



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl O.P.(MD)No.13632 of 2021

and

Crl M.P.(MD)No.7108 of 2021

M.Jeyaraj ... Petitioner/Accused No. 2
Vs.

1.State, rep by the Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
(Crime No.163 of 2012) ... Respondent/Complainant

2.K.Thiruvengadam ... Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the case in C.C.No.211 of 2021 in the Court of the Judicial Magistrate-I, Srivilliputhur.

For Petitioner : Mr.R.John Sathyan
For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor for R1
No Appearance for R2

ORDER

The petitioner is figuring as the second accused in C.C No.211 of 2021 on the file of the Judicial Magistrate No.1, Srivilliputhur. The case of the prosecution is as follows :

The daughter of the defacto complainant had given a criminal case against one Palraj before the All Women Police Station, Srivilliputhur for the offences under Sections 417 and 376 of IPC. Palraj was arrested. While publishing a news report on this, the accused had disclosed the identity of the victim. Hence, the accused have committed the offence under Section 228A of IPC. The first accused in the case is the editor of the news daily. The petitioner herein was implicated as the second accused as it was he who as reporter filed the news report. To quash the impugned proceedings in so far as he is concerned, this petition has been filed.



2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that no case has been made out for quashing the impugned proceedings and he prayed for dismissal of this petition. Though the de-facto complainant has been served and his name is also printed in the cause list, he has not chosen to enter appearance.

3.I carefully considered the rival contentions and went through the materials on record. Section 228A of IPC was inserted by Central Act 43 of 1983 w.e.f 25.12.1983 to penalise disclosure of identity of victims of certain offences. Section 228 A(1) of IPC is as follows :

"Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine."

The Hon'ble Supreme Court has time and again stressed the need to maintain the confidentiality of the identity of the victim in sexual offences. Courts have been cautioned against mentioning the names of the victims in their orders and proceedings. Some of the leading decisions pertaining to Section 228 A of IPC are Bhupinder Sharma vs. State of Himachal Pradesh (2003) 8 SCC 551, Nipun Saxena and Ors. vs. Union of India (UOI) and Ors. (2019) 2 SCC 703, X vs. The State of Jharkhand and Ors. (2021) 2 SCC 598 and State of Punjab vs. Ramdev Singh (2004) 1 SCC 421.

4.In this case, the identity of the victim was disclosed and as such Section 228 A of IPC got attracted. But the question is whether the petitioner can be prosecuted for the offence. It is settled law that strict interpretation is required to be given to penal statutes (**Aparna A. Shah vs. Sheth Developers Pvt. Ltd. and Ors. (2013) 8 SCC 71**). As per Section 228 A of IPC, whoever prints or publishes the name or any matter which may make known of the identity of the victim referred to in the provision commits the offence. When it comes to a registered newspaper, the expression "publisher" means the publisher of a newspaper (Rule 2 of the Registration of Newspapers (Central) Rules, 1956). Section 5(2) of the Press and Registration of Books Act, 1867 r/w. Rule 3 of the The Registration of Newspapers (Central) Rules, 1956 mandates the making of following declaration in Form - I :



¹⁹[FORM OF DECLARATION

FORM I

(See rule 3)

I,, declare that I am the *printer or *publisher or *printer and publisher of the newspaper entitled.....to be *printed at.....and *published at.....or to be *printed and published at.....and that particulars in respect of the said newspaper given hereunder are true to the best of my knowledge and belief.

1. Title of the newspaper.

2. Language(s) in which it is (to be), published.

3. Periodicity of its publication.

(a) Whether a daily, tri-weekly, bi-weekly, weekly, fortnightly, or otherwise.

(b) In the case of a daily, please state whether it is a morning or evening newspaper?

(c) In the case of a newspaper other than a daily, please state the day(s)/date(s) on which it is (to be) published.

4. Retail selling price of the newspaper per copy.

(a) If the newspaper is for free distribution, please state that it is "for free distribution".

(b) If it has only an annual subscription and no retail price, please state the annual subscription.

5. Publisher's name.

Nationality.

²⁰[(a) Whether a citizen of India?

(b) If a foreigner, please state the country of origin.]

Address.

6. Place of publication (please give the complete postal address).

7. Printer's name.

Nationality.

²⁰[(a) Whether a citizen of India?

(b) If a foreigner, please state the country of origin.]

Address.

²¹[8. Name(s) of the printing press(es) where the newspaper is actually printed and the true and precise description of the premises on which the press(es) is/are installed.]

9. Editor's name.

Nationality.

²⁰[(a) Whether a citizen of India?

(b) If a foreigner, please state the country of origin.]

Address.



REGISTRATION OF NEWSPAPERS (CENTRAL) RULES, 1956

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10. Owner's name(s).

(a) Please state the particulars of individual(s) or of the firm, Joint Stock Company, trust, co-operative society or association which owns the newspaper.

(b) Please state whether the owner owns any other newspaper and, if so, its name, periodicity, language and place of publication.

11. Please state whether the declaration is in respect of—

(a) a new newspaper, or

(b) an existing newspaper,

(c) in case the declaration falls under item (b), the reason for filing the fresh declaration.

Date.....

Signature.....

Name (in block letters).....

Designation.....

*Strike out whatever is not applicable.

Note.—Separate declarations should be filed by the printer and the publisher, unless the printer and the publisher is the same person.]

5. Nowhere the prosecution has alleged that the name of the petitioner herein has been mentioned in Form-I either as publisher or printer. The petitioner is only a reporter of the news daily in question. He is not its printer or publisher. When the penal provision envisages prosecution of the printer or publisher, the petitioner who does not fall under either of the categories cannot be made to face criminal trial. We are not concerned with a post in social media. The expression "whoever prints or publishes" occurring in Section 228 A of IPC when it is invoked in the case of an offending publication in a registered newspaper can refer only to the printer or publisher mentioned in Form-I declaration under Rule 3 r/w.5 of the Act 25 of 1867. Since the petitioner is neither the printer nor the publisher of the news daily, continuance of the impugned prosecution against the petitioner herein will constitute a clear abuse of legal process. To secure the ends of justice, the impugned proceeding deserved to be quashed. It is accordingly quashed insofar as the petitioner is concerned. The criminal original petition is allowed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



skm

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 Judicial Magistrate No.I, Srivilliputhur.

2.The Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.

3. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.R. JOHNSATHYAN, Advocate (SR-35010[F] dated 18/11/2021

Crl O.P.(MD)No.13632 of 2021
and
Crl M.P.(MD)No.7108 of 2021
17.11.2021

KM(CO)

KB(30.11.2021) 5P 5C