family Court stating that "Since the first respondent has no potency to have the child on his own."

6. It is not in dispute that that private complaint has been filed for lowering reputation of the respondent. It is the contention of the defacto complainant that statements made in the interlocutory application filed by the petitioner amounts to imputation. It is to be noted that the Original petition has been filed for the custody of the petition. The allegations in the interlocutory application cannot be considered as imputation at all. If the statements stated in the interlocutory applications are considered as an imputation and complaint is entertained and there will be a prosecution as a counter blast for every application. In this regard, it is relevant to refer a judgment of this Court in Geetha Vs. A.K.Dhamodharan in Crl.R.C.No..784 of 2009, dated 28.06.2021, wherein it has been held as follows :

"Here, it is pertinent to note that admittedly, the case is subjudice and it is yet to be disposed of. It is confined to comments on cases which are decided by Court and not to those cases which are subjudice. It does not cover pending matters in Court. Pending matters are immune from comments. Considering the



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same, the respondent/husband herein has filed a divorce petition on the ground of adultery and cruelty. He also filed a suit and made an allegation against her wife, stating that she is leading adultery life with one Anju @ Prakash, who is none other than friend of her elder son. He also pleaded that it is an illegal act and the case is yet to be disposed of. In such circumstances, whether the fact has been true or not is yet to be decided. Hence, whether the statement is true or defamatory and that has been decided after the disposal of the case. In such circumstances, I am of the opinion, as per the dictum of 1987 (3) SCC 34, pending matters are immune from comments made by the parties. The averments mentioned in the pleadings filed before the judicial forum is not coming under the purview of Section 499 I.P.C., wherein the proceedings are pending and subjudice. Hence, there is no prima facie case has been made out for taking cognizable offence under Sections 499, 500, 501 and 502 of I.P.C. against the respondent/husband. So the learned Magistrate has considered all the aspects in proper perspective and came to the correct conclusion and hence, the criminal revision is dismissed as devoid of merits."

7. In the light of the above judgment, the averments made in the pending matters before the judicial forum will not come under the purview of Section 499 I.P.C., wherein the proceedings are pending and subjudice. In this present case also, the main petition filed for custody of the child is pending before the I Additional Family Court and there is no material available from the complaint that such an imputation or statement has lowered the reputation of the defacto complainant. Therefore, complaint for prosecution for the alleged offence punishable under Section 499 of the Indian Penal Code cannot be entertained. Therefore, this Court is of the considered view that continuation of prosecution is nothing but a waste of time.

8. Accordingly, this Criminal Original Petition is allowed and the private complaint filed in C.C.No.625 of 2017 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar



vrc/kbs

To

The VII Metropolitan Magistrate,  
George Town, Chennai.

+1cc to Mr.R.Karthikeyan, Advocate SR. No.58924

CRL.O.P.No.19740 of 2017 and  
CRL.M.P.Nos.11908 & 11909 of 2017

NMI (CO)  
PR (03/12/2021)