



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 22.02.2021

DATE ON WHICH PRONOUNCED : 23.03.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.14533 of 2017

and

Crl MP (MD)Nos.9685 & 9686 of 2017

1.Natarajan
2.R.Vijayalakshmi
3.R.Balakrishnan
4.R.Dhanalakshmi
5.R.Bhakiyalakshmi
6.R.Selvarajan
7.R.Dhanarajan

... Petitioners/Accused

Vs.

S.Logambal

... Respondent/Complainant

Prayer:Criminal Original Petition filed under Section 482 Criminal Procedure Code to call for the records pertaining to the case in C.C.No.420 of 2015 on the file of the learned Judicial Magistrate No.1, Tirunelveli and quash the private complaint and consequential further proceedings.

For Petitioners : Mr.M.Elanchezhian

For Respondent : Mr.R.J.Karthick

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No.420 of 2015 on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2. The case of the prosecution before the Trial Court:-

A civil suit was filed by the husband of the respondent by name Sundarampillai in O.S.No.34 of 2015 before the Principal Sub Court, Palakkad, against these petitioners and two others. The petitioners and the above said Sundarampillai are brothers and sisters. The petitioners have contested the suit and it is pending for adjudication.



3. During the pendency of the suit, the respondent herein filed a private complaint in C.C.No.420 of 2015 before the learned Judicial Magistrate No.I, Tirunelveli, against these petitioners on the ground that in the counter statement filed by these petitioners in I.A.No.415 of 2015 in O.S.No.34 of 2015 as mentioned supra, made defamatory statement against her. According to her, the following averments are counter in defamatory in nature;

"Lokambal married Sundaram Pillai within the year of after the demise of the father of Sundaram Pillai that is the petitioner's/complainant's father-in-law. And also stated that the petitioner lived with the said Sundaram Pillai before their marriage as husband and wife. And they also stated that the petitioner has married her brother itself."

4. On knowing about these contents of the counter affidavit filed by these petitioners by the relatives and friends, they enquired her about the marriage affairs and because of this, she suffered physically and mentally.

5. But, whereas, in the counter, it has been stated by these petitioners, which is extracted hereunder:-

"Within one year of the death of the father, the plaintiff married his mother's sister's daughter against the interest of the family and because of that he was not having good relationship with the plaintiff."

6. The private complaint was taken on file and summons were issued to these petitioners by the Trial Court. Seeking quashment of the private complaint, this petition is filed, mainly on the ground that what has been stated in the counter, was not correctly translated by the respondent in the complaint. The entire pleadings are in Malayam and the respondent had translated the same, into English and added some statements to suit her convenience, which shows vast difference between the translated version of the statement filed by the petitioners in the counter, from that of the actual averments made in the counter. So, on this ground, they seek quashment of the private complaint.

7. Heard both sides.



8. The petitioners filed a written argument, reproducing the same grounds, that have been mentioned in the petition.

9. Per contra, the learned counsel for the respondent would rely upon the judgments reported in **K.L.Dhall Vs B.P.Dutta 1985 (1) Crimes 848 and M.C.Chaturvedi Vs R.K.Chaturvedi 43 (1991) DLT 367**, for the purpose of argument that even though the averments are made in the pending proceedings, there is no bar for the Magistrate to take cognizance of the offence punishable under Section 500 IPC. According to him, the counter affidavit in the Court proceedings itself will amount to publication and so, the offence under Section 499 IPC is attracted.

10. Even at that time, when the learned counsel for the petitioners argued before this Court, this Court asked the question to the parties **whether the translated version of the statement alleged to have been made by the parties in O.S.No.34 of 2015 on the file of the Principal Sub Court, Palakkad, was duly certified by a duly qualified translator**. But, the parties are not in a position to inform the Court, about the correctness of the translation. Moreover, the parties had also not filed the certified translated copy of the statement by the qualified persons either before the Trial Court or before this Court. So, this Court is in a handicapped position to know what was the exact words or sentence used by these petitioners in the counter filed by them before the Principal Sub Court, Palakkad in I.A.No.415 of 2015 in O.S.No.34 of 2015. So, without expressing any opinion on this point, this petition has to be considered on merits.

11. Moreover, this Court cannot go into the correctness of the alleged defamative statements alleged to have been made by these petitioners in the counter statements and that got to be decided only by the Trial Court during the trial proceedings. So, on this point also, this Court is not expressing any opinion.

12. The only point that has been alleged by these petitioners, is that the private complaint came to be filed, only due to the defamative translation of the statement made by these petitioners in the counter affidavit filed in the above said Interlocutory Application. Again, this is a matter for consideration by the Trial Court. Simply because, the respondent has not produced translation by a qualified person, the complaint cannot be quashed, when there is a specific allegation to the effect that her reputation was damaged by these petitioners. So, on this



ground, the petition filed by the petitioners cannot be entertained.

13. Moreover, in this petition, they have pleaded that what has been stated by them in the counter affidavit are true to their own belief and knowledge. When that being so, whether these explanations will come under any one of the exceptions mentioned in the Section 499 IPC, again is a matter for trial. Whether the alleged statement made by the petitioners in the counter affidavit, would attract the ingredients of Section 499 IPC is a matter for consideration by the Trial Court. Exceptions 9 of 499 IPC reads as under:-

"Ninth Exception : Imputation made in good faith by person for protection of his or other's interest

It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good."

14. So, when the petitioners say that the statements were made by them in good faith and true to their own knowledge and belief and then whether they have acted in good faith or not, is also a question of fact and that got to be decided by the Trial Court. The term, good faith is also defined under Section 52 IPC, which runs as under:-

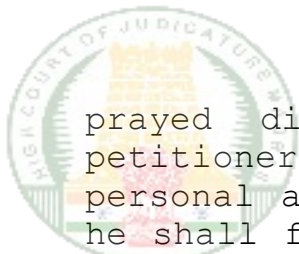
"52. "Good faith"

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

15. So, whether the petitioners have exercised the due care and attention before making these statements, is also a question of fact and that got to be decided only during trial.

16. I am of the considered view that no strong case has been made out of by these petitioners to quash the complaint. So, with this above observations, this petition deserves dismissal and accordingly, the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

17. After pronouncing the order, the learned counsel for the petitioners requested the Court to dispose of the matter within a short time and the first petitioners being the aged persons, he



prayed dispense with the personal appearance of the first petitioner before the Trial Court. Considering the same, the personal appearance of the first petitioner is dispensed with and he shall file an affidavit undertaking that he will appear before the Court as and when necessary and required. He must also affix his photographs duly attested by his respective counsel in the affidavit. However, the first petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The Trial Court shall dispose the case within 5 months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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
Judicial Magistrate No.1, Tirunelveli
Tirunelveli.

+1 CC to M/s.R.J.KARTHICK, Advocate SR-13142[F] dated 23/03/2021

**Crl.O.P. (MD)No.14533 of 2017
and
Crl MP(MD)Nos.9685 & 9686 of 2017
23.3.2021**

**ES (co)
TR(03.05.2021) 5P 3C**