



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.18961 of 2015

1.P.Varadarajan
Editor
"Kumudam Reporter" Group Editor
M/s Kumudam Publications Pvt Ltd.
151/306, Purasawakkam High Road,
Chennai - 10.

2.Selvaraj
Senior Editor
"Kumudam Reporter" Group Editor
M/s Kumudam Publications Pvt Ltd.
151/306, Purasawakkam High Road,
Chennai - 10.

...Petitioners/Accused land 2

Vs.

M.V.Sathish

...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings pursuant to the complaint in C.C.No.11044 of 2014 on the file of II Metropolitan Magistrate, Egmore, Chennai and quash the said proceedings.

For Petitioners : Mr.R.Amizhdhu

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed to call for the records of the proceedings pursuant to the complaint in C.C.No.11044 of 2014, on the file of II Metropolitan Magistrate, Egmore, Chennai and quash the same.

2.This complaint was filed under Section 200 Cr.P.C. for offences punishable under Sections 499 and 500 IPC. The respondent filed this complaint alleging that he is the owner of the company named and styled as Sri Sai Arrya Trading Private Limited, involved in the business of Granite and



AIRTEL works. He is also the President of M.G.R. Youth Wing of Chennai District. He is involved in various service activities for the benefits of the society and is having very good reputation among the general public and especially in Chennai. The first petitioner in his publication dated 18.07.2014, carried an article written by the second petitioner under the caption "வாடகைக்கு கல்லூரி மாணவிகள் விழாக்களுக்கு சப்ளை செய்யும் ஆரசியல் பள்ளி" with a deliberate intention to malign the respondent/complainant and defame the name and reputation in the eyes of the public. After the purported and false article dated 18.07.2014, general public have started putting questions to him as to whether the article is correct or not. Taking advantage of the same, some unscrupulous elements have also distributed the copy of the article to the local public who started believing that the article is genuine and true. The allegations made in the article are absolutely false, spread with malafide intention to defame his name and politically motivated. The respondent/complainant gave notice through his counsel on 19.07.2014, calling upon the petitioners to tender unconditional apology to the respondent for the false propaganda made by the petitioners. The petitioners have not issued any unconditional apology or published their explanation. Therefore, the petitioners are liable to be prosecuted for the offences under Section 499 and 500IPC.

3.This case was taken cognizance by the learned II Metropolitan Magistrate, Egmore, Chennai, in C.C.No.1104 of 2014 and summons were issued to the petitioners. Challenging the same, the petitioners have filed this petition.

4.The learned counsel for the petitioners submitted that the complaint is not maintainable for the reason that the contents of the article is based on true facts. It is an admitted fact that the college students were taken to a Cinema function from the hostel. The professors of the college who were also wardens, took the girl students to the Cinema function at the instance of the respondent. The girl students were taken in the evening from the hostel and returned only in the night. The contents of the article were published on the basis of the information received from the relatives of the girl students as the father could not reach his daughter on that date. The article complained of are not defamatory in nature and the filing of the complaint is only an attempt to muzzle the press and preventing the magazine from reporting in a free and fair manner. The cursory reading of the sworn statement given by the respondent/complainant contained material defects and did not make out a case for defamation as against these petitioners. There is no whisper that the publication of the article created dent to his reputation. Witnesses have not deposed that after reading the article their estimation about the respondent/complainant came down and lowered the credit of the respondent/complainant. In the absence of such statement from the witnesses, taking



cognizance is unsustainable. Section 7 of PRB Act contemplates that the Editor alone is legally presumed to be responsible for the selection and publication of the article. The respondent has falsely described the first accused as Editor and Group Editor of the magazine. The first petitioner is neither Editor or Group Editor of Kumudam Publications Pvt Ltd., The contents of the article were based on truth and made in good faith for protection of others interest and for the public. The complaint filed against these petitioners is illegal, unsustainable and liable to be quashed. In support of his submissions, the learned counsel for the petitioners relied on the following judgments:

(1) Kalyanam Vs. Ramesh in Crl.O.P.No. 11401 of 2001

9. In a trial for defamation, it is quite essential that the details of imputation containing the words alleged to be defamatory in character should be precisely set out in the complaint. It is the said imputation or the words so set out in the complaint that will constitute the foundation for defamation.

12. When a similar question was raised before the Supreme Court in a defamation case, the Supreme Court would hold in BALRAJ KHANNA v. MOTIRAM (1971 S.C.C.(Cri.)647) in the following words:

"The purpose or object will be served if the complainant is able to reproduce in his complaint or evidence in a substantial measure the words of imputation alleged to have been uttered. If the statements or the words placed before the Court by the complainant are held to be not defamatory, it will mean that the complainant will have to lose. Therefore, it is to his interest to get a proper adjudication from the Court that as far as possible the words spoken or the statements actually made and which he alleges to be defamatory are before the Court. ... From the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be so stated as to enable the accused to know the nature of the allegations that they have to meet."

.....

17 . It is salutary to note that the judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that



WEB COPY

the law casts liability or creates offence against the person, then only process would be issued. At that stage, the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process, otherwise it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it should not be allowed to use those means to wreak personal vengeance.

(2) J.Jayalalitha Vs. Arcot N.Veerasingam

26. I have gone through the complaint, sworn statement and other records filed along with that. It is stated in the complaint, that the petitioner issued a public statement, asking the Government to honestly investigate, instead of trying to foist the case against some other persons. It is further stated in the complaint, that the respondent also issued a statement, in the impugned news item, stating that the petitioner was responsible for the attack made by the culprits on Mr. T. V. Venkataraman, former Chief Secretary of Tamil Nadu, in order to escape from the "coal deal case", and that the Tamil Nadu police would soon trace out the real culprits, and expose to the public, the persons responsible for the attack made on the former Chief Secretary.

30. Nothing has been mentioned in the complaint with reference to the fact that the allegations made by the accused against the complainant was found to be untrue, either in the investigation proceedings, or in Court proceedings. It must be also noted, that there is no averment either in the complaint or in the sworn statement, that due to above imputation the prestige, image and reputation of the complainant has been lowered in the estimation of the public.

31. According to the definition of 'defamation' as provided in Section 499 of the Indian Penal Code, "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



WEB COPY

reason to believe that such imputation will harm the reputation of such person, is said, to defame that person."

32. Explanation 4 to Section 499 I.P.C., runs as follows :-

"No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person, in respect of his caste or of his calling, or lowers the credit of that person, or caused it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

33. Thus, the conjoint reading of Section 499 I.P.C., with this Explanation 4, would make it clear, that in the complaint, there shall be an averment to the effect, that because of the imputation, the complainant's reputation had been lowered in the estimation of others. As indicated earlier, this important ingredient is absent in the complaint and in the sworn statement.

34. While interpreting Section 499 I.P.C., and Explanation 4 thereto, this Court in *Mis Violet Wapshare v. Miss Maureen Fround* 1970 MLW (Crl) 4, held as follows :-

"The word "harm" used here relates to imputations on a man's character made and expressed to others; so as to lower him in their estimation and anything which lowers him merely in his own estimation certainly does not constitute defamation."

(3) Anjali @ Balathirupurasundari Vs. Mu.Kalanjiyam in Crl.O.P.No.30318 of 2013.

9. Here is the case, wherein, the reading of the complaint would reveal that what was stated in the complaint is that the defamatory statement was made with an intention to spoil the reputation of the respondent in public. However, there is no specific averment that it actually lowered the reputation of the respondent in the estimate of others. In the absence of any specific averment in the complaint, the main ingredient for the offence under section 499 IPC is not made out. In that event, there is no justification for this court to allow the criminal proceedings to continue against the petitioner herein and this court feels that



WEB COPY

it is a fit case wherein the proceedings is liable to be quashed.

(4) K.M.Mathew Vs. State of Kerala and Anr

In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 ('the Act'). But Section 7 of the Act has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'editor' as required under Section 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as 'Editor' is the editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines 'Editor' to mean 'the person who controls the selection of the matter that is published in a newspaper'. Section 7 raises the presumption in respect of a person who is named as the editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under Section 7 of the Act.

It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with.

(5) S.Nihal singh and others vs. Arjan Das, New Delhi

8.The learned counsel for the petitioners has at the very outset pointed out that Shri Ram Nath Goenka petitioner in Crl.R. No. 84/82 has been described as owner of the newspaper and is sought to be made liable for the publication of the offending news item on that score. However, as declared at the bottom of the back page of issue dated 4-11-1981 of the newspaper itself the



WEB COPY

newspaper is owned by M/s. Indian Express Newspaper (Bombay) Private Limited which is a corporate body and not be any individual person much less Shri Goenka. Further according to him, Shri Goenka is at present Chairman of the said company which owns and publishes the newspaper, from ten different centres in India. The submission made precisely is that Shri Goenka not being the owner of the aforesaid company or the newspaper cannot be held liable even vicariously for publication of the offending news items. It is all due to misrepresentation on the part of the respondent that he has been summoned by the trial court. It is pointed out that this fact was to the knowledge of the respondent as would be borne out by the reply filed by him in Crl.M. 214/82 (in Cr. M. (M) No. 76/82). In the said reply the respondent admitted that Shri Goenka was the Chairman of the Indian Express Newspapers (Bombay) Pvt. Ltd. which is a private limited company. However, he was explained that it was in the aforesaid context that Sh. Goenka was described as owner he being the Chairman of the private limited company which owns the newspaper. Evidently there is misdescription about Shri Goenkar being owner of the newspaper and it has led the trial court to summon him to face trial. Had the true position been revealed to the trial court this order, in all probability, would not have been made. Needless to say that as Chairman of the company Shri Goenka can be had liable for the publication of the offending news items only if it is shown that he was somehow concerned with the publication of the defamatory news items. It is highly doubtful that he can be asked to answer the charge of defamation merely because he happened to be the Chairman of the company owning the newspaper without there being any further evidence as regards his participation in the actual management and administration of the affairs of the company. Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the person concerned is an essential ingredient of offence under Section 499 I.P.C. but such evidence is totally missing in the instant case. Under the circumstances the impugned order as regards Shri Goenka cannot be sustained on



WEB COPY

this short ground.

(6) Shri Vivek Goenka Managing Editor Vs. State of Maharashtra and Rajabhau

20. The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

12. It is thus clear that in Mathew-II, a further clarification has been given on scanning the provisions of Section 7 of the Act and more particularly that the presumption against the editor is rebuttable which implies that by leading evidence an editor could prove that though his name was mentioned or printed as editor on the newspaper, he was, in fact, not responsible for the day to day reporting in the news paper or the articles published and someone else was responsible and in such a situation if the Managing Editor or the Chief Editor is allowed to be discharged at the threshold by setting aside the order of issuance of process, the complainant would be left with no remedy and the complaint would be frustrated.

(7) Vivek Goenka Vs. State (NCT of Delhi) & Anr

53 . Primarily, a Reporter is responsible for his act of defamation. Then, vicarious liability is fastened on the printer, publisher and editor of the newspaper under the Press and Registration of Books Act, 1967.

55. In view of provisions of Press and Registration Act, 1867, particularly Section 7 unless the contrary is proved, the persons declared as Printer, Publisher and Editor of the newspaper are presumed to be responsible for the contents of the newspaper.



8. In the typed set of papers, the copy of the article published on 24.07.2014 is produced, copy of the legal notice and copy of the reply prior to filing of the complaint are also produced. The article is titled as "வாடகைக்கு கல்லூரி மாணவிகள் விழாக்களுக்கு சப்ளை செய்யும் அரசியல் புள்ளி". Shorn of unnecessary details, the contents alleged to have been defamative against the respondent/complainant is extracted in brief hereunder:

The article refers about the girl students attending function in connection with the release of a song from the movie 'Nambiar' on 09.07.2014. The girl students of two Government colleges staying in hostel were taken to this function by the Deputy warden of the hostel. The girl students returned to the hostel after the function only after 10P.M. When enquired, it was found that at the instance of the respondent/complainant, the girl students were taken to the function. It is also written in the article that the respondent is the functionary of the M.G.R. Youth Wing of Chennai District (AIADMK). He runs several liquor shop and bar in the name of Binami. Since he held a position in students wing, he got majority of the college students under his control. Through them, he moved with several Professors and he built enormous influence with the Directorate of College Education situated at DPI. Many college teachers are after him in connection with transfer. Therefore, when he requested, college professors had taken the college girl students to the function.

9. No doubt that the allegations made against the respondent that he is running a liquor shop and bar in the name of his Binami, controlling the students and he has enormous influence at the Directorate of College Education situated at DPI and college teachers are after him for their transfers and that he was responsible for taking the girl students to the Cinema function, if not true, would certainly amount to defamatory allegations. Whether these allegations are true or not cannot be decided now. Only during trial, it would be known as to whether the allegations are true or not.

10. In the private complaint, specific allegations are made that the article was published with a deliberate intention to spoil the respondent/complainant's name and defame his name and reputation in the eyes of the public. After the publication of the article, general public started to question him as to whether the article is correct or not. Some unscrupulous elements distributed the copies of the article to the local public and they started to believe the article as genuine and true. The respondent has also given sworn statement confirming to the allegations made in the complaint. Witness Vijayakumar has given evidence that it is a defamatory article. Witness Venkatesan stated that the contents of the article is defamatory. The complaint allegations, sworn statement of respondent/complainant and the evidence of the witnesses make out a prima facie case for



taking cognizance of the case against the accused, especially the second accused. So far as the first petitioner is concerned, it is seen from the Kumudham reporter magazine and the details regarding the Director, Editor, Group Editor, reporter etc., the first petitioner is the Chairman and Managing Director and not an Editor or Group Editor. As per PRB Act, Printer, Publisher and Editor are only responsible for the news published in the Kumudam reporter. Thus, the defamation case cannot be maintained against the first petitioner. The second petitioner is the reporter, therefore, filing this case against the second petitioner cannot be considered as illegal and against PRB Act. Prima facie case is made out against the second petitioner for proceeding with the trial of this case. In view of the discussions held above, this Court finds that, the judgments relied on by the learned counsel for the petitioners on the principles underlying the institution of criminal defamation case are not useful to the case of the petitioners.

11. In fine, this petition is allowed against first petitioner and dismissed against second petitioner. The trial Court is directed to dispose the case in C.C.No.11044 of 2014 as expeditiously as possible, without being influenced by the observations made in this order. Consequently, connected miscellaneous petitions, if any, is also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sli

To

1. The learned II Metropolitan Magistrate,
Egmore, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.R.Amizhdhu, Advocate SR. No. 31902

CRL.O.P.No.18961 of 2015

SKM (CO)

PR (14/06/2022)