



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 20.01.2021

DATE ON WHICH PRONOUNCED : 17.02.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.7515 of 2017

and

Crl MP(MD)No.5145 of 2017

Girinivasaprasad ... Petitioner/Sole Accused

Vs.

T.D.Sanjay ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case in C.C.No.95 of 2017 on the file of the Judicial Magistrate, Eraniel and quash the same.

For Petitioner : Mr.S.Ramasamy

For Respondent : Mr.S.Mahalakshmi for Mr.S.Rajesh

ORDER

This Criminal Original Petition has been to quash the charge sheet in C.C.No.95 of 2017 on the file of the Judicial Magistrate, Eraniel.

2. The brief facts of the case is as follows:-

The respondent/defacto complainant filed a private complaint under Section 200 of Cr.PC against the petitioner before the Judicial Magistrate No.I, Tirunelveli. It was taken on file in C.C.No.95 of 2017 by the Trial Court and recorded the statement of the respondent/defacto complainant. After satisfying himself, he decided that it is a fit case to take cognizance of the offence punishable under Section 500 of IPC and issued summons to the petitioner by its order dated 25.02.2017.

3. Challenging the cognizance, the petitioner filed this

<https://hcservices.ecourts.gov.in/hcservices/>



petition invoking jurisdiction of this Court under Section 482 Cr.PC, to quash the C.C.No.95 of 2017 on the file of the Judicial Magistrate, Eraniel.

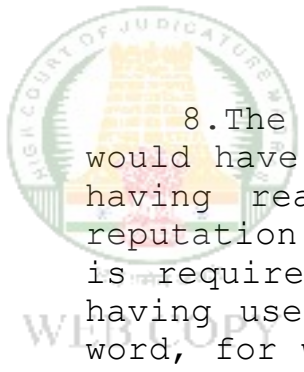
4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5.The main grievance of the respondent is that there was a money transaction between both the parties and because of the dispute, the petitioner herein, sent a complaint to the Superintendent of Police on 13.04.2015 and subsequently, on 01.06.2015, the petitioner herein, lodged a complaint before the Deputy Inspector General of Police and the same was forwarded to the Superintendent of Police, Kanniyakumari and later to the Deputy Superintendent of Police. In that complaint, defamatory statements were made by the accused, who is the present petitioner herein that the respondent is behaving like a 'rowdy'; the respondent along with others used to sit in the Gopal Two Wheeler Works, Villukuri and indulged in atrocities. So, according to the respondent, these are defamation uttered by the petitioner in the complaint. After enquiry, the Additional Superintendent of Police, Nagercoil, referred the same as false. So, because of the false complaint, he has been defamed. So, with this allegations, the respondent herein, filed the above said private complaint before the Trial Court.

6.The quashment is sought mainly on the ground that no offence as mentioned in the complaint is made out, since the ingredients under Section 499 of IPC, are not attracted to the allegations mentioned in the complaint. Further ground is that, the contention of the complaint, was not made public the respondent is having, so many cases in various police stations.

7.The short point, which is arises for consideration is whether the allegation made by the respondent in the complaint to the police authorities will attract the ingredients under Section 499 IPC. The defamatory word said to have been used by the respondent is that the petitioner is 'rowdy'. According to the respondent, he is a practising advocate and because of such defamatory words, his reputation have been damaged in the society and that is why, he has presented the complaint before the Trial Court. Under Section 499 IPC reads under:-

"499.Defamation-Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person"



8.The main ingredients of the offence is that the respondent would have used the words with an intention to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. So, as per the definition clause, what is required is the intention on the part of the respondent, for having used, such a word. The word 'rowdy', will be a defamatory word, for which, there can be no second opinion. If the respondent wants to prove that he did not have any such intention, his case must come with in any one of the exception mentioned under Section 499 IPC.

(i) 8th exception of Section 499 of IPC, reads as under:-

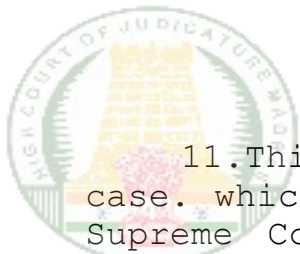
" Accusation preferred in good faith to authorised person. - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. Illustration if A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; If A in good faith complains of the conduct of Z, and child, to Z's father- A is within this exception."

(ii) 9th exception of Section 499 of IPC, reads as under:-

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

9.So, it is for the petitioner to prove that he comes within the exceptions, it is possible only when the Trial Court is undertaken. So, the first contention on the part of the petitioner that the words alleged have been uttered or used by him in the complaint does not attract, the ingredients under Section 499 CPC, cannot be accepted.

10.The next contention on the part of the petitioner is that the complaint made by him to the Police Authority was not made public. But, this contention also is not acceptable. A complaint to the Police Authority is not a confidential document. Moreover, from the averments made in the complaint, it is seen that the complaint was forwarded to many authorities. So, the contention that it is not made public cannot be also accepted. So, the petitioner has to face the trial and only during trial whether he had any intention to defame the respondent can be found out. Similarly, whether he comes under any one of the exception under Section 499 CPC, also will come out.



11.This Court is of the considered view that it is not a fit case. which fits into any one of the parameters set by the Hon'ble Supreme Court in **State of Haryana and others Vs Bhajanlal and others 1992 Supp (1) SCC 335**, which considered to be a basic document for considering the quashment of criminal cases. So, with the above observation, this Criminal Original Petition is liable to be dismissed accordingly, dismissed. Consequently, connected miscellaneous petition is closed.

12.The Trial Court shall continue with the trial proceedings and dispose of the same in accordance with law, without being influenced by any of the observations made by this Court.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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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,
Eraniel.

Crl.O.P.(MD)No.7515 of 2017
and
Crl MP(MD)No.5145 of 2017
17.02.2021

NSM(CO)
TR(26.02.2021) 4P 2C