



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18656 of 2018 and
CRL.M.P.Nos.9835 & 9836 of 2018

1.Bureau Shanmugam

President,
Mamallan Co-operative House Building Society,
No.A-36, Mahendra Pallavan Street,
Mamallan Nagar,
Kanchipuram 631 501.

... Petitioner

Versus

1.P.Radhakrishnan

S/o.Desavelu,
Rep. by his Power Agent,
P.R.Desavelu, Aged 39,
S/o. P.Radhakrishnan,
No.A-35, K.T.S.Mani Street,
Mamallan Nagar, Kanchipuram.

2.Mr.G.Kathirvel,

Editor & Printer,
'NALLATCHI' Monthly Tamil Magazine,
No.4/17, Grey Nagar 3rd Street,
Pulianthoppu, Chennai - 600 012.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the same in respect of the petitioner C.C.No.227/2015 on the file of Judicial Magistrate - II, Kanchipuram.

For Petitioner : Mr.K.M.Balaji

For R1 : Mr.R.Rajasekaran for
Mr.R.Vijayakumar



ORDER

The petitioner/A1, who is facing trial before the learned Judicial Magistrate No.II, Kancheepuram (trial Court) in C.C.No.227 of 2015, for offence under Section 501 of IPC, has filed this Criminal Original Petition.

2.The gist of the case is that the 1st respondent/complainant is the resident of Mamallan Nagar, Kancheepuram, who filed the private complaint against the petitioner/A1, President of Mamallan Cooperative House Building Society at Mamallan Nagar, Kancheepuram (Hereinafter referred to as 'Society') and the 2nd respondent/A2, Editor and Printer of Tamil monthly magazine viz., 'Nallatchi'. The complaint of the 1st respondent is that the petitioner circulated October month's publication of 'Nallatchi', a Tamil monthly magazine to the residents of Mamallan Nagar, Kancheepuram Town and other places on 12.10.2014 in person and also through his henchmen at free of cost and also affixed posters on walls of houses and shops at prominent places in and around Kancheepuram Town. Though the magazine was priced at Rs.10/-, the same was circulated at free of cost by the petitioner. In the said magazine in page Nos.8 and 9, slanderous and libel article was printed and published by the 2nd respondent in the name of the petitioner. The said article printed with a heading of 'Mamallan Kootturavu Veedu Kattum Sangathil Mega Mosadi' 'Ambalapaduththugirar Bureau Shanmugam'. In the article, the photo of petitioner and the 1st respondent published. The article is said to have been reported by two persons viz., R.Anandan and S.Rajendran. On enquiry, it was found that these persons are fictitious and no such persons are available in that names. In the article, imputations were made against the 1st respondent as if the 1st respondent swindled Rs.38/- crores of rupees of Mamallan Cooperative House Building Society funds during his tenure as President. The 1st respondent never acted as President of the said society at any point of time. The Society was having a Board, which was discharging its duties under the Presidentship of President, Secretary and team of Directors.

3.It is further averred in the complaint that the house, in which, the petitioner residing, was originally sold by the Society through registered sale deed to its member (No.381) namely one V.Rajamohan, son of V.Vasudeva Mudaliar in the year 1979. Thereafter, the said V.Rajamohan, on family partition, had given this property to his brother Gnanavadivelan on 22.04.1981. After death of Gnanavadivelan, his legal heirs sold the property to the 1st respondent on 02.08.1982. It is reported



in the article that the 1st respondent is a Member of DMK political party, using political influence, he committed various misdeeds. The 1st respondent is a well known person in Kancheepuram Town and he is a well known Bus Operator, owner of Bharath Petroleum Corporation Limited, fertilizer sales agent, MRF Tyre sales agent and running a finance company as one of the Director. He is also a member of International Rotary Club of Kancheepuram and President of Mamallan Nagar Matriculation School, Kancheepuram. Thus, the 1st respondent is a man with reputation in the society. Further, the 1st respondent and his family are annually paying about Rs.36,00,000/- (Rupees thirty six lakhs only) towards income tax. The 2nd respondent, the Editor and Printer of magazine without verifying the truthfulness and otherwise of the article, published the same. Annoyed over the same, the 1st respondent sent legal notice, dated 15.10.2014 to the petitioner seeking withdrawal of slanderous article and also sought compensation of Rs.10,00,000/- (Rupees ten lakhs only). The petitioner received the notice, sent a reply on 31.10.2014 confirming the publication of the article and shown no remorse. Hence, the 1st respondent filed a complaint before the trial Court against the petitioner and the 2nd respondent. The trial Court on examination of 1st respondent and two other persons, took the case on file as C.C.No.227 of 2015, issued summons to the accused, against which, the present petition.

4.The learned counsel for the petitioner submitted that the petitioner took over as President of the Society, found some irregularities committed by the erstwhile office bearers and its members. He found that the approval granted by the Director of Town Planning in the year 1973 was not available in the concerned file. The petitioner received lot of complaints from the members and others about the misdeeds committed on the society, more specifically against the 1st respondent. The petitioner sent a complaint to the concerned authority. On the complaint of the petitioner, the Deputy Registrar, Cooperative (Housing) Society, Chengalpet ordered domestic enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act (Hereinafter referred to as 'Act') appointing one Mr.Ramanujam, Sub Registrar, (House Building Society), Tambaram Range as Enquiry Officer. The enquiry officer confirmed the misdeed committed by the 1st respondent, vide his report, dated 05.10.2015. In the report, it is clearly stated that the plot allotted to the vendor of the 1st respondent was for public purpose and not for residential plot. Based on the enquiry report of Mr.Ramanujam, the allotment of plot and subsequent sale deed executed by the vendor of the 1st respondent was



directed to be cancelled by the Deputy Registrar, Cooperative (Housing) Society, Chengalpet, vide Na.Ka.No.136/2015/U, dated 05.01.2016. Unable to digest the cancellation of sale deed and taking publication of article as a shield and to divert the misdeeds, a legal notice was sent by the 1st respondent to the petitioner on 15.10.2014 with false allegations. The petitioner sent a detailed reply on 31.10.2014 informing that the publication of article was made in the interest of public. The publication of article referring the 1st respondent, no way lowered his reputation in any manner.

5.The learned counsel for the petitioner further submitted that on going through the complaint and taking it as a whole, no offence is made out against the petitioner. He further submitted that the procedure adopted by the trial Court in taking cognizance of the complaint of the 1st respondent is not proper. The procedure under Sections 202 and 204 of Cr.P.C., were not followed in this case. Hence, the very cognizance of the complaint is bad in law and prayed for quashing of the complaint against the petitioner.

6.In support of his contention, the learned counsel for the petitioner relied on the decisions of "Rajendra Kumar Sitaram Pande Versus Uttam and another reported in (1999) 3 SCC 134" and in the case of "Sri.K.Venkataramaiah and Ors., Versus Sri Katterao reported in ILR 2008 KAR 474" for the point that the petitioner is claiming exception 8 of Section 499 IPC. Further, stressing on the point that taking cognizance, issuing process by recording the statement of complainant and other witnesses based on proof affidavit is not proper.

7.The learned counsel for the respondent/complainant filed typed set and made his submissions that Mamallan Cooperative House Building Society, Mamallan Nagar, Kancheepuram had developed layout in Kancheepuram Town for benefit of its members and others. The Commissioner Town Planning, Kancheepuram approved the layout of Society on 30.05.1973. The Society vide its resolution No.8, dated 02.06.1973 allotted plots to seven persons. The plot No.A35 was allotted to V.Rajamohan (Member No.381), which was approved, duly signed by President, Vice President and Secretary and others of the Society on 02.06.1979, by way of registered sale deed in document No.866 of 1979. Thereafter, the 1st respondent purchased the said property from his vendor on 02.08.1982 and constructed house after getting approval from the Municipal and other authorities and thereafter, he has been residing there for decades. He further submitted that after defamatory article published in the



magazine, the 1st respondent was questioned by several persons about the same and thereby, he looks down. Annoyed over the same, he sent a legal notice to the petitioner on 15.10.2014 seeking withdrawal of slanderous article and also sought compensation of Rs.10,00,000/- (Rupees ten lakhs only). On 13.10.2014, the petitioner sent a reply not denying the publication of defamatory article in the magazine. On going through the defamatory article, on the face of it, it can be seen that it is an article with imputation causing defamation to the 1st respondent. The 1st respondent never acted as President of Society at any point of time. It is stated in the magazine that from the year 1979 to 2013, for 35 years, the 1st respondent held various post in the society as Director, President and Vice President. During his period of tenure, he misappropriated to the tune of Rs.38 Crores. By purchasing the property allotted for public purpose, he committed fraud and swindled money to the tune of Rs.26 Crores. Further it is stated that the 1st respondent encroached 58 cents of water body land in Konerikuppam Village, Tindivanam Taluk. The above article is per se defamatory. The petitioner knowing its falsity, had caused such article and in connivance with 2nd respondent got it published in 'Nallatchi' magazine.

8.He further submitted that the Deputy Registrar, Cooperative (Housing) Society, Chengalpet directed an enquiry under Section 81 of the Act to be conducted by Mr.Ramanujam, Sub Registrar (House Building Society), Tambaram Range, based on the enquiry, the Deputy Registrar, Cooperative (Housing) Society, Chengalpet cancelled the sale deed to the plot No.A35, which is not proper. In this case, the 1st respondent sent a legal notice on 15.10.2014 and he filed the complaint before the trial Court on 07.11.2014. The petitioner sent a complaint to the Deputy Registrar, Cooperative (Housing) Society, Chengalpet on 10.02.2015, based on which, an under Section 81 of the Act was ordered on 31.03.2015 and the same was completed on 05.10.2015. Thus, as an afterthought to brook vengeance, after filing of complaint by the 1st respondent before the trial Court, the petitioner lodged a complaint to the Tamil Nadu Cooperative Society Authority. The Tamil Nadu Cooperative Societies Authority after 35 years of allotment of plot and execution of sale deed, had initiated enquiry under Section 81 of the Act, which is unheard-of.

9.He further submitted that on 29.02.2016, the petitioner sent a requisition to the Deputy Registrar, Cooperative (Housing) Society, Chengalpet seeking copy of the complaint, based on which the enquiry was conducted and order passed.



Since there was no reply, the petitioner sent a letter to the Deputy Registrar, Cooperative (Housing) Society, Chengalpet under Right to Information Act, on 03.03.2016. The Deputy Registrar, Cooperative (Housing) Society sent a reply in Na.Ka.No.247/2016/U2, dated 07.04.2016 informing that there is no such order available. The petitioner made representation to the Secretary, Housing and Urban Development Department, Chennai on 14.03.2016. The Secretary on the same day issued the following directions:-

"RCHS

Pl. look into it. Once the society has executed the sale deed in obtaining consideration, transfer of title becomes absolute and society has no further role to play. If there is violation of usage, it is for the planning authorities to regularize the same or take any other action deemed fit. Society has no role to play. Pl. examine accordingly and take."

10.Following the same, on 13.04.2016 in Na.Ka.No.136/2015/U, Deputy Registrar, Cooperative (Housing) Society, Chengalpet has sent a communication to the President of the Society not to take any action pursuant to the enquiry conducted under Section 81 of the Act and order passed on 05.01.2016. The 1st respondent was informed through Na.Ka.No.136 of 2015/U, dated 01.06.2016 by the Deputy Registrar, Cooperative (Housing) Society, Chengalpet that no further action would be taken with regard to allotment of plot No.A35. On fact of it, it is apparent that the petitioner made defamatory article against the 1st respondent in the magazine and the same was published by the 2nd respondent without verifying the truthfulness and otherwise. He further submitted that once the person claims protection under any exceptions, the same to be decided during trial and not in this petition.

11.In support of his submissions, the learned counsel for the 1st respondent relied on the decision of the Hon'ble Apex Court in the case of "Rajeev Kourav Versus Baisahab and Others reported in (2020) 2 Supreme Court Cases (Cri) 51", wherein it is held that if prima facie case is made out disclosing the ingredients of the offence, the Court cannot quash a criminal proceeding. In this case, the defamatory article, on the face of it, apparently confirmed prima facie case is made out against the petitioner and the 2nd respondent. Hence, he prayed for dismissal of this Criminal Original Petition.

12.This Court considered the rival submissions and perused the materials available on record.



13. In this case, the petitioner has not denied the article published in the 2nd respondent magazine 'Nallatchi'. The 1st respondent sent a legal notice, dated 15.10.2014 stating that he never acted as President of the Society and no justifiable material produced by the petitioner to show that there have been misappropriation to the tune of Rs.38 Crores. It is seen that the Society was registered in G.2085 on 20.03.1963 and functioning from 05.04.1963. The Society for the benefit of its members, had developed housing plots at Arapanencheri Village and classified plots as 'A' and 'B'. 'A' of 33 plots and 'B' of 101 plots, in total 134 plots were allotted in that area. 'A' plot consists of 4500 sq.ft and 'B' consists of 2400 sq.ft. The 1st respondent's vendor predecessor one V.Rajamohan was allotted plot No.A35 vide resolution No.8 of the Society, dated 02.06.1973. On the strength of it, the society executed a sale deed in document No.866 of 1979 on 04.06.1979 in favour of V.Rajamohan, which was duly signed by the Secretary, President and Vice President and others. During the family partition, the property was allotted to V.Rajamohan's brother Gnanavadivelan on 22.04.1981, vide document No.1055 of 1981. Since Gnanavadivelan died, his legal heirs executed the sale deed in favour of the 1st respondent on 02.08.1982, vide document No.1384 of 1982. Thereafter, the 1st respondent built house and has been residing there for decades. The 1st respondent is a well known person in Kancheepuram Town and he is a business man, running various business and Mamallan Nagar Matriculation School, Kancheepuram and he is actively involved in social and other activities.

14. The enquiry under Section 81 of the Act conducted by the Sub Registrar (House Building Society), Tambaram Range and thereafter, cancelling the sale deed are all after the notice sent by the 1st respondent for publication of defamatory article in the 2nd respondent's magazine. Now, the Secretary, Housing and Urban Development Department, Chennai had set aside the order of the Deputy Registrar, Cooperative (Housing) Society, Chengalpet in Na.Ka.No.136/2015/U, dated 05.01.2016. Be that as it may, the petitioner not denied the contents in the article and the article published in the magazine. There is no misappropriation case against the 1st respondent and further, he never acted as President of the Society. The 1st respondent purchased the housing plot from private individual for a consideration. The petitioner in the reply confirmed the alleged imputation made against the 1st respondent. Therefore, the points raised by the learned counsel for the petitioner has to be decided only during trial and not in this Criminal Original Petition and the same liable to be dismissed and, is dismissed.



15. On perusal of the complaint, it could be seen that the trial Court at pre-cognizance stage, recorded the statement of the complainant/1st respondent and other two witnesses by way of proof affidavit, which is not proper. This Court in the case of "Nallaippan Versus Samuvel in Crl.O.P.Nos.8863 & 8864 of 2005, dated 05.01.2008" had deprecated such a practice.

16. At this stage, for the mistake committed by the trial Court in following wrong and improper procedure, the 1st respondent not to suffer by quashing the entire case against the accused. The irregularity do not vitiate the proceedings, it is curable under Section 460 of Cr.P.C.

17. The order of the trial Court taking cognizance of the offence is not disturbed. The trial Court is directed to record the statement of the 1st respondent and other witnesses and proceed further, in accordance with law.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vv2
To

The Judicial Magistrate Court No.II,
Kancheepuram.

CRL.O.P.No.18656 of 2018

br [co]
srg 31/03/2022