



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2022

PRONOUNCED ON : 13.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.17665 of 2016

and

CrI.M.P.No.8436 of 2016

S. Savithri ... Petitioner

Vs.

Lisa ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings in C.C.No.3421 of 2016 on the file of the V Metropolitan Magistrate at Egmore, Madras and to quash the same as illegal and contrary to law.

For Petitioner : Mr. V. Raghavachari

For Respondent : Mr. A. Ganesh

O R D E R

This petition is filed to call for the records in C.C.No.3421 of 2016 on the file of 5th Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. C.C.No.3421 of 2016 was filed under Section 200 of Cr.P.C., for the offence under Section 500 IPC. The respondent filed a private complaint alleging that she is working in Selvarangam Hospital as a Nurse. She is married and has two female children aged 17 and 14 years, studying in XII Standard and IX Standard respectively, at Valliammal Girls Higher Secondary School, Annanagar, Chennai. She is a head Nurse of Selvarangam Hospital and staying in Nurses Quarters belonging to Selvarangam Hospital with her children. In July 2015, a woman constable from All Women Police Station from Annanagar, came to nurses' quarters and called her to police station for enquiry. On visiting the police station, she was asked several questions linking her with Dr.Selvakumar, Proprietor of Selvarangam Hospital. Then, she found that petitioner lodged a complaint against her husband alleging among other things that Dr.Selvakumar, developed intimacy with respondent. Her son Siddath saw respondent and her husband meeting secretly in her in-law's house. Her sister's husband



Balasubramani had also seen both of them in her in-law's house. This complaint was in English and it was read over by Kandhasamy and translated to her in Tamil. Police came to Nurses' quarters and enquired the nurses on these allegations. The allegations made against the respondent by the petitioner is absolutely false. She had only professional communication with Dr.Selvakumar, in her capacity as nurse. The allegations made against her caused willful imputation against her, attacking her character. Respondent felt very low and humiliated. The reputation was lowered in the eyes of society. She has two grownup daughters, and these allegations not only affected her reputation but her childrens' welfare. It is a slanderous allegation against her husband as well. The imputation of unchastity and adultery are made directly against the respondent without any basis. Therefore, the complaint for the offence under Section 500 IPC. Challenging this complaint, this quash petition is filed.

3. Learned counsel for the petitioner submitted that the petitioner had given a complaint against her husband in response to a complaint lodged by her husband. The allegations made in the complaint given to the police cannot form basis for filing of defamation case when the complaint is pending enquiry. The filing of defamation case is misconceived and it is an attempt to arm twist the petitioner at the machination of Selvakumar. Petitioner had not caused any publication and therefore, provision of Section 499 is not attracted. Thus, he prayed for quashing the proceedings. In support of his submission, he drew the attention of this Court to the following judgments:

i). 2020 SCC OnLine Mad 1398 (Babu E. v. S.Ramesh), it is observed as follows:

"11. The respondent is referred as 'Theif' in the complaint and hence, he has been defamed is on a wrong premise. The complaint given to the police authorities by the petitioner is for his grievance, for which he had narrated certain aspects as he perceived. The police authorities on enquiry closed and dropped the complaint which alone would not prove the fact the imputations were motivated with malice, per se defamatory. Further, there is no material to show that the defamatory words shown in the complaint were publicised and due to the publication, harm was caused to the respondent's reputation, directly or indirectly in the estimation of others. In absence of such averments and materials in the complaint, this Court finds that the continuation of the proceedings against the petitioner would amount to abuse of process of law."

ii) (1999) 3 Supreme Court Cases 134 (Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another), it is observed as follows:-



WEB COPY

"The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office using filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold an enquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in out considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself."

iii) 2019 SCC OnLine Mad 24714 (M. Manoharan and Another Vs. M.A. Vetrivel), it is observed as follows:-

"4. In this case, the second petitioner has only lodged a complaint before the jurisdictional police authority. The case was closed by



WEB COPY

referring the undertaking of the respondent. This indicates that the complaint was lodged in good faith. Otherwise, the question of good faith would be a question of fact. In this case, the materials enclosed in the typed set of papers would clearly show that the accusation by the second petitioner against the respondent was preferred in good faith. It is not in dispute that no First Information Report was registered by the respondent. There was also no causing of paper publication. Except knocking the doors of the jurisdictional police, the second petitioner has not done anything else.

5. Under these circumstances, I am of the view that the continuance of the impugned prosecution can only be construed as an abuse of legal process and quashing the same, would secure the ends of justice. The impugned private complaint stands quashed."

iv) Crl.R.C.No.701 of 1397 (G.N. Subba Rao and others Vs. Anna M. Venkatachalapathi Aiyar), it is observed as follows:-

"...Apart from the merits of the case which even on a superficial examination would have convinced any Magistrate that there was really no substance in the charge of defamation, it is argued that the Magistrate was incompetent to take cognizance of the offence inasmuch as the offence, if at all, was one of giving false information to a public officer or of making a false accusation-an offence punishable under S. 182 or S. 211, Indian Penal Code; offences of this nature cannot be taken cognizance of by a Magistrate in the absence of a complaint by the public servant concerned or of some authority to whom the public servant is subordinate; see S. 195 of the Criminal Procedure Code. I am of opinion that this contention is well founded. Where it is clear that the publication was to a person in authority and was really intended to give information about some offences with a view to get redress or protection the offence if any must be only the furnishing of false information or the making of a false accusation. It cannot be said that the offence of defamation is also committed simply because some part of the information or the accusation may be found to be defamatory and false."

v) 2019 SCC OnLine Mad 38282 (Thanneermalai and Others Vs. O. Muthu and Another), it is observed as follows:-

"8....The present attempt made by the respondent/complainant to project as if the allegations made in the complaint are defamatory, is clearly an abuse of process of law. The petitioners are entitled to give a complaint to



WEB COPY

the concerned authorities by making necessary allegations and those allegations made in good faith cannot be considered to be defamatory and the 8th exception to Section 499 of IPC clearly applies to the facts of the present case.

9. The continuation of the proceedings before the Court below will merely result in abuse of process of Court and it requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C."

vi) 2015 SCC OnLine Mad 14218 : (2016) 1 LW (Cri) 216: (2016) 2 MWN (Cri) 284 (Murugan Vs. Subramania Swamy), it is observed as follows:-

"7....The trial Court has correctly held that the complaint has been given before the police by the respondent and the respondent has not published the news item. Merely the respondent has given a complaint to the lawful authority, there is no offence would come since the respondent is entitled the eight exception of Section 499 of I.P.C."

4. In response, the learned counsel for the respondent submitted that the allegations made against the respondent in the police complaint are per se defamatory. On the basis of the allegations made in the complaint, police had conducted an enquiry in and around the nurse staff quarters, making everyone knew about the allegations. By these publication of allegations, the respondent's reputation got lowered in the eyes of the colleagues and the public. It is not necessary that publication should be made in the news paper, it is enough third parties come to know about the defamatory allegations. In the case before hand, by making scandalous, frivolous, adulterous and unfounded allegations against the respondent to the police and making a police to visit nurses' quarters to make enquiries in and around the respondent's residence, publication was made effectively, damaging the reputation of not only the respondent but her husband and children. Therefore, the learned counsel for the respondent submitted that the case has to be tried for it to reach its logical conclusion. In support of his submission, he relied on the following judgments:-

i) M.A.Rumugam Vs. Kittu @ Krishnamoorthy dated 07.11.2008 in Crl.A.No.1749 of 2008, it is observed as follows:-

"14. Allegation made in the said complaint petition, thus, in our opinion, make out a case for proceeding against the appellant under Section 500 of the Indian Penal Code as thereby imputation concerning the respondent had been made intending to harm or knowing or having reason to believe that such imputation would harm his reputation.

15. For the purpose of bringing his case within the purview of the Eight and the Ninth



WEB COPY

Exception appended to Section 499 of the Indian Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good.

16. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellant alone.

17. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities."

ii) Girinivasaprasad Vs. T.D.Sanjay dated 20.01.2021 in CrI.O.P.(MD) No.7515 of 2017, it is observed as follows:-

"7. The short point, which 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. Section 499 of IPC defines defamation. This defamation comes with 10 exceptions. Section 499, reads as follows:-

"Whoever, by words either spoken or intended to be read, or by signs or by visible representation, 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, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of



WEB COPY

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 causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

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."

iii) Prem Harjit Singh & another Vs. Nirmal Harjit Singh dated 23.08.2012 in Criminal Misc. No.24889 of 2012, it is observed as follows:

"...The police officials visited the house of the respondent-complainant and also made enquiries into the alleged complaint of the petitioners and found the same to be false and complaints were dismissed. Thereafter, other complaints were also moved which met the same fate. Feeling aggrieved against the false complaints and defamation of the respondent-complainant and his family members, the respondent-complainant filed a complaint dated 13.09.2007 (Annexure P-1) in which the petitioners have been summoned vide summoning order dated 28.02.2009 (Annexure P-9). Hence the petitioners have approached this Court.

...There is no presumption that the petitioners have filed the applications in good faith to the police authorities. The good faith is to be proved by bringing the reports within the ambit of Eighth Exception by leading evidence."



WEB COPY

iv) Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathil & Others dated 10.09.1996, it is observed as follows:-

"....At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this state it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, 1st Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

5. Considered the rival submission and perused the records.

6. As per Section 499 IPC, whoever by words spoken or written, or by signs, or visible representation, makes or publishes any imputation concerning of person intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person is except in the cases excepted hereinafter said to have defamed that person.

7. In the case before hand, petitioner alleges that respondent has illicit intimacy with her husband, meaning thereby, respondent is an unchaste woman and living an adulterous life with her husband. If this serious allegation is not proved by the petitioner, no doubt that this allegation certainly amounts to defamatory allegation. It has to be borne in mind that respondent has her husband and two grown up female children. Therefore, making a serious allegations as aforesaid without the truth in it, will certainly attract the offence under Section 499 IPC.



8. As referred above, both the counsel appearing for the parties, pressed into service, the judgments relating to what constitute an offence of defamation under Section 500 IPC and the Exceptions to it.

WEB COPY

9. On a careful consideration of the judgments relied by both the parties, this Court finds that having made serious allegations of adultery against the respondent, it is for the petitioner to prove that she has evidence to support the allegation or that she had made the allegation in good faith. It was already found that the allegations made against the respondent is per se defamatory. Whether, there is truth in the allegations made by the petitioner or she had made the allegation in good faith. As a matter to be decided during the course of trial.

10. It is observed by the Hon'ble Supreme Court in M.A.Rumugam V. Kittu @ Krishnamoorthy reported in 2009(1) SCC (Cr1.) 245 in paras No.19, 20 and 21 which are reproduced herein below:-

"19. For the purpose of bringing his case within the purview of the Eight and the Ninth Exception appended to Section 499 of the Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good.

20. It is now a well settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellant alone.

21. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities."

11. Therefore, this Court is of the view that having made the allegations of defamatory in nature against the respondent, petitioner has to face the trial to sustain her allegation. This Court cannot embark upon weighing the evidence to find out whether allegations made in the complaint constitute for offence punishable under Section 500 IPC or not. In this view of the matter, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

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

Sub Assistant Registrar



AT
To

The V Metropolitan Magistrate at Egmore, Chennai.

WEB COPY

+1 cc to Mr. V. Raghavachari, Advocate Sr.NO.25384

+1 cc to Mr. A. Ganesh, Advocate Sr.NO. 26627

CRL.O.P.No.17665 of 2021 and
Crl.M.P.No.8436 of 2016

SKM(CO)
A.SK(04/05/2022)