



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2022
DELIVERED ON : 27.05.2022

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CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.21758 & 21777 OF 2018

Dr.A.Jawahar Palaniappan

...Petitioner / Accused-2
in Crl.O.P.No.21758 of 2018

M.Krishna Meyammai
Power of Attorney holder of
Dr.A.Jawahar Palaniappan

...Petitioner / Accused-1
in Crl.O.P.No.21777 of 2018

Versus

P.Varadarajan

...Respondent in both Crl.O.Ps.

COMMON PRAYER : Criminal Original petitions filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in C.C.No.5708 of 2018 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel
in both Crl.O.Ps. for Mr.V.Adith Narayan &
for Mr.K.P.Ananthakrishna

For Respondent : Mr.N.R.Elango, Senior Counsel
in both Crl.O.Ps. for Mr.R.Amizhdhu

COMMON ORDER

These Criminal Original Petitions are filed to quash the proceedings in C.C.No.5708 of 2018 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

2. Since the prayer sought for in both petitions, is to quash the proceedings in C.C.No.5708 of 2018 and the respondent is common in both the petitions, this Court dispose of these petitions by a common order.

3. Crl.O.P.No.21758 of 2018 filed by the petitioner/Accused No.2 and Crl.O.P.No.21777 of 2018 filed by the petitioner/Accused No.1 against the private complaint filed by



the respondent in C.C.No.5708 of 2018 for the offence under Sections 499, 500, 501 and 502 of I.P.C.

4. The gist of the complaint is that the respondent the Chairman and Managing Director of Kumudam Publication Private Limited (KPPL) engaged in the business of printing, publishing of various magazines, newspaper, journals and periodicals having wide circulation. The respondent is a reputed person in the society. After completing his studies abroad, he joined the Management of Kumudam in the year 1990 thereafter, he became the Chairman and Managing Director of the company in the year 2002. Under his chairmanship, the company attained the glorious position. The petitioner in Crl.O.P.No.21777 of 2018/Accused No.1, who is the Power of Attorney holder of the petitioner in Crl.O.P.No.21758 of 2018/Accused No.2, sent false, malicious and mischievous complaint dated 30.04.2018 to the Registrar of Companies, Income Tax authorities, Indian Bank and Karur Vysya Bank against Kumudam Publication Private Limited (KPPL) to malign the company and its management, particularly against the respondent. The action of the petitioners were motivated, an oblique desire to malign the respondent and the company with malicious intent to defame the respondent and thereby injuring his business reputation and social standing. The petitioners attempt to usurp the Kumudam Publications Private Limited by illegal and unlawful manner has been resisted by the respondent as per law. Having failed in all their endeavour, got infuriated over the same, lodged a criminal complaint against the respondent, which was closed as mistake of fact and thereafter protest petition filed, which was also dismissed. Thereafter, they filed a revision petition before this Court. In that petition, no relief obtained, on the other hand, the accused are taking adjournments in the revision case to avoid its dismissal.

4.1. On the contrary, to tarnish the respondent's reputation in the eyes of public, in general and to the readers of Kumudam publications, the petitioners wrote letters to many distributors of the magazine and others. Without any authority, they have lodged a complaint dated 30.04.2018 claiming that the petitioner/Accused No.2 is a major shareholder in M/s.Kumudam Publication Private Limited and the company is marked as under "Management Dispute" by the Registrar of Companies, Chennai. The petitioner/Accused No.2 claims, he is holding 64.73% of the equity shares of company and his mother Mrs.A.Kothai is holding 1.88% of the shares and M/s.Imprint Tech (India) Private Limited holding 33.39% in which, the respondent and his brother Mr.P.Srinivasan are the directors. Making allegations as though the respondent made unauthorised withdrawal of salary to the tune of over Rs.3 crores during the year 2008-2009, the petitioner/Accused No.2 lodged a complaint with the police and a criminal case in Crime No.196/2010 is pending before this Court.



4.2. Further, on 15.08.2010, a Memorandum of Understanding was entered between the shareholders of Kumudam Publications Private Limited. In that it was agreed that two Chartered Accountants to be appointed as Joint Statutory Auditors to protect the interest of rival parties and the same was approved by the General Body of the company on 14.02.2011. It was further alleged in the complaint that since the respondent and his brother started violating and defying the terms and conditions of the above Memorandum of Understanding dated 15.08.2010, the petitioner/Accused No.2 filed a civil suit in C.S.No.139 of 2012 for the relief of specific performance on the above MoU, which is pending before this Court. He also questioned the board meeting held on 20.09.2011, by which, the respondent and his brother cancelled the shares of the petitioner/Accused No.2 and intimated the same to the Registrar of Companies by way of filing Form 32, for the reason the petitioner/Accused No.2 has become a citizen of USA. The mother of petitioner's/Accused No.2, filed a petition before the National Company Law Tribunal (NCLT) on 02.01.2012 challenging the cancellation of the shares in a board meeting held on 20.09.2011 and the resolution passed thereon. It was further alleged that the respondent had exerted undue pressure on Mr.Chella Krishna, Chartered Accountant appointed on behalf of the petitioner/Accused No.2 group and hence, he resigned.

4.3. Presumably, to facilitate the respondent, to place the audited accounts before the Annual General Meeting and to regularise pending matters utilising the services of an auditor on the choice of the respondent, despite the petitioner's/Accused No.2 group holding major share of 66.61%, which has been invalidated illegally. With these allegations, a letter was sent to the authorities and to the bankers, not to accept any audited accounts of the said company unless it is signed by joint auditors. This letter is contrary to the facts and truth, which caused defamation. Hence, the respondent filed a private complaint before the II Metropolitan Magistrate, Chennai on 17.07.2018. The sworn statement of the respondent was recorded on 24.07.2018, thereafter seven documents produced and marked as Ex.P1 to P7. Thereafter, on satisfying prima-facie case is made out, the lower Court by order dated 27.07.2018, took cognizance of the offence in C.C.No.5708 of 2018, against which, the present quash petitions filed.

5. The learned Senior Counsel appearing for the petitioners submitted that a letter dated 30.04.2018 was sent to the Registrar of Companies, Income Tax officials and to the bankers informing that in Kumudam Publication Private Limited, the petitioner's/Accused No.2 group was holding 66.61% and M/s.Imprint Tech (India) Private Limited, a company owned by the



respondent and his brother Srinivasan was holding 33.39%. In the year 2008-2009, a dispute arose between the shareholders over the fraudulent and unauthorised withdrawal of salary by the respondent as Managing Director to the tune of over Rs.3 crores. Hence, a criminal complaint was lodged in Crime No.196/2010. Thereafter, both the groups came to an understanding, on 15.08.2010, a Memorandum of Understanding was entered between the petitioner's/Accused No.2 group and the respondent group, wherein, it was agreed that the respondent group shall transfer their 33.40% shares in KPPL, with certain conditions, to restrain usage of the name "Kumudam" as prefix or suffix in the magazine and editions. Further, to surrender the RNI license, Trademark, Copy Right and other registrations by the respondent and shifting of the Tower and to vacate the premises of KPPL by the respondent. The shares to be valued and after arriving at the valuation, the amount to be paid by the petitioner's/Accused No.2 group to the respondent and all other disputes and the interest in the other connected business entities to be resolved. On arriving at the value, a schedule to implement the same, by a final settlement agreement, to be entered within 60 days. One of the primary condition was that both the parties agreed to appoint a Chartered Accountant each as Joint Statutory Auditors, to audit the books of accounts of Kumudam Publications Private Limited and Loganatha Trading Private Limited for the year ending 31.03.2010 and to do audit for the period 01.04.2010 to 15.08.2010, which will be the basis for arriving at the valuation of KPPL and Loganatha Trading Private Limited. Pending execution of final settlement, the petitioner/Accused No.2 agrees not to precipitate the criminal case pending before the Commissioner of Police and shall withdraw the complaint at the time of execution of final settlement agreement. Further, the Memorandum of Understanding shall be kept with Mr.N.Ram of "The Hindu". Further, affidavits, written statements etc. to be filed mutually, not to affect the rights of the petitioner's/Accused No.2 as well as the respondent in C.S.No.365 of 2002 and C.S.No.1018 of 1999 and give quietus to all the disputes between the petitioner's/Accused No.2 group and the respondent's group. The execution of the final settlement agreement shall be done within 60 days from the date of Memorandum of Understanding dated 15.08.2010.

5.1. Contrary to the agreement, the respondent held Board meetings and took policy decisions adversely affecting the petitioner, by racking the status of the petitioner as foreigner/NRI, highlighting the restrictions in the news agency and FDI investment in print and publishing industry, by sending complaints to the RBI, Enforcement and other authorities, started giving trouble to the petitioner/Accused No.2, undermining his status and shareholding. The petitioner's/Accused No.2 group defending the same by sending



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objections, for the conduct of board meeting in his absence and for ratifying the accounts, which was prepared after the forced resignation of auditor nominated on behalf of the petitioner/Accused No.2. Further, for not complying to the Memorandum of Understanding dated 15.08.2010. The Kumudam Publications Private Limited also fell into debt, due to the wrong decisions and mismanagement, the respondent made huge payments, without proper reasons. The petitioner having given personal guarantee for the loans to the bank and other financial institutions, made to suffer for the improper, illogical decisions taken. On the other hand, ignoring the protest of the petitioner/Accused No.2, in holding the Board meetings unilaterally by the respondent. In the Board meetings, it was recorded that the petitioner not attended the board meeting on three occasions, hence he was removed from the directorship of the company. The shares of the petitioner/Accused No.2 was cancelled and a paltry sum, shown as its value and kept in an escrow account to justify the illegal act. The petitioner not only lodged a police complaint, he also filed a civil suit before this Court and before the National Company Law Tribunal. Further, he had to face, proceedings of the Enforcement, RBI, Income Tax and other authorities. Since the Joint Statutory Auditor resigned, the fundamental issue to arrive at the value of the company was flouted by illegal design, in the process the petitioner/Accused No.2 was made to suffer heavily and the reputation of the magazine suffered. The petitioner sent letter to the authorities and bankers for non implementation of Memorandum of Understanding dated 15.08.2010, Joint Statutory Audit not conducted and its repercussion, the letter was an information to the concern and not a complaint. This letter was necessary to safeguard the interest of the petitioner and to inform the public and others about the real status of issues between them. Further, from the sworn statement recorded, it is seen that the sworn statement is contrary to the complaint, wherein, exaggerated version and new facts stated referring to the Company Law Board petition in C.P.No.54 of 2012, FEMA, Enforcement Directorate actions, the closure report filed in Crime No.196 of 2010, dismissal of protest petition and the revision petition is yet to be admitted by the High Court. Further, taking advantage of the wordings in the resignation letter of the Joint Statutory Auditor, appointed on behalf of the petitioner/Accused No.2 that Auditor resigned due to pre-occupation, since the senior partner Dr.C.N.Gangadaran was in advanced age of 74 years. On perusal of the said letter, it can be seen, the primary reason is that there have been prolonged litigation between the shareholders, i.e. petitioner and the respondent. This litigation was due to the non cooperation and non adherence to the Memorandum of Understanding dated 15.08.2010. From the letter of Ministry of Corporate Affairs dated 23.08.2018, it is seen that the respondent vide letter



dated 27.03.2018, has addressed to the Regional Director, Southern Region, Chennai, under Section 140(1) of the Companies Act, which is nothing but the removal of the Auditor.

5.2. Further, the cognizance order of the learned Magistrate is nothing but reproduction of the complaint, there is no reference to the sworn statement. The learned Magistrate failed to advert to the sworn statement to arrive at his satisfaction on the other hand, mechanically passed an order based on the complaint. He further submitted that except for the respondent, no other witnesses examined to corroborate and to confirm the publication of alleged defamation letter dated 30.04.2018, to show that the imputation, harmed the reputation directly or indirectly in the estimation of others and thereby lowering moral or intellectual character of the respondent or lowers his credit. The learned Senior Counsel produced the final order passed by the National Company Law Tribunal in TCP No.26 of 2018, the Tribunal held the Board Meeting held on 20.09.2011, cancelling 3,32,400 equity shares of the petitioner/Accused No.2 and the subsequent filing of Form-32 before the Registrar of Companies on 02.01.2012, are non-est in law. Further held that the High Court of Madras, has allotted 3,32,640 shares amounting to 64.73% of the share holding of Kumudam Publications Private Limited in favour of the petitioner/Accused No.2. It refers to the smooth exit of the respondent as per the Memorandum of Understanding dated 15.08.2010, pendency of the civil suit in C.S.No.139 of 2012 before this Court is also recorded. It is further observed, referring to FIPB and RBI holding categorically, that there is no violation of acquisition of shares by the petitioner/Accused No.2 and there is no infusion of foreign exchange for purchase of the same. The adjudicating authority of FEMA, not ordered confiscation of 3,32,640 shares and only penalty imposed, which is under appeal before the Appellate Tribunal for Foreign Exchange.

5.3. The learned Senior Counsel further submitted that the petitioner's/Accused No.2 position as Director, major share holder restored, further, the National Company Law Tribunal now appointed one Mr.K.K.Balu (Ex-Vice Chairman, Company Law Board) as Chairman of the Kumudam Publications Private Limited, who will lead the Board of Directors, gave liberty to the petitioner/Accused No.2 to nominate two more directors in the Board of Directors of Kumudam Publication Private Limited, thereby justifying the letter dated 30.04.2018 sent to the authorities and bankers, was only to safeguard the interest of the petitioner/Accused No.2 group.

6. In support of his contention, the learned Senior Counsel for the petitioners relied upon the decision of this Court in the case of N.Sathya and another Vs.V.Sekar reported in 2009 SCC



Online Mad 1709 for the preposition that the imputation should be either made directly to the knowledge of third parties or the same should be published to the knowledge of third parties. In this case, there is no such publication. Further, relied upon the decision of this Court in the case of B.Sreenivasan Vs.M.K.Thirumurugan reported in 2009-2-LW (Cr1) 909 for the preposition that what is the abusive language spoken by the petitioner, later amounting to defamation nothing has been stated, it is the merits of contention and rival contention, which is now projected as defamation. Further, he relied upon the decision of the High Court of Bombay, in the case of Ramachandra Venkataramanan Vs.Shapoorji Pallonji & Company Ltd. and Others reported in MANU/MH/0495/2019, wherein it is held as follows:

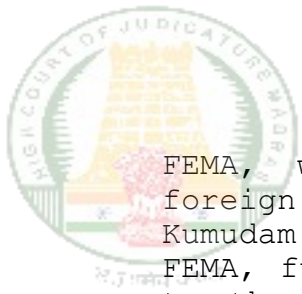
"46. Coming to the press note, the allegedly offending words stated in it are 'motivated', 'baseless' and 'smear campaign'. Smear means damaging the reputation by false accusation. These words are required to be read in the entire context. The petitioner has made this statement with the reference to earlier disputes. As wp.5298.2018.doc mentioned in the beginning, the matter carries a baggage of accusations, denials, claims and disclaimer. Both the parties are from the business world. Though they initially worked together, today, they are at loggerheads. Their disputes are discussed publicly by the media and the people. When two persons are fighting, they are bound to make some allegations against each other. If these allegations are abusive, they create an impression of hatred, contempt and ridicule against the person who is attacked. I am of the view that these words do not constitute defamation. One has to be careful in choosing the words while expressing his feelings. To express and speak is an invaluable fundamental right of an individual guaranteed under Articles 19 and 21 of the Constitution of India to all the citizens which is the soul of democracy. The law of defamation is one of legally acceptable reasonable restrictions in the Indian legal system. To oppose, deny, reject, defend, etc. are the ways of expression. It manifests emotional status and thinking process. However, it should not lead to harm, damage, which is a rider to the freedom of expression. Thus, one can disclaim, refuse, deny, reject certain charges or allegations made against him or her publicly with restrained words. Ultimately, it is a choice of words which may constitute the offence of defamation."



7. Further, the learned Senior Counsel relied upon the decision of the Hon'ble Supreme Court in the case of M.L.Wadhawan Vs. Zunzarrao Bhikaji Nagarkar and Others reported in (2018) 13 SCC 290 and Rajesh Rangaraja Vs. Crop Care Federation of India and Another reported in (2010) 15 SCC 163. Further relied upon the decisions of this Court in the case of S.Seetharama Iyer Vs. K.C.Ramulu reported in 1972 LW (Cr1) 226 and Violet Wapshare Vs. Maureen Froud reported in 1970 LW (Cr1) 4, reiterating similar preposition.

8. Learned Senior Counsel appearing for the respondent submitted that in the complaint filed by the respondent, the respondent established in detail how each allegations mentioned in the letter was false and how the petitioner/Accused No.2 despite knowing the same, sent letter to various authorities and bankers. The petitioner/Accused No.2 defence is that the letter would fall under Exception 8 and 9 of Section 499 I.P.C. on the ground of 'good faith' cannot be considered now. The petitioners to prove the letter dated 30.04.2018 was sent in good faith would be a matter of fact, to be proved only during trial. The point raised by the petitioner/Accused No.2, that he is entitled for exemption on 'good faith' is not supported with any materials or by plausible explanations. The allegation made against the respondent is that the respondent exerted undue pressure on Mr.Chella Krishna of M/s.CNGSN & Associates, Chartered Accountant, proved to be false. The resignation letter of the Auditor dated 23.03.2018 would confirm the same. The CNGSN & Associates LLP, Chartered Accountants, informed to the Kumudam Publications Private Limited that, owing to preoccupation they are submitting their resignation as Statutory Auditors of the company. Further, the respondent, had written a letter to Mr.Chella Krishna, Chartered Accountant on 21.06.2018 to clear the doubt of the petitioners. The Chartered Accountant by his reply categorically stated that due to preoccupation and due to the advanced age of the senior member they are unable to continue with the auditing of the company. Hence, he resigned from the position of Joint Statutory Auditor of the company.

9. Further, on the letter of the petitioner dated 30.04.2018, the office of Registrar of Companies had sought for para-wise reply vide communication dated 22.05.2018. Thereafter, the respondent had sent a reply on 25.06.2018, giving detailed para-wise explanation for the false allegations made against him. Despite the same, no refutation or explanation has been given by the petitioners. Further submitted that the petitioner filed a complaint along with the documents, thereafter, sworn statement was recorded. In the sworn statement, the respondent narrated the entire sequence of happenings and the pendency of the Company Law Board petition. The action initiated under the



FEMA, wherein the petitioner/Accused No.2 was found to be foreign citizen/NRI and hence, by acquiring the shares of Kumudam Publications Private Limited, violated the provisions of FEMA, further Enforcement Director conducted enquiry with regard to the purchase of shares and imposed penalty of Rs.1 crore, against which though an appeal had been filed, it is yet to be entertained. Likewise, Crime No.196 of 2010, which was filed at the instance of the petitioner was closed as mistake of fact. Though protest petition has been filed, the same was also dismissed. The respondent on filing of the complaint, was examined by the trial Court, who gave his sworn statement, produced documents, Exs.P1 to P7. The trial Court on the evidence and materials produced, satisfied finding prima-facie case made out, took cognizance and orders passed, which is a detailed and self explanatory one. The points raised by the petitioner are factual to be decided during trial. Further, submitted that at the stage of cognizance, it is not necessary to weigh and see whether the case would end in conviction. It is suffice to see prima-facie case is made out. In the above case, the trial Court got satisfied that prima-facie case made out, took the case on file, issued summons. The petitioners now cannot challenge the same for the subsequent development or orders, which necessarily to be put to the witness, thereafter veracity or otherwise to be decided and not in this quash application. He further submitted that a person claiming shelter under any of the exceptions, the onus is on that person to prove the same, which is only during trial. The petitioner filed various cases in various forum, however, could not obtain any orders in his favour. Admittedly, there are cases pending before the forums, the modus of the petitioner/Accused No.2 is that he would set up his mother, who is also holding meager share in the company, in filing one petition or other to obstruct the smooth functioning of the company and thereby being one of the reason for the company to have a downslide. Not stopping with the same, he is presently using his sister as Power of Attorney and filing one petition or other. The petitioner being a USA citizen, Doctor by profession and a Cardiologist, busy with his profession, has no time for the company. M/s.Kumudam Publications Private Limited needs full time Director and Executive to involve on a day-to-day basis, Kumudam Publications cannot be operated by remote. The respondent from the year 1990, is working tirelessly for the growth of Kumudam Publications, the company made good progress expanded and made huge profits. Thereafter only he was made as Managing Director. The respondent's salary and 11% remuneration are all approved by the Board of Directors. Likewise purchase of equipments was for the benefit of the company. The allegation that the respondent had withdrawn over Rs.3 crores unauthorisedly is false. These false allegations are confirmed, and for that reason Crime No.196 of 2010 was closed as mistake of fact. The Memorandum of



Understanding dated 15.08.2010 was signed under undue pressure and coercion. The suit filed by the petitioner in C.S.No.139 of 2012 for specific performance is left as it is. The petitioner not shown any interest to pursue the suit with diligence. The petitioner already approached the Company Law Board in C.P.No.154 of 2012, which was numbered as T.C.P.No.26 of 2018 and unable to get any interim orders.

10. This Court as well as the Apex Court time and again have held that in a case of defamation, any person, who is claiming protection under the Exception has to prove the same and the proof is only during the trial and not in a quash application.

11. The learned Senior Counsel referred to the following decisions of the Hon'ble Supreme Court in support of his contentions:

(i) In the case of Sardar Amar Singh Vs. K.S.Badalia reported in (1965) 2 Cri LJ 693, it was held as follows:

"15. One of the ingredients of the offence of defamation is that there should be making or publication of any imputation concerning any person. Such imputation may be words either spoken or written. The defamatory matter has to be published. In other words, it has to be communicated to a person other than the person defamed. The word 'makes' in Section 499 refers to the originator of the defamatory matter. I can usefully refer here to Volume III, 6th edition of Dr. Sir Had Singh Gour's Penal Law of India page 2340 where the learned author has noted that the word "'makes" in Section 499 has been used in its etymological sense as connoting "to make public" or to make known to people in general. Publication implies communication to at least one person other than the person defamed. In other words, communication must be to a third party, that is, to a party other than the person defamed (vide Khima Nand v. Emperor 38 Cri L J 806 (All)). The question whether the defamatory matter in this particular case was communicated to a third person is, therefore, material. The letter dated 21-8-1959 (Ex. X) was addressed to the President of the Managing Committee of Sri Takht Harmandirji and after receiving it he made a note on it and directed the General Secretary to report to him about the affairs of the Gurudwara. Later on, the President sent a reply to the respondent (vide Ext. C/2). There can be thus no doubt that the defamatory statements made in the letter were communicated to the President of the Managing Committee and he was a person other than the appellant who was defamed in that letter. I am thus



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of the view that there was publication as contemplated in Section 499 of the Indian Penal Code. The steps which the President and the General Secretary took after the receipt of the letter do not seem to be very material, inasmuch as the respondent may not have intended that the letter should be placed before the members of the Managing Committee"

(ii) In the case of Chaman Lal Vs. State of Punjab reported in 1970 (1) SCC 590, it was held as follows:

"8. Public good is a question of fact. Good faith has also to be established as a fact.

15. In order to come within the First Exception to section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant. The appellant totally- failed to establish these pleas. On the contrary, the evidence is that the imputation concerning the respondent is not true but is motivated by animus of the appellant against the respondent. "

(iii) In the case of Sukra Mahto Vs. Basdeo Kumar Mahto and Another reported in 1971 (1) SCC 885, it was held as follows:

"8. The ingredients of the Ninth Exception are first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a question of fact. This Court in Harbhajan Singh v. State of Punjab(1) in dealing with the Ninth Exception to section 499 of the Indian Penal Code said that it would have to be found out whether a person acted with due care, and attention. This Court said there "Simple, belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role". The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true. The proof of the truth of the statement is not



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an element of the Ninth Exception as of the First Exception to section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true. The accent is on the enquiry, care and objective and not subjective satisfaction"

(iv) In the case of Balraj Khanna and Others Vs. Moti Ram reported in 1971 (3) SCC 399, it was held as follows:

"11. The question arises whether in an action for defamation under Section 500 I. P. C., it is necessary that the actual statements containing the words alleged to have been used by the accused must be before the court or whether it is enough that the statements alleged to have been made are substantially reproduced in the complaint. The further question is whether the complaint in this case is defective in the sense that the actual statements alleged to have been made by the individual accused have not been stated in the complaint.

29. Before concluding the discussion, it is to be stated that the trial Magistrate has given an additional reason for dismissing the complaint That reason is that the resolution passed by the Standing Committee on December 11, 1964 and the discussion preceding it by the members of the Standing Committee including the appellants, is covered by the Exceptions to Section 499, I. P. C. Unfortunately, the High Court also has touched upon this aspect and made certain observations. In our opinion, the question of, the application of the Exceptions to Section 499, I. P. C., does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I. P. C. as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint."

(v) In the case of M.A.Rumugam Vs. Kittu alias Krishnamoorthy reported in (2009) 1 SCC 101, it was held as follows:

"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."



(vi) In the case of Jeffrey J Diermeier and Another Vs. State of West Bengal and Another reported in (2010) 6 SCC 243, it was held as follows:

"37. It is trite that where to the charge of defamation under Section 500 IPC, the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him. The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt."

(vii) In the case of P.S.Meherhomji Vs. K.T.Vijay Kumar and Others reported in (2015) 1 SCC 788, it was held as follows:

"15. So far as the complaint alleging the offence under Section 499 I.P.C., is concerned, if on consideration of the allegations the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance."

(viii) In the case of Subramanian Swamy Vs. Union of India, Ministry of Law and Others reported in (2016) 7 SCC 221, it was held as follows:

"189. In Chaman Lal, the Court has opined that good faith requires care and caution and prudence in the background of context and circumstances. The position of the persons making the imputation will regulate the standard of care and caution. In Sukra Mahto (supra), emphasis has been laid on protection of the interest of the person making it or of any other person or for the public good. Reference has been made to Harbhajan Singh case (supra) to stress on due care and attention. In Sewakram Sobhani v. R.K. Karanjia¹⁷², it has been observed that the ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or of any other person or for the public good, and the 172 (1981) 3 SCC 208 184 imputation made must be in good faith for the public good. In M.A. Rumugam v. Kittu¹⁷³, it has been held that for the purpose of bringing the case within the purview of the Eighth and the Ninth Exception appended to Section 499 of the Penal Code, it would be necessary for the accused 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."

(ix) In the case of Google India Private Limited Vs. Visaka Industries reported in (2020) 4 SCC 162, it was held as follows:

"107. In the light of this discussion, we may only reiterate that the criminal offence of defamation under Section 499 of the IPC is committed when a person makes a defamatory imputation which, as explained in Mohd. Abdulla Khan (supra), would consist of the imputation being conveyed to the person about whom the imputation is made. A publication, on the other hand, is made when the imputation is communicated to persons other than the persons about whom the defamatory imputation is conveyed. A person, who makes the defamatory imputation, could also publish the imputation and thus could be the maker and the publisher of a defamatory imputation. On the other hand, a person may be liable though he may not have made the statement but he publishes it."

and prayed that the quash petitions to be dismissed.

12. Considering the rival submission of Senior Counsels appearing for the petitioners and respondent it is seen, the letter dated 30.04.2018 was sent by the petitioner to authorities and Bankers with regard to dispute arising for non complying Memorandum of Understanding dated 15.08.2010. The dispute was among the shareholders of KPPL. The Memorandum of Understanding was a precursor, for a final agreement to be entered within 60 days. The primary issue was to arrive at the value of the shares, it was a buy back arrangement of shares. The respondent agreed for a smooth exit. The interest of both petitioners and respondent to be safeguarded. None other than Mr.N.Ram of "The Hindu" was nominated to conclude the Memorandum of Understanding. Thereafter, the issue of petitioner/Accused No.2, NRI status and devolution of share to him racked up. It is not the case that the respondent was not aware of it when Memorandum of Understanding dated 15.08.2010 was entered. There have been several adjudications, enquiry, suit and proceedings before the Enforcement authorities, RBI and others. Civil suits also pending. The NCLT order in TCP No.26 of 2018 dated 02.11.2020, set asides, clouding of mystery with regard to devolution of shares, the petitioners shareholding, the proceedings initiated by Enforcement, RBI and others. Now the petitioners position as major shareholder restored, the petitioner sending communication to the authorities and Bankers finds justifiable reason. In view of the above it cannot be alleged that imputation caused by the petitioner, lead to defamation of the respondent.



13. In this case though the respondent claimed by the letter dated 30.04.2018, he was defamed, except for the statement of the respondent none other were examined to corroborate, substantiate that such imputation caused harm to his reputation directly or indirectly in the estimation of others and thereby he was defamed.

14. Thus, looking the case from any angle, this Court finds no reason or justification to continue the proceedings in C.C.No.5708 of 2018. Further, continuation would only amount to abuse of process of Law. Hence, the proceedings against the petitioners in C.C.No.5708 of 2018, pending before the learned II Metropolitan Magistrate, Egmore, Chennai is hereby quashed.

15. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

rsi

To

The II Metropolitan Magistrate,
Egmore, Chennai.

+2ccs to Mr.Amizhdhu, Advocate, Sr.No.31901

+1cc to Mr.K.Gowtham Kumar, Advocate, Sr.No.31932

CrI.O.P.Nos.21758 & 21777 of 2018

KJ(CO)
RVM(30/06/2022)