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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2022

PRONOUNCED ON : 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.11880 of 2019
and

Crl.M.P.No.6154 of 2019

1.K.Chandrasekar
2.B.Rajasekar
3.B.Lakshmi

:Petitioners/Accused Nos.1,4,5

Vs

T.Arulmony

:Respondent/De-facto Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records culminating in C.C.No.3056 of 2018 pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.Arun Anbumani
for M/s.S.Lawrence

For Respondent : Mr.R.Subburaj

ORDER

This Criminal Original Petition had been filed to quash the Proceedings in C.C.No.3056 of 2018 pending on the file of the learned Metropolitan Magistrate No.V, Egmore, Chennai.

2.The learned Counsel for the Petitioner Mr.Arun Anbumani on behalf of Mr.Lawrence submitted his oral arguments. As per the submissions of the learned Counsel for the Petitioner, this Petition had been filed to quash the criminal complaint in C.C.No.3056 of 2017 filed by the Respondent herein as a private complaint on the file of the learned V Metropolitan Magistrate, Egmore. The Petitioners herein are arrayed as A-1, A-4 and A-5. A-4 is the son of the A-5, A-4 and A-5 are the Petitioners 2 and 3 herein. In the private complaint totally there are five accused.The learned Counsel for the Petitioners Mr.Arun Anbumani invited the attention of this Court to the private complaint in paragraphs 5 to 15 which reads as under:

"5. It is humbly submitted that the complainant having



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no other option and in order to prevent leakage into his house and find out the persons who are causing constant damage and trouble, the Complainant installed CCTV Camera in the open terrace in such a manner that the camera is facing only to the portion of the open terrace of the complainant house and the parking area of the ground floor. Immediately on 19.05.2017 the first accused herein Chandrasekaran along with 2nd accused and 4th accused namely Srinivasan and L.Rajasekar had lodged a false complaint before K7, I.C.F, Police Station, Law & Order, Chennai alleging that the Complainant is constructing Church in the open terrace for preaching and obstructing them by creating nuisance to them. Thus it became clear that it was the Accused persons who were doing all the nuisances as alleged and that being scared of being caught on the CCTV Camera, they gave false complaint.

6.It is humbly submitted that on 24.05.2017 the complainant had given police complaint against the accused herein alleging that the accused persons herein are threatening unnecessarily to uninstall the CCTV cameras. The Complainant also gave representation to National Minority Commission on the same day.

7.It is humbly submitted that on 30.05.2017 one Dhanalakshmi who is the deceased wife of 1st Accused and 3rd and 5th accused namely B.Lakshmi and R.Hemamalini had lodged a complaint alleging that the Complainant was creating nuisance and misbehaving with them. Based on all the complaints the complainant and accused were called for enquiry. Both the parties appeared for enquiry. During the enquiry it was revealed that there is no prima facie case made out in the complaint given by the accused persons herein and it was a false complaint given to harass the complainant and it was stated that the installation of camera is only for the purpose to stop the Criminal activities and could no way affect the privacy of the Accused. The complaint given by the accused persons was closed as mistake of fact.

8.It is humbly submitted that in order to wreck vengeance one Srinivasan who is the 2nd accused herein along with one unknown lady during night time wantonly in the open terrace facing the CCTV camera were dancing in the indecent manner just to irritate the complainant and his wife. The 2nd accused Srinivasan along with his wife Hemamalini facing the CCTV Camera had indulged in uncompromising and embarrassing



activities.

9.It is humbly submitted that on 17.08.2017, K.Chandrasekar the 1st accused herein with the mala fide intention to create mental agony and denigrate the character of the complainant wantonly had given false complaint to the Assistant Executive Engineer, Tamilnadu Electricity Board, Konnur, Chennai-600038 alleging that the complainant had indulged in electricity theft in his house and also given false complaint against the Electricity Board Staff that he demanded bribe from the complainant. Based on the complaint an enquiry was conducted and even the complainant's Electricity meter was verified. It was found that the complaint given by K.Chandrasekar is a false one. But due to this false complaint the complainant had to undergo a lot of hassle.

10.It is humbly submitted that the Accused persons are eyeing the house of the Complainant. In public they have challenged the Complainant that they will do all acts to create nuisance and make the complainant and his family to run away from the house. They want to usurp the property without paying any monies. The complainant does not want to accede to these unfair demands, hence, the Accused are doing one act or the other to create trouble for the Complainant and his family, making their life hell on earth.

11.It is humbly submitted that the above attitude of the accused herein had caused an immense mental agony and hardship to the complainant herein. The accused persons herein had given false complaint against the complainant with the mala fide intention to assassinate the character of the complainant in the public life. The police closure report clearly reveals that the complaint given by the accused persons are false complaint with the intention to cause mental agony to the complainant and spoil the reputation of the complainant. Further by stating that the Complainant is trying to construct a church in terrace area, the Accused are hurting the religious sentiments of the Christians at large.

12.The activities of the Accused clearly fall within the definition of Public Nuisance as defined under Section 268, Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs as defined under Section 295-A, providing false information to



public officer as defined under Section 182, False charge of offence made with intent to injure as defined under Section 211, causing defamation under Section 499 and other offences.

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13.The cause of action for purpose of filing the present complaint arose on 19.05.2017 when the accused 1st , 2nd and 4th accused has filed a false complaint claiming that the Complainant is putting up a church in the terrace area to preach Christianity, on 24.05.2017 when the complainant had lodged a complain against the accused herein before the K7, I.C.F, Police Station, Law & Order, Chennai, on 30.05 2017 when the accused person lodged false police complaint before K7, I.C.F. Police Station, Law & Order, Chennai and on 02.07.2017 and 10.07.2017 when the above complaint was closed as false complaint against the accused, on 17.07.2017 when the Accused gave a complaint to Assistant Executive Engineer, Tamilnadu Electricity Board, Konnur, Chennai-600038 alleging that the complainant had indulged in electricity theft in his house and also given false complaint against the Electricity Board Staff that he demanded bribe from the complainant, when on 10th October 2017 and enquiry in this regard was conducted, when on 12th October 2017 complaint was closed as untrue and another enquiry conducted on 18th November 2017 and closed and subsequently thereon.

14.The complainant submits that a sum of Rs 80/- is paid as a prescribed court fees for the relief sought in the complaint

15.The complainant files the above complaint before the Court where the residence of the accused is situated ie., Villivakkam, Chennai."

3.In the concluding paragraph, the Respondent/De-facto Complainant prayed the learned Metropolitan Magistrate to take the complaint on file against the Accused for the offence under Section 268 for causing public nuisance, under Section 295-A for deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs as defined under Section 295-A, under Section 182 for providing false information to Public Officer, under Section 211 for false charge of offence made with intent to injure as defined under Section 211 and under Section 499 for causing defamation and to punish the Accused 1 to 5 for committing the said offences against the Complainant. Further, in the complaint, the documents relied upon by the complainant is



provided in the list of documents. Also witnesses by name 1.A.Guruvu and 2.Wing Commander S.T.Perumal are cited as Witnesses for and on behalf of the Complainant. The learned Counsel for the Petitioners invited the attention of this Court to the summon caused by the learned Metropolitan Magistrate on the Petitioners herein which also includes in the typed set. From the summons, it is found that the learned Metropolitan Magistrate had taken cognizance of the offence only under Section 500 I.P.C. Section 499 of IPC describes defamation and Section 500 IPC is the punishment section for defamation. The Accused and the Complainant before the learned Metropolitan Magistrate are both residents and flat owners in the same block. Therefore, there had been disputes between them, particularly, the first Accused herein is residing in ground floor. Accused 2 and 3 are husband and wife. They are residing in the first floor of the same block. Accused 4 and 5 are Petitioners 2 and 3 herein who are the son and mother respectively. They are residing in the ground floor. The Complainant T.Arulmony is residing in the first floor. The documents relied on by the Complainant in the complaint are complaints given by the Petitioners herein and other two Accused who are not before this Court viz., Accused 2 and 3 who are husband and wife. The wife of the first Petitioner - Chandrasekar died before filing of the Criminal Complaint. The deceased Dhanalakshmi had preferred complaint against the Complainant to the Police and TANGEDCO authorities regarding suspected energy theft. Also, the report sent by the Police officials and TANGEDCO Engineers regarding the complaints received against the Complainant/Respondent herein. Also, the copies of the complaint sent by the Complainant to the Commission for Minorities and against Accused to various public officials. Also, the information obtained by the Complainant/Respondent herein from public authorities on filing Petition under Right To Information Act are the documents relied upon by the Complainant. Also, he had enclosed the Floppy Disc containing videos of the Accused focusing on the CCTV in uncomfortable situation.

4.The learned Counsel for the Petitioners invited the attention of this Court to the ingredients of Section 499 of I.P.C. and along with its exceptions, particularly, exceptions 8,9,10 which are extracted hereunder:

"Eighth Exception-Accusation preferred in good faith to authorised person-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception-Imputation made in good faith by person for protection of his or other's interests.-It



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is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Therefore, the contents of the complaint in paragraphs 4 to 9 and the documents relied on by the Petitioners particularly the complaint preferred against the Accused 1 to 5 to the Police Officers cannot be considered as defamation attracting the ingredients of Section 499 of IPC. When that be the case, the learned Metropolitan Magistrate taking cognizance of the offences alleged by the Complainant/Respondent under Section 500 of IPC is not at all maintainable. It is nothing but an abuse of process of Court against which the affected party had to approach this Court only under Section 482 of Cr.P.C. Therefore, the learned Counsel for the Petitioners sought indulgence of this Court to exercise the extraordinary power of this Court under Section 482 of Cr.P.C. to quash the Private Complaint filed by the Respondent herein in C.C. No.3056 of 2018 on the file of the learned V Metropolitan Magistrate, Egmore. It is pertinent to note that the Petitioners also had given similar complaint against the Complainant to the same public officials. The complaints referred by the Complainant are complaints preferred by the Petitioners herein who are arrayed as A1, A4 and A5 and other accused viz., A-2 and A-3 who are husband and wife, who are not before this Court. The police officials who are public officials empowered to conduct enquiry to investigate cases regarding criminal offences as per law. Therefore, the conduct of the Petitioners herein and the other accused before the Court of the Metropolitan Magistrate and the conduct of the wife of the first Petitioner herein - Dhanalakshmi who is no more who had preferred complaint to the police regarding the conduct of the Complainant herein/Respondent towards woman for which the Complainant cannot initiate this complaint.

5.The complaint preferred by the Complainant/Respondent herein is defective particularly three defects where the imputation alleged by the complainant against the accused had been publicised through publication are in any way affecting the dignity and reputation of the Complainant/Respondent in the eyes



of the general public. Among the documents, there had not been any document regarding publication of either pamphlets or any such things by the Petitioners herein and other accused before the Court of the learned Metropolitan Magistrate, Egmore.

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6. The learned Counsel for the Petitioners invited the attention of this Court to the contents of the complaint preferred against the Respondent/Complainant with the police officials. It attracts the provisions of Harassment of Woman Act. The first Accused - Chandrasekar states that he had not preferred any complaint to TANGEDCO. It is the contention of the respondent/complainant that the Respondent had preferred complaint against the Petitioners and two others regarding preferring a complaint to TANGEDCO as though the Respondent had committed energy theft. TANGEDCO officials came to the residence of the Petitioners, made enquiry and found out that this is a vexatious petition. Therefore, they closed the petition.

7. In support of his contention, the learned Counsel for the Petitioners relied upon the following rulings:

7.1. In the case of G.N. Subba Rao and others -vs- Anna M. Venkatachalapathi Aiyar reported in (1938) 48 L.W. 320 (Mad) this Court has held as follows:

"The defamation consisted in the presentation of a certain petition to the Sub-Inspector of Police by the residents of a certain locality in Madura against the complainant alleging that he was in the habit of getting drunk and abusing people and threatening to do evil by the use of black art and praying for protection against the complainant. There can be no doubt that the so-called defamation was the presentation of a petition to a public officer with the intention of protecting the interests of the people who sent the petition. That fact stands out unmistakably, and this outstanding fact has been practically ignored by the learned Magistrate. The case clearly fell under the 8th exception which declares that "it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation." It is not pretended that the Sub-Inspector was not a person having lawful authority over the complainant in the present case with respect to the subject-matter of the accusation contained in the petition made to him. Good faith has to be presumed in view of the fact that it is admitted by the complainant that he does not know the accused personally and in the absence of any evidence of any express malice or enmity. Apart from



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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 cognisance 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, Penal Code, 1860; offences of this nature cannot be taken cognisance 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."

7.2. In the case of M. Neelakantadas -vs- M. Gopinathan reported in 1995 (1) M.W.N. (Cr.) 79 this Court has observed as under:

"8. ...

"The plea of absolute privilege means that by a sort of legal fiction the law, owing to compelling consideration of public policy invests statements made upon certain occasions with a special protection so that all statements made on such occasions even though they may be defamatory cannot be made the subject matter of litigation in courts of law and no action of defamation will lie in respect of them."

12. Learned counsel Mr. P. Gopalan brought to my notice the decision in *Bapalal and Company v. Krishnaswami Iyer*, (1940) 2 MLJ 556: AIR 1941 Mad. 26: ILR 1941 Mad. 332: 52 L.W. 519: 1940 MWN 1054. In that case, a medical practitioner at Madras who was the respondent took some diamonds from the appellants firm of jewellery, in April, 1936. In May, the appellants presented the respondent with an invoice for their costs. By 27.9.1936 the money have not been paid by the respondent. On that date, the appellants sent a letter to the Inspector of Police, Flower Bazaar Police Station, which is claimed by the respondent to be defamatory, as being equivalent to a charge against him of criminal breach of trust. In the written statement, the appellants contended that this communication was privileged, having been sent bona fide with the sole purpose of protecting their own interests. The City Civil Court held that the occasion was privileged and if the letter were in fact bona fide the suit must be dismissed, but he held further that the letter did not state the true facts. The suit



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was decreed. On appeal, it was contended that this letter in question was privileged absolutely and consequently, the Civil Court was precluded from adjudicating upon the question whether it was sent maliciously or not. King, J. observed.

"On a careful consideration of the authorities I think this contention must prevail. The principal authorities to which I have been referred to in the course of the arguments are Sanjivi Reddi v. Konen Reddi, I.L.R. 49 Mad. 315, Sadap Jan v. Bholanath, 38 Cal. 800, Madhab Chandra v. Nirode Chandra, I.L.R. (1939) 1 Cal. 574 and Majju v. Lachman Prasad, I.L.R. 46 All. 671. All those authorities are unanimous in holding that the common law of England which grants an absolute privileged to all statements made in the witness-box should be applied in India. That privilege extends in England to the preliminary examination of witnesses, by a solicitor to find out what they can prove. The question then is how far this principle derived from Watson v. M'Ewan, 1905 A.C. 480, should be extended. 49 Mad, 315 (cited supra) dealt with a complaint to a Magistrate requesting him to take action under Sec. 107, Criminal Procedure Code and to statements made by the complainants to a police officer investigating that complaint. Both were held to be absolutely privileged. No actual evidence was given in this case, as the Magistrate eventually refused to take any action under Sec. 107. In 38 Cal. 880 (cited supra) a complaint laid before a Magistrate for criminal breach of trust which led to no trial but was dismissed under Sec. 203, Civil Procedure Code was held to be absolutely privileged. In I.L.R. (1939) 1 Cal. 574, it was held that both a report to the police alleging the commission of a crime and evidence given in court in support of the accusation were absolutely privileged. In 46 All. 671 a distinction was drawn between a complaint to the police which in fact led to judicial proceedings and one which did not. A complaint in the latter case was held not to be privileged.

Learned Judge concluded by saying,

"I am accordingly of opinion that the weight of authority is in favour of the view that a complaint to a police officer from its very nature as a statement which the complainant is prepared later, if called upon to do so, to substantiate upon oath is absolutely privileged."

The appeal by the plaintiff was dismissed by the learned Judge.



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15. On hearing Mr. Sreekumaran Niar, learned counsel for the appellant, I reacted very sharply and felt that the act of the defendant was defamatory and he cannot claim absolute privilege. But, in the light of the view taken by this Court I do not want to take a different view and the learned counsel for the appellant did not produce any weighty authority which can persuade me to differ from the view taken by this Court on the earlier occasions. Therefore, I have to confirm the judgment and decree of the courts below. The second appeal is dismissed. No costs."

7.3. In the case of J. Jayalalitha rep. by Power of Attorney Agent -vs- Arcot N. Veerasamy reported in 1997 (1) M.W.N. (Cr.) 215 this Court had observed as under:

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

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

35. In a recent Judgment of the Supreme Court in Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi (1997 CrL. L.J. 212), while answering similar question, the Apex Court, after extracting S. 499 I.P.C. and Explanation-4 thereto, observed as follows :-

"A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under S. 500 I.P.C. The contents of the magazine are alleged to be defamatory against the Marwari community, lowering them in the estimate of the public or their reputation is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the court of the Judicial Magistrate, First Class in Court No. 4 at Pune does not contain any of the allegation so as to constitute the offence of defamation defined in S. 499 and punishable under Section 500 I.P.C."



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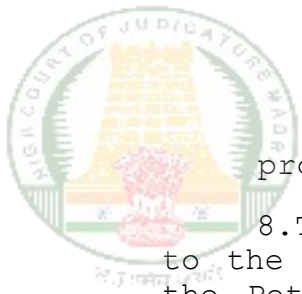
Therefore, in the absence of the said averment in the complaint, with reference to the fact of the reputation of the petitioner having been lowered down in the estimation of the others. I feel that sufficient ground is not made out for proceeding further, by taking cognizance of the complaint."

7.4. In the case of Dr.N.Raman -vs- Dr.Indira Kalyanasundaram reported in 1998 (2) M.W.N. (Cr.) 252 this Court had held as under:

"Indian Penal Code, 1860, S. 500 & S. 499 Exception Eighth - Defamation - Appellant, a Senior Lecturer in a University filed a private complaint against the Respondent, a Reader in the same University - Allegations that due to the alleged imputation made by the respondent, appellant's reputation was lowered in the estimation of the others - Publication - Letter written by the respondent, containing certain allegations, sent to the Registrar of the University - Letter sent to the lawful authority - Falls under Eighth Exception to S. 499 - Said act cannot be termed as defamation - Held, the letter containing some allegations against a particular person addressed to the authorised person, who forwarded it to a third person calling for remarks from the concerned person, cannot be said to be a publication as contemplated u/S. 499 - Since the letter sent by the respondent to the Registrar was in envelop, the main ingredient i.e. publication is not proved."

7.5. In an unreported judgment of this Court in the case of Babu.E. -vs- S.Remesh [Crl.O.P.No.24370 of 2014, dated 14.07.2020] this Court has observed as under:

"11. The respondent is referred as 'Thief' 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 that 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."

8. The learned Counsel for the Respondent vehemently objected to the line of arguments put forth by the learned Counsel for the Petitioner Mr. Arun Anbumani stating that the complainant's sworn statement had been recorded along with the documents furnished by the Complainant by the learned Metropolitan Magistrate. Only after finding prima facie materials against the accused, the learned Metropolitan Magistrate had taken cognizance of the offence under Section 500 I.P.C. alone. The learned Counsel for the Respondent/Complainant relied on the very same document relied on by the learned Counsel for the Petitioners in the typed set of papers stating that the complaint had been filed by the Complainant against the Petitioners herein who are arrayed as Accused in the private complaint regarding the frequent complaint given by the Petitioners against the Respondent/Complainant. All the complaints given by the Petitioners herein and the other two accused viz., A2 and A3, who are husband and wife, had on enquiry by the police officials found to be vexatious and not bona fide complaints. Therefore, further action was dropped. This much of information was available to the query by the Complainant to the Police Officials through Right to Information Act. Also, the complaint preferred by the Petitioners before TANGEDCO regarding energy theft was also found to be vexatious and frivolous complaint. Therefore, by filing complaint before the various authorities, the Complainant/Respondent herein was harassed. Only then, the Complainant/Respondent had approached the Court of the learned V Metropolitan Magistrate by filing the criminal complaint as private complaint for the offence under Section 500 of I.P.C. In spite of several complaints, the Respondent was regularly summoned by the Police which affects his reputation. Particularly, the Respondent herein had stated in the complaint that the intention of the Petitioners herein and other two Accused viz., A-2 and A-3 before the learned V Metropolitan Magistrate was threatening the complainant/Respondent herein and to damage the status of the complainant. Therefore, he states that there are sufficient materials to proceed with the trial of the private complaint. If the submission of the learned Counsel for the Petitioners is accepted and this Petition is allowed, it will result in miscarriage of justice by preventing the Court from adducing evidence from the complainant side. What are all admitted by the Petitioners are to be treated as valuable defence before the learned trial Judge.

9. The learned Counsel for the Respondent/Complainant relied on the following rulings in support of his submissions:

9.1. In the reported decision of the Hon'ble Supreme Court in the case of M. Arumugam -vs- Kittu @ Krishnamoorthy reported in



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difficult to return a finding whether or not the appellants have satisfied the requirements of "good faith" and "public good" so as to fall within the ambit of the Tenth Exception to Section 499 IPC. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by Respondent 2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties."

9.3. In an unreported judgement of this Court in the case of A.S.Sree Nandhini -vs- R.Uthaman [CrI.O.P.No.19578 of 2014, dated 27.11.2014], this Court has observed as follows:

"16. In this regard, it is worthwhile to refer to the decision of the Hon'ble Supreme Court in Jeffrey J.Diermeier and another versus State of West Bengal and another reported in (2010) 6 SCC 243, wherein, it has been held that the mere plea that a person believed that what he had stated was in 'good faith' is not sufficient to accept his defence unless he justify the same by adducing evidence. The observation made by the Apex Court in para 39 and 40 of its judgment, may profitably be extracted as hereunder thus:

"39. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which it came to be made and the status of the person who makes the imputation as also the status of the person against whom the imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding the appellants' plea of 'good faith' and 'public interest'. Unfortunately, all these are questions of fact and matters for evidence.

40. In the instant case, the stage for recording of evidence had not been reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied the requirements of 'good faith' and 'public good' so as to fall within the ambit of the Tenth Exception to [Section 499](#) IPC. Similarly, it will neither be possible



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nor appropriate for this Court to comment on the allegations levelled by Respondent 2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under [Section 482](#) of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties.

17. It is also useful to refer the decision in M.N.Damini versus S.K.Sinha and Others? reported in (2001) 5 SCC 156, wherein, the Hon'ble Supreme Court has held as under:

"For deciding whether the criminal proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied:

(1) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and
(2) whether it is expedient and in the interest of justice to permit a prosecution to continue. On a plain reading of the order of the Magistrate issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the appellant, it appears that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. The Single Judge of the High Court failed to apply this test. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. Assuming that the imputations made could be covered by Exception 9 of [Section 499](#) IPC., several questions still remain to be examined - whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. Having regard to the facts of the case it must therefore, be held that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under [Section 482](#) Cr.PC."

18. Therefore, as per the dictum of the Hon'ble Supreme Court narrated supra, I am of the view that the burden is on the petitioner to prove that she made allegations against the respondent herein in 'good faith' by adducing evidence. As rightly contended by the learned counsel for the respondent, without evidence, the plea of 'good faith' cannot be



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determined and it is a question of fact which requires evidence. Admittedly, in the instant case, the stage for recording of evidence has not been reached. Therefore, I am of the view that in the absence of evidence, it is difficult to come to a conclusion that whether the petitioner has satisfied the requirements of 'good faith' which squarely falls within the ambit of Eighth Exception to [Section 499](#) IPC. Further, it is not possible for this Court at this prima facie stage that whether the allegations made by the petitioner against the respondent do not constitute defamation in order to quash the proceedings by invoking inherent jurisdiction of this Court under [Section 482](#) Cr.P.C."

9.4. In yet another unreported judgement of this Court in the case of Girinivasaprasad -vs- T.D.Sanjay [Crl.O.P.No.7515 of 2017, dated 17.02.2021], this Court has observed as follows:

"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."

10. On perusal of the rulings relied on by the learned Counsel for the Petitioners and Respondent and on perusal of the materials available before the learned V Metropolitan Magistrate in the complaint as well as the documents annexed to the complaint, it is found that the Respondent herein who is the complainant before the learned Metropolitan Magistrate had filed the criminal complaint as private complaint on the basis that the wife of the first Petitioner viz., deceased Dhanalakshmi during her life time had preferred a complaint against the Respondent. Also, the other persons who preferred the complaint are A-2 and A-3 who are husband and wife who are not before this Court. The third complaint is by the Petitioner No.3 herein. All these are the complaints preferred by the woman to the police officials who are the public authority entrusted with the power to register cases under the criminal laws of this country to investigate the case and file final report before the Court of the learned Magistrate concerned. Therefore, when the woman apprehends danger to the life and limb by the conduct of the Respondent/Complainant, she has no other option than to approach



the police regarding the conduct of the complainant. Based on that, the complainant cannot treat it as it affects his reputation. Particularly, the exceptions to Section 499 IPC speaks about the same. The complaint given to the public authority cannot be treated as defamation. In the light of the above, the rulings relied upon by the Petitioners in the case of J.Jayalalitha rep. by Power of Attorney Agent -vs- Arcot N. Veerasamy reported in 1997 (1) MWN (Cr.) 215 is found acceptable and reasonable in the facts and circumstances of this case. Therefore, the extraordinary powers of the High Court under Section 482 Cr.P.C. had to be exercised as per the ruling of the Hon'ble Supreme Court in the case of State of Haryana -vs- Bhajan Lal reported in 1992 SCC (Cri.) 426 where the Hon'ble Supreme Court had issued guidelines to the High Courts regarding exercise of the extraordinary powers under Section 482 of Cr.P.C. Only intention of Section 482 of Cr.P.C. is to prevent abuse of process of law. Therefore, the submissions of the learned Counsel for the Petitioner are accepted.

11. In the light of the arguments of the learned Counsel for the Petitioners and in the light of the reported rulings of the Hon'ble Supreme Court in the case of State of Haryana -vs- Bhajan Lal reported in 1992 SCC (Cri.) 426 which had been reiterated in the rulings placed on by the Petitioners, the complaint of the Respondent/Complainant is nothing but an exercise of abuse of process of Court. Therefore, the arguments put forth by the learned Counsel for the Respondent/Complainant that the complaint is maintainable cannot at all be accepted and the same is rejected in the light of the materials available before this Court.

12. The complaints given either by the Petitioners or any other persons against the Respondent cannot at all be considered as defamation. The documents enclosed in the complaint does not attract the ingredients of Section 499 of IPC exceptions 8, 9 and 10 and attracting punishment under Section 500 of IPC. Therefore, the learned Counsel for the Petitioners sought quashing of the complaint by the Respondent as there had not been any publication to defame the Respondent. Therefore, reliance placed on by the learned Counsel for the Respondent seeking to dismiss this Criminal Original Petition will not help the case of the Respondent/Complainant. Therefore, the same is rejected.

13. In the light of the exceptions 8, 9, 10 under Sections 499 of IPC, the alleged actions of the accused before the learned V Metropolitan Magistrate by the complainant stating that the accused had preferred complaint to public authorities cannot be considered as defamation attracting ingredients of Section 499 of IPC, there was no public or libel affecting the reputation of the complainant before the general public or among



his acquaintances.

14. The actions of the learned V Metropolitan Magistrate having taken cognizance of offence under Section 500 of I.P.C. alone cannot at all be considered as complaint under Section 500 of IPC for defamation is not at all maintainable on perusal of ingredients/averments in the complaint. Therefore, in the light of the above, the submission of the learned Counsel for the Petitioners is found acceptable and it is nothing but an abuse of process of Court to harass the Petitioners herein and two other accused who were before the learned Metropolitan Magistrate.

In the result, this Criminal Original Petition is allowed.

The entire criminal complaint in C.C.No.3056 of 2018 on the file of the learned Metropolitan Magistrate No.V, Egmore, Chennai, is quashed. Even though the accused Nos.2 and 3, who are husband and wife, had not approached this Court, from the materials placed before this Court by the Petitioners herein, the entire private complaint has to be quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SRM

To:

1. The Metropolitan Magistrate No.V,
Egmore, Chennai. (This order shall be communicated to
the Metropolitan Magistrate No.V, Egmore,
through e-mail today itself)
2. The Public Prosecutor,
High Court, Chennai.

+2cc to Mr.S.Lawrence, Advocate, S.R.No.36278

CrI.O.P.No.11880 of 2019

SKM(CO)
RGA(07/07/2022)