



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.8713 of 2016

1.Nakkheeran Gopal

2.Damodharan Prakash

...Petitioners

Vs.

Rajendran

...Respondent

Prayer:- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for records in Criminal Defamation case C.C.No.7 of 2016 on the file of learned Judicial Magistrate No.II, Sankari, and quash the same.

For Petitioners : P.T.Perumal

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed for quashing C.C.No.7 of 2016 pending on the file of the learned Judicial Magistrate No.II, Sankari. This complaint was filed under Section 200 of Criminal Procedure Code for an offence punishable under Section 469 & 500 r/w. 501 & 502 of Indian Penal Code against the petitioners.

2.Respondent/complainant filed his criminal complaint alleging that he is a party worker in All India Anna Dravida Munnetra Kalazham. Respondent was the Youth Wing Deputy Secretary of Salem Rural District of the AIADMK till recently. He was having regular written and oral communication with party headquarters on the activities of the party in his district. Except party headquarters and Honourable Amma, he never exposed his grievance with any person, body corporate, association or anybody on the earth with respect to party matters. The Tamil Magazine "Nakkheeran" in Volume 28, No.86, page 1,2 & 3, 2016 February 07-09 issue, published a false and fake article with respect to the then Honourable Minister Edappadi Palanisamy. He never communicated such allegations against the said Minister.



The second petitioner with the connivance of Editor, Printer and Publisher, the first petitioner, forged the complainant's letterhead with a sole intention to defame the complainant and his party, published the article against the will and wish of the complainant and without his knowledge. Petitioners have specific knowledge that the letterhead is forged and used to defame the complainant by means of wrongful gain to the accused and wrongful loss to the respondent/complainant. The imputation will harm the reputation and political life of the respondent/complainant. The respondent/complainant called the second petitioner through his phone on 07.02.2016 at about 14.19 hours and shouted over the forged report and requested him to publish an apology letter immediately. The second petitioner felt sorry and promised to publish an apology report in the forthcoming issue. On 08.02.2016, respondent/complainant issued a notice to the petitioners 1 and 2 calling upon to publish an apology letter within seven days from the date of receipt of notice. But, so far, petitioners have not done so. Again on 19.02.2016 at about 10.01 hours respondent/complainant called the second petitioner over his mobile phone and insisted to publish apology. Second petitioner called him at about 14.08 hours on the same day and promised to publish apology letter in their forthcoming issue. In such circumstances, this case is filed. After recording the statement of the respondent/complainant, learned Judicial Magistrate No.II, Sankari, has taken cognisance of this case under Sections 469, 500 r/w. 501 and 502 of the Indian Penal Code and issued summons to the petitioners. Challenging the said complaint, this quash petition is filed.

3. Notice was ordered to the respondent in this quash petition and respondent entered appearance through Advocate Mr.Selvaraju. When the matter was taken up on 10.11.2021, Mr.Selvaraju reported no instruction from the respondent. Fresh notice was ordered to be sent to the respondent. On 23.11.2021, fresh notice was taken to respondent and proof of service was filed. Registry was directed to verify as to whether any vakalath has been filed on behalf of the respondent, otherwise, print the name of the respondent in the cause list. When the matter came on 11.02.2022, there was no representation for the respondent and again adjourned to 15.02.2022. On 15.02.2022, there was no representation for the respondent despite his name was printed in the cause list. Heard the learned counsel for the petitioner and matter was adjourned to 17.02.2022 for hearing submission of the respondent. On 17.02.2022, there was again no representation for the respondent. Counsel for the petitioners was heard and the matter was posted for orders today.

4. Learned counsel for the petitioners submitted that the complaint allegations do not make out a case for taking



cognisance of offences against the petitioners under Sections 469, 500 r/w 501 & 502 of Indian Penal Code. Petitioners had only published the complaint sent by the second respondent to the party head of All India Anna Dravida Munnetra Kazhagam. No forgery was committed by the petitioners as alleged by the respondent. That apart, before taking cognisance, the learned Judicial Magistrate No.II, Sankari, has not followed the procedures mandated under Criminal Procedure Code. When the accused reside at a place beyond the area of the jurisdiction of Judicial Magistrate, the Judicial Magistrate should postpone the issue of process against the accused, and either inquire into the case himself or direct investigation should be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. In the case before hand, the petitioners are residing in Chennai. Learned Judicial Magistrate, without conducting an inquiry as contemplated under Section 202 (1) CRPC has taken cognisance of the case without inquiring or examining an independent witness. Therefore, the very taking of the cognisance of the case is illegal.

5.It is further submitted by the learned counsel for the petitioners that there should be an animus to defame the respondent/complainant on the part of the petitioners in publishing complaint allegedly sent by the respondent/complainant to the party head. No defamatory or sullyng allegations had been made against the respondent. The article is not actuated by malice. There is no material produced to show that respondent's image is lowered in the estimation of others. There is no pleading or evidence in this regard. The respondent has not made out a case of ill will on the part of the petitioners to harm the reputation of the respondent by the publication. There are absolutely no grounds for proceeding against the petitioners under Section 469, 500 r/w 501 & 502 of Indian Penal Code. Therefore, they prayed for quashing of this complaint. In support of his submissions, learned counsel for the petitioners, pressed into service of the following judgments. In the Judgment reported in CDJ 1997 MHC 392 J.Jayalalitha Vs. Arcot N.Veerassamy, it is observed that,

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.

33. Thus, the conjoint reading of Section 499 I.P.C., with this Explanation 4, would make it clear, that in



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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.

In the Judgment reported in 2008 Cri LJ 4221 V.S.Achuthanandan Vs. G.Kamalamma and Another, it is observed that,

26.....In this context, unless specific pleading and averment that the complainant is a public figure or the accused have prior acquaintance with her and her reputation and they maintained some animosity towards her, nothing can be attributed against the accused that they have done the act with mala fide intention. Therefore, no offence under Section 499 is disclosed against any of the accused and therefore, the court below has committed wrong in taking cognizance against the petitioners/accused based upon annexure B complaint. Hence, Annexure B complaint is liable to be quashed.

27. Another point argued by the learned counsel for the petitioners is that in view of Explanation 4 to section 499, Annexure A report will not come within the purview of Section 499. Explanation 4 to Section 499 reads:

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

28.The Counsel took me through Annexure A article and submitted that nowhere in Annexure A news article mentioned the name of the complainant and further submitted that therefore it cannot be said that the report was intended to adversely affect the reputation of the complainant in the estimation of others. It is true that there is no averments in the complaint that some of the witnesses or persons have read Annexure A report and there is no details regarding the places where it has been read, the date on which the article was read and the name of persons who read the article and as to how in their mind lowered the reputation of the complainant. It is also an admitted fact that both the complainant and the accused have no previous



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acquaintance and the complainant is not a public figure so as to come into a conclusion that the article was prepared and calculated in such a manner so as to lower the reputation of the complainant in the estimation of others. Regarding all these aspects, the complaint is silent and there is no sufficient averments and allegations so as to attract the ingredients of Section 499. But the available materials and averments will show that Annexure A article will come within the clutches of Explanation 4 of Section 499 of IPC. Therefore I am of the view that no complaint will lie against the petitioners/accused.

6. Considered the submissions of the learned counsel for the petitioners and perused the records. As already indicated, despite giving sufficient opportunities, there is no representation for the respondent and therefore, this matter is decided on merit.

7. Section 499 of the Indian Penal Code defines defamation. It reads as follows,

Section 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, is said, except in the cases hereinafter expected, 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 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.

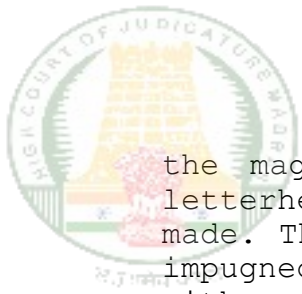


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8.Explanation 4 is relevant here. What is important to make out the case of defamation as per Explanation 4 is that, only if a person's reputation, character and credit is directly or indirectly, in the estimation of others, is lowered, the offence of defamation would be attracted. As rightly pointed out by the learned counsel for the petitioners, the reading of the complaint allegations shows that there is no pleading as to whether respondent's reputation, character and credit is harmed in the estimation of others. Most importantly, the respondent has not cited any witness to speak about his reputation being dented in the estimation of others on reading the article referred in the complaint. Admittedly, no witness was examined to speak about this aspect.

9.Then again, the petitioners are residing in Chennai. The Court at Sankari had taken cognisance of the offences alleged in the complaint against the petitioners. It is mandatory under Section 202 CRPC when the accused are residing outside the jurisdiction of the Magistrate, the issue of process should be postponed. The Magistrate should either inquire the case himself or direct an investigation to be made by police officer or by such other person, he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. May be investigation by police officer is not required in this case. Certainly an inquiry as to whether respondent's reputation is harmed in the estimation of others ought to have been conducted by the learned Judicial Magistrate by examining witnesses. That was not done, probably for the reason that no witness was cited in this regard by the respondent.

10.The reading of the complaint shows that the respondent alleges that the petitioners in connivance with each other forged the complainant's letter head with the sole intention to defame the complainant and his party and published the article without his knowledge. The allegations are repeatedly made that respondent's letter head is forged and defamatory article was published in the magazine. However, in the letters sent to the petitioners dated 08.02.2016, it is alleged that petitioners should have contacted him before publishing the letter. Publication of the letter in his letter pad without his permission is condemnable. It is also claimed that the xerox copy of office letter head was secured from others and the news was printed. Respondent had taken contradictory stand with regard to the published material in letter head. On the one hand, he claims that the letterhead and the contents are fabricated, on the other hand, he claims that he was not the author of the complaint and the petitioner should have got his explanation and permission before publishing the complaint in



the magazine. Another version is that the xerox copy of the letterhead was obtained from someone and the publication was made. The case of the petitioners is that they got the complaint impugned from their source and published in the magazine along with certain other complaints received against party leaders. There is no malice or will in publishing such letters. It was only their part of job.

11.The judgments relied and mentioned above make it clear that there should be averment in the complaint that the allegation made by the accused were found to be untrue. Not only that, due to the above imputation, the prestige, image and reputation of the complainant is lowered in the estimation of the public. Admittedly, there is no averments made in the complaint on these lines. Therefore, this Court is of the considered view that there is no prima-facie case made out to take cognisance of the case against the petitioners for the offences under Section 469 & 500 r/w. 501 & 502 of Indian Penal Code.

12.In fine, this petition is allowed, complaint against the petitioners in C.C.No.7 of 2016 on the file of learned Judicial Magistrate No.II, Sankari, is quashed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

The Judicial Magistrate No.II,
Sankari.

CRL.O.P.No.8713 of 2016

SR(CO)
GMY(10/03/2022)