

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.1368 of 2018
and
Crl.M.P.No.15868 of 2018

State Rep. By,
The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai-7.

... Petitioner/Complainant

Vs.

1. S.Jeyapragash,
S/o.M.Rajasekar

2. Dr.S.M.Balaji,
S/o.Subramanian Muthiah

... Respondents/A1 & A2

3. Dr.R.Gunaseelan,
S/o. (Late) Dr.B.P.Rajan

... Respondent/
de facto complainant

(* R3 impleaded as per order in Crl.M.P.No.7930/2020
in Crl.R.C.No.1368/2018, dated 18.12.2020)

PRAYER: This Criminal Revision has been filed, under Sections 397 and 401 Cr.P.C., seeking to set aside the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.2017 of 2017 dated 28.09.2018.

For Petitioner : C.Iyyappa Raj,
Additional Public Prosecutor

For R-1 & R2 : Mr.J.Suresh

For R3 : Mr.B.Kumar, Senior Counsel
for Mr.S.Ramachandran

ORDER

(This case has been heard through video conference)

This Criminal Revision has been filed by the Petitioner/Complainant, seeking to set aside the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No.2017 of 2017, dated 28.09.2018.

2.The brief facts of the case:

The impleaded respondent/de facto complainant Dr.R.Gunaseelan, is a Dental Surgeon and specialist in Oral and Maxillofacial Surgery and he is also a Member of the Indian Society for Dental Research and International Association of Oral and Maxillofacial Surgeons. Dr.Gunaseelan /de facto complainant and other surgeons from India participated in an International Conference of Oral and Maxillofacial Surgeons at Barcelona, Spain on 21st October 2013,, and the de facto complainant, presented a scientific paper on Oral and Maxillofacial Surgery. After returning from Barcelona, one Dr.Kishore Nayak, a friend of the de facto complainant/Dr.Gunaseelan had forwarded an e-mail that was received by him from the e-mail ID viz., mfssurgeons@gmail.com with derogatory and defamatory contents against Dr.Kishore Nayak, Dr.George Paul and the de facto complainant/Dr.Gunaseelan. The crucial contents of the e-mail is extracted hereunder:

"The HMA trust presided by Drs.Kishore Nayak, George Paul, Gunaseelan Rajan had been involved in a malpractices supposedly through Dental Council of India and has been raided by CBI. Dr.Gunaseelan Rajan was arrested repeatedly by CBI in this regard. Subsequently, their DCI memberships were stripped by the Tamil Nadu State Government. The ill gotten money has been spent by HMA trust members to build medical college, hospitals, renovate clinic and build a construction empire for his son at Bangalore."

3.Apart from the above defamatory statements, there were also other allegations of fraud. Since, the sender of the mail was not traceable, the de facto complainant/Dr.Gunaseelan gave a complaint dated 01.11.2013, based on which, the Petitioner/Complainant registered a case in Crime No.30 of 2014 on 11.10.2014, for the offences under Sections 500, 507 IPC and Section 66-A of the Information Technology Act, 2008 (for short "the IT Act") against the suspect who had sent the mail from mfssurgeong@gmail.com

4.The investigation and the case was taken over by one Anbazhagan, Inspector of Police and the mail was found to be replicated from the mail of the 1st respondent/S.Jeyapragash (A1), who is an employee under the 2nd respondent Dr.S.M.Balaji (A2). During the course of investigation, the fact came to light that on account of personal and professional rivalry between the 2nd respondent/Dr.S.M.Balaji (A2) and the de facto complainant/ Dr.Gunaseelan, a false e-mail ID in the name of mfssurgeons@gmail.com had been created by the 1st respondent/S.Jeyapragash (A1), an employee of Balaji Dental and Cranofacial Hospital, Chennai, which was run by the 2nd respondent/Dr.S.M.Balaji (A2) and the impugned e-mail had been sent to all the Dental Surgeons throughout the world to tarnish the image of the defacto complainant. The 1st respondent S.Jeyapragash (A1) was arrested by the police and the 2nd respondent Dr.S.M.Balaji (A2) was granted anticipatory bail.

5.After completing the investigation, Anbazhagan, the Investigating Officer, filed the final report dated 02.06.2015, before the learned XI Metropolitan Magistrate, Chennai, for the offences under Sections 506(I), 507 IPC and Section 66-D of the IT Act, 2008, against the 1st respondent S.Jeyapragash (A1) and the 2nd respondent Dr.S.M.Balaji (A2). It may be apposite to extract the relevant paragraphs from the final report as under:

"On the above complaint, during the course of preliminary enquiry, the requisition was sent on 12.11.2013 to Google Service Provider to furnish the Internet Protocol (IP) logs for the above said e-mail ID mfssurgeons@gmail.com. The documents furnished by the Google Service Provider, it is ascertained that the login IP was 101.220.244.157 on 23.10.2013 at 15.24.36 UTC (20:54:36 IST). The user details for the alleged IP was obtained from Aircel Broadband Service and found to be originated from the Data Card number 7299008833 which belong to one Mr.Jeyapragash, No.37/68, Srirampet CIT Nagar, Nandhanam, Chennai 600035. A case in CCB Crime No.30/2014, U/s.500, 506(ii), 507 IPC and 66 A of the IT Amendment Act, 2008 was registered on 11.01.2014 at 21.00 hrs. and taken up for investigation.

There was a previous enmity between the 2nd accused and the complainant and other maxillofacial surgeons, the 2nd accused has instructed the 1st accused to send malicious and

defamatory email messages to the members of IAOMS. The 2nd accused has given password of his email id smbalaji@gmail.com and asked him to copy the contents as in the above said email message to forward the same to the email addresses already given by the 2nd accused. The 1st accused had created a fake name MFS Surgeons and an email id mfssurgeons@gmail.com from his machines, laptop by using his data Aircel data card no.+917299008833 IMEI no.867648016369751 SIM Aircel 89914100000159577209 on 23.10.2013 at 15.24.35 UTC (20:54:35 IST) IP 101.220.244.157. The 1st accused had sent the content copied from the 2nd accused email id smbalaji@gmail.com to all the email addresses provided by the 2nd accused. Some addresses were also copied from IOAMS website. On the instruction of 2nd accused the 1st accused had threatened through net calls."

6.The then Presiding Officer at the XI Metropolitan Magistrate Court, Saidapet, Chennai before whom the final report was filed, refused to take cognizance of the offences disclosed in the final report and dismissed the same on 08.09.2015. The dismissal had been done without putting the de facto complainant/ Dr.Gunaseelan, on notice. Against the refusal to take cognizance Dr.Gunaseelan, the de facto complainant filed CrI.R.C.No.1170 of 2015, before this Court and this Court, by an order dated 29.01.2016, set aside the order dated 08.09.2015, passed by the XI Metropolitan Magistrate, Chennai by relying upon the decision of the Hon'ble Supreme Court in Bhagwant Singh Vs. Commissioner of Police MANU/SC/0063/1985 : 1985 (2) SCC 537 and held that the Magistrate ought not to have rejected the final report without hearing the de facto complainant/Dr.Gunaseelan, and directed the Magistrate to give an opportunity to the de facto complainant and thereafter, to take a decision on the final report filed by the police.

7.By then, the earlier Presiding Officer, who was there on 08.09.2015, was transferred and one Mr.S.Prakash, succeeded him as XI Metropolitan Magistrate, Saidapet, Chennai. Based on the order passed by this Court in CrI.R.C.No.1170 of 2015 and the Protest Petition filed by the defacto complainant/Dr.Gunaseelan and after hearing the Assistant Public Prosecutor, the learned XI Metropolitan Magistrate finding several lacunae like absence of certificate under Section 65-B of the Evidence Act, 1872, and lacunae in the collection of evidence and also relying upon the documents filed by Anbazhagan, Investigating Officer, directed

for further investigation u/s.156(3) Cr.P.C. by an order dated 24.03.2017.

8. Based on the order dated 24.03.2017, the Investigating Officer conducted further investigation and filed the final report dated 02.11.2017, before the said Magistrate, deleting the name of the 2nd respondent Dr.S.M.Balaji (A2) from the array of accused and arraying only the 1st accused S.Jayapragash (A1) as the sole accused in the case. The learned Magistrate, once again issued notice to the de facto complainant/Dr.Gunaseelan and after hearing his counsel and after perusal of materials placed on record, finding that there was prima facie case made out for taking cognizance as against the 1st respondent S.Jeyapragash (A1) and also the 2nd respondent Dr.S.M.Balaji (A2) passed the impugned order dated 28.09.2018 and took up the case on file for the offences under Sections 506(I) and 507 IPC and Section 66-D of the Information Technology Amendment Act, and issued summons to the 1st respondent S.Jeyapragash (A1) and the 2nd respondent Dr.S.M.Balaji (A2). Against the order dated 28.09.2018, the present Criminal Revision Case has been filed by the Petitioner who is the Investigating Officer.

9. Heard the counsels.

10. Mr.C.Iyyappa Raj, learned Additional Public Prosecutor, would submit that the Petitioner/I.O had conducted a fair investigation and finding that there is no material as against the 2nd respondent/Dr.S.M.Balaji (A2) had filed the final report, only as against the 1st respondent S.Jeyapragash (A1), whereas, the learned Magistrate, without properly analysing the materials on record, had taken cognizance against the 2nd respondent/Dr.S.M.Balaji (A2) and issued summons to him. He would submit that the Petitioner/I.O is an independent person and he has no grudge against either the defacto complainant or the 2nd respondent and he had fairly conducted investigation. However, he would submit as against the very same impugned order in CrI.M.P.No.2017 of 2017, dated 28.09.2018, the 1st and 2nd respondents viz., A1 and A2 have filed quash petitions in CrI.O.P.Nos.26924 & 28725 of 2019 and this Court by a detailed order, dated 28.09.2020, had dismissed the above quash petitions. He would further submit that this Court taking into consideration, the materials on record had rendered a finding that the final report and the accompanying documents are sufficient enough to take cognizance of the offences and issuance of process to both the accused. He would further submit that due to some communication gap the pendency of the present Revision was not brought to the knowledge of this Court, when CrI.O.P.Nos.26924 & 28725 of 2018 were disposed of by this Court

on 28.09.2020. He would fairly concede that when this Court had already held that there are sufficient materials against the 1st and 2nd respondents viz., A1 and A2, this Criminal Revision Case would amount to re-agitating the earlier order. Further, he would submit that the appellant/accused has not committed any mistake and he has conducted the investigation in accordance with law.

11.Mr.J.Suresh, learned counsel appearing for the 1st and 2nd respondents would submit that the investigation was done in a fair manner and the Investigating Officer finding no incriminating materials against the 2nd respondent has rightly filed the final report deleting the 2nd respondent. However he would admit that the 1st and 2nd respondents had approached this Court challenging the issuance of summons dated 28.09.2018 in CrI.M.P.No.2017 of 2017 by filing CrI.O.P.Nos.26924 & 28725 of 2018, and this Court had dismissed the same on 28.09.2020, finding that there are incriminating materials against him. He would also submit that the order passed in CrI.O.P.Nos.26924 & 28725 of 2018, dated 28.09.2020, is not subjected to challenge before the superior forum.

12.Mr.B.Kumar, learned Senior Counsel appearing for the impleaded respondent Dr.R.Gunaseelan/de facto complainant would submit that the learned Magistrate, finding that there are prima facie and sufficient materials against both the accused for having committed the offences, took cognizance and directed to issuance of summons against both the accused by the impugned order, dated 28.09.2019. He would further submit that the very same impugned order was challenged by way of quash petitions by the respondents / accused in CrI.O.P.Nos.26924 & 28725 of 2018, and this Court after hearing them and the prosecution finding that there are prima facie and sufficient materials to proceed against them had passed a detailed order on 28.09.2020. When such being so, entertaining this Criminal Revision Case, would amount to a second round of litigation on the very same point. He would further submit that though concept of res judicata is alien to criminal Law, the present Criminal Revision Case by the petitioner / I.O. is nothing but a re-agitation in the form of a separate Revision. Though, the Petitioner / I.O was aware about the pendency of the criminal revision, he had failed to bring it to the notice of the Court during the hearing of the quash petitions. He would further submit that when the quash petitions were heard, the State Public Prosecutor had also represented that the respondents are bound by the orders that is passed by this Court and having conceded to the order the Petitioner/I.O cannot now re-agitate this criminal revision petition.

13.The order sought to be set aside by the petitioner is passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.2017 of 2017, dated 28.09.2019. There was an earlier round of litigation in respect of the very same order by the accused. The 1st & 2nd respondents / A1 & A2 have earlier preferred quash petitions in Crl.O.P.Nos.26924 & 28725 of 2018, challenging the very same order, taking cognizance and issuance of summons against them. This Court, by a detailed common order dated 28.09.2020, had dismissed the petitions and rendered a finding that the final report and the accompanying documents are sufficient enough to take cognizance of the offences and issued process against the 1st and 2nd respondents and this Court had also justified the order of issue of process for prosecuting the 1st and 2nd respondents.

14.At this juncture, it is necessary to refer to the relevant paragraphs (Para 27 to 29) in Crl.O.P.Nos.26924 & 28725 of 2018;

"27.The short question is, on the materials filed by the police, whether there is sufficient ground for proceeding against the accused. The materials collected by the police show that Jeyapragash (A1) is not a Dental Surgeon, but, an employee of Dr.Balaji (A2), who is a Dental Surgeon. Dr.Balaji (A2) is a member of the Dental Surgeons Association of India. The e-mail ID mfssurgeons@gmail.com is not the personal e-mail ID of either Jeyapragash (A1) or Dr.Balaji (A2).

28.The police investigation shows that the said e-mail ID was created with the Mobile No:7299008833 of Jeyapragash (A1). Jeyapragash (A1) has no animosity towards either Dr.Gunaseelan (defacto complainant) or Dr.Kishore Nayak. The statement of Dr.Kishore Nayak shows that there was rivalry between his group and Dr.Balaji's (A2) group in the affairs of the Association. This, by itself, is sufficient for an ordinary prudent man to draw a legitimate inference that Jeyapragash (A1) and Dr.Balaji (A2) had, in tandem, acted in creating the e-mail ID and sending the impugned e-mail to all the Dental Surgeons, both in India and abroad. If they had wanted to express their honest opinion about the way DrGunaseelan (defacto Complainant) and Dr.Kishore Nayak are administering the Association, they could have

sent the e-mail from their personal e-mail ID. The impugned e-mail ID mfssurgeons@gmail.com, proprio vigore, would make one think that it is an official e-mail ID. This is one form of "spoofing". This is far more dangerous than printing and circulating scandalizing materials. By using the medium of e-mail, thousands of persons can be reached in one stroke all over the world and the reputation of a person can be marred. This Court posed the following question to the counsel. "If a person creates an e-mail ID, "madrashighcourtofficial@gmail.com " and sends a mail to all the lawyers in the country saying,

"On account of spike in spread of COVID-19 pandemic in the city of Chennai, holidays have been declared for the High Court from 7th September to 11th September 2020, both days inclusive, under the Negotiable Instruments Act, 1881.

-Registrar General"

disastrous consequences will follow. Lawyers, who would have wanted to file cases in that week to save limitation, may not file and thereby lose their remedy. There are thousands of Lawyers, who are not tech-savvy, may not even know what is the official e-mail ID of the Madras High Court. To this question, there was no answer from any counsel. In this case, since the parties are affluent, they are all able to engage the cream of the Chennai Bar to doggedly fight the legal battles at all levels. The police also shifted sides like the weathercock. One cannot imagine the plight of ordinary mortals, who suffer daily and silently the onslaught to their reputation by internet guerilla warriors. The sentry in the police station will not even permit the aggrieved to enter the station for giving complaint. Anyone can be named and shamed in this internet age and post truth world.

29.Coming to the facts of this case, the final report and the accompanying documents are sufficient enough to take cognizance of the offences and issue process to Jeyapragash (A1) and Dr.Balaji (A2). Therefore, in the opinion of

this Court, there are sufficient materials against Jeyapragash (A1) and Dr.Balaji (A2) to be prosecuted for the said offences, justifying the order of issue of process by the XI Metropolitan Magistrate, Chennai.

In the result, these criminal original petitions are dismissed as being devoid of merits. The order of interim stay already granted by this Court vide orders dated 20.11.2018 and 10.12.2018 in Crl.M.P.Nos.15540 & 16774 of 2018, respectively, shall stand vacated. It is made clear that whatever is stated above is only for the limited purpose of deciding these criminal original petitions and the trial Court shall proceed with the case in accordance with law unmindful of this order. Jeyapragash (A1) and Dr.Balaji (A2) are directed to appear before the XI Metropolitan Magistrate Court, Chennai, on at 10.30 a.m., on 02.11.2020."

15.Having heard the counsels and perused the materials on record, this Court is satisfied that there are sufficient materials against the respondents 1 & 2 for issuance of process. This Court does not find any infirmity in the order passed by the learned Magistrate dated 28.09.2018. Further, another Bench of this Court has also found that there are sufficient materials against the respondents and also justified the order of issuance of process against both the accused/Respondents 1 & 2 and dismissed their petitions challenging the impugned order. Further, during earlier round of litigation, the State Public Prosecutor had also contended that the prosecution is bound by the orders passed by this Court. When such being the case, the present Revision is nothing but revisiting and re-agitating the earlier order passed by this Court. This court reiterates that there is no infirmity or illegality in the order passed by the learned Magistrate. The present Revision lacks merit and deserves to be dismissed.

16.In view of the above, the Criminal Revision Case stands dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

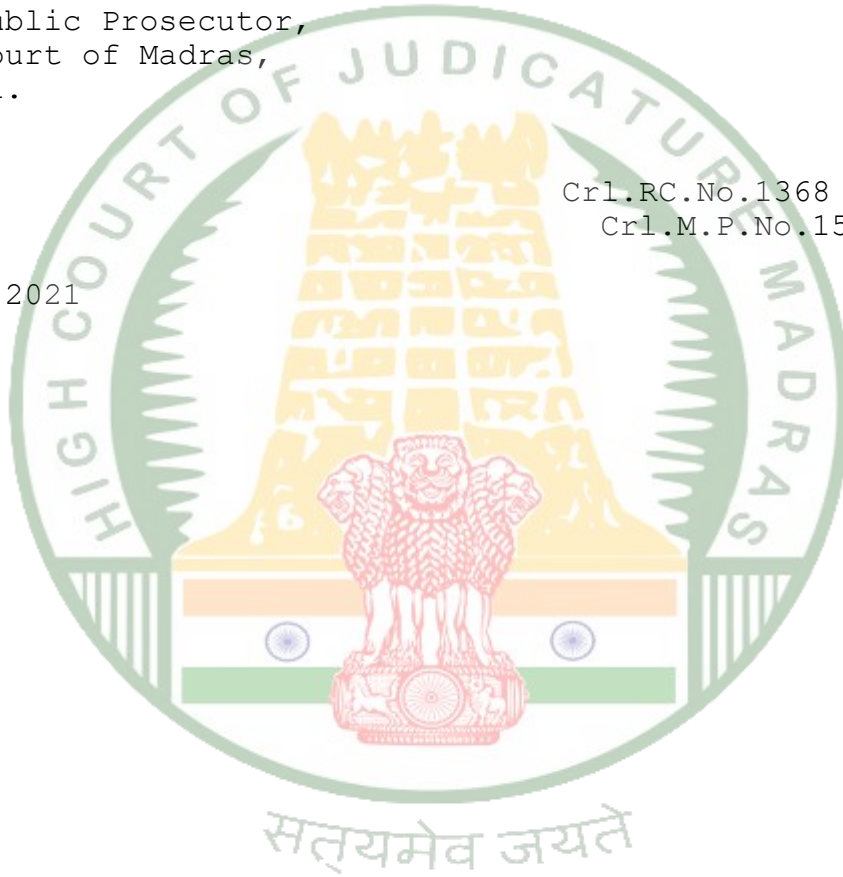
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To

1. The XI Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai-7.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

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CSR 22.03.2021

Crl.RC.No.1368 of 2018 and
Crl.M.P.No.15866 of 2018



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