



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G. ILANGO VAN**

Crl.O.P.(MD)No.10815 of 2021

CRL.M.P.(MD) .No.5506 of 2021

Dr.Kannadasan ... Petitioner/Sole Accused
Vs.

1.The State rep.by the
Inspector of Police,
Annavasal Police Station,
Pudukottai District. ... 1st Respondent/ Complainant

2.Dr.Mohan ... Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the First Information Report in Crime No.86 of 2021 pending on the file of the 1st respondent Police and quash the same as illegal.

For Petitioners : Mr.B.Janarth Kumar
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the First Information Report in Crime No.86 of 2021 pending on the file of the 1st respondent Police and quash the same as illegal.

2. The case of the prosecution is that on 27.09.2019, a false information has been spread in a Whatsapp group namely "AMO Thanjai" to defame the defacto complainant and his family members. When he was working as DSMO, he initiated departmental action against the petitioner and later he retired in the year 2019. To wreck vengeance, the petitioner abused the defacto complainant and his family members through Whatsapp group. On the basis of the complaint



given by the defacto complainant, no action was taken. Thereafter, he filed a petition before the District Munsif cum Judicial Magistrate, Illupur under Section 156(3) of Cr.P.C. seeking a direction to the respondent Police to register the case and investigate the matter and the same was ordered on 18.01.2021. Based upon which, a case in Crl.M.P.No.114 of 2021 has been registered on 18.01.2021 for the offence under Section 500 of IPC and Section 66A of IT Act, 2000.

3. Seeking quashment of the First Information Report, this petition has been filed mainly on the ground that as per the judgment of the Hon'ble Supreme Court of India in the case of Shreya Singhal vs. Union of India reported in (2015) 5SCC 1, Section 66A of the Information Technology Act, 2000 has been struck down as unconstitutional. Therefore, registering the First Information Report on the offence under Section 66 A of the Information Technology Act is without jurisdiction and illegal. The second ground is that the offence under Section 500 IPC is a non-cognizable offence. Hence, only the aggrieved party can file a private complaint before the concerned Magistrate. On this ground, the present petition has been filed seeking quashment.

4. Since a limited question of law is involved in this matter, notice was not ordered to the second respondent and the matter is taken up for final disposal at the time of admission itself.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

6. As rightly pointed out by the learned counsel appearing for the petitioner, the Hon'ble Supreme Court in the above said case has struck down the Section 66A of the Information Technology Act as unconstitutional. Now, it is no more in the statute book. So, on that basis, the complaint registered under Section 66A of the Information Technology Act is illegal and liable to be quashed.

7. As far as the offence under Section 500 IPC is concerned, it is a non-cognizable offence and only the aggrieved party can file a private complaint before the concerned Court. Except that, the police investigation on the basis of the First Information Report is not maintainable. Even though the case has been registered on the basis of the order passed by the learned Judicial Magistrate, Illupur dated 18.01.2021, Section 66A of the said Act has been struck down by the Hon'ble Supreme Court. Hence, liberty is granted to the defacto complainant to file a private complaint before the concerned Court, if so advised.

8. With these observations, this Criminal Original Petition stands allowed and the proceedings in Crime No.86 of 2021 pending on



the file of the 1st respondent Police is quashed. Consequently, connected miscellaneous petition is also closed.

9. Let the order copy is also sent to the second respondent.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police,
Annavasal Police Station,
Pudukottai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.JANATHKUMAR, Advocate (SR-25809[F] dated 10/08/2021)

CrI.O.P. (MD) No.10815 of 2021
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MGJ(19.08.2021) 3P 4C