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CrI.O.P.No.15415 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

DELIVERED ON : 06.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.15415 of 2022
and CrI.M.P.No.8641 of 2022

V.A.Kurian

.. Petitioner/Accused

Vs.

Babu Daniel

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in S.T.C.No.825 of 2022 pending on the file of the learned Judicial Magistrate-II, Pondicherry and quash the same.

For Petitioner : Mr.Satish Parasaran
SC for Mr.L.Infant Dinesh

For Respondent : Mr.Thomas T.Jacob



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ORDER

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This petition has been filed seeking to quash the private complaint registered for the offence punishable under Section 500 of IPC, which was taken on file as S.T.C.No.825 of 2022 and pending before the learned Judicial Magistrate-II, Puducherry.

2. The crux of the allegations in the complaint is as follows:

(i) The respondent/complainant is a life member of the Madras Medical Mission (MMM) which is a registered charitable Society. The Pondicherry Institute of Medical Sciences (Hospital & Medical College) (PIMS) in Puducherry is a unit of the said Society.

(ii) The respondent/complainant is also the Principal Advisor to the Managing Committee of the Pondicherry Institute of Medical Sciences (Hospital & Medical College) and he was also appointed as a Member of the Audit Committee by the General Body of the Society on 22.06.2021.

(iii) In pursuance to the various allegations raised by some of the



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members of the Society, the Governing Board of the Madras Medical Mission

in its meeting held on 15.10.2020, decided to institute an enquiry and subsequently as per the orders of this Court dated 29.04.2021, a detailed enquiry was conducted by Mr.A.Selvaraj IRS (Former Chief Commissioner of Income Tax). The enquiry report was submitted on 30.09.2021 and based on which, a complaint was preferred with the SHO, Kalapaet Police Station.

(iv) In the meanwhile, some of the supporters of the erring members have convened a meeting on 22.11.2021. The Governing Board of the Madras Medical Mission has already scheduled to conduct a meeting on 04.12.2021. Therefore, an application has been filed before this Court in O.A.No.725 of 2021 in C.S.No.339 of 2021.

(v) This Court has passed an order in O.A.No.725 of 2021 in C.S.No.339 of 2021 that the meeting scheduled to take place at the instance of the third defendant therein on 22.11.2021, shall go on without hindrance, however, it shall be subject to the result of the application in O.A.No.725 of 2021. Similarly, the meeting convened by the first defendant therein scheduled to take place on 04.12.2021, shall also be subject to the result of



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O.A.No.725 of 2021

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(vi) When the matter stood thus, the petitioner/accused herein sent an email to various members of the MMM Society, Doctors and staff of various institutions that are run by the Society stating that the complainant along with one Mr.Philip being the Interim Secretary of MMM and Chairman of PIMS are removed from 22.11.2021, only with an intent of harming the reputation of the complainant in the Society and defaming him ad-mist the members of MMM Society, Doctors and Staff of various institutions run by the MMM Society.

(vii) According to the respondent/complainant the act of petitioner/accused is also against the orders of this Court in O.A.No.725 of 2021 in C.S.No.339 of 2021, hence he filed a complaint against the petitioner/accused for circulating the defamatory email.

(viii) The said complaint has been taken cognizance for the offence punishable under Section 500 of I.P.C. in S.T.C.No.825 of 2022 by the learned Judicial Magistrate-II, Puducherry. Seeking to quash the same, the



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present petition has been filed.

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3. The respondent/complainant has filed a counter affidavit. In the counter affidavit, inter alia, it has been stated that the email has been circulated violating the orders of this Court and the respondent has not been removed from the post at any point of time and the petitioner has no authority to issue such defamatory publication. The defamatory email publication was intended to delegitimize the actions taken by the respondent in his official capacity in the Society and to hurt his standing among members in the Society and also among other persons acquainted with the Society. According to him, the statements made in the email are untrue as still he is retaining those official capacities in the Society and at no point of time he has been removed from any official capacities as published in the said email. Therefore, the respondent oppose this petition.

4. Mr.Sathish Parasaran, learned senior counsel appearing for the petitioner/accused would submit that this complaint is nothing but to harass the petitioner, who is aged about 92 years old and residing at Chennai. It is his contention that the complainant is also a permanent resident of Chennai,



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whereas, he has given a false address as if he is residing in the medical college campus and chosen the jurisdiction of Puducherry Court only in order to harass the accused, who is aged about 92 years. Hence it is his contention that the allegations leveled in the complaint do not disclose any cognizable offence under Section 499 of IPC. Even the entire allegation is taken at their face value and accepted in its entirety, same do not constitute any offence of defamation. It is his further contention that majority of the members of the Society have attended the meeting, which was held with the permission of this Court on 22.11.2021.

5. The learned senior counsel further submitted that a suit has been filed by the respondent in C.S.No.389 of 2021, to declare the notices issued at the request of the board members on 28.10.2021 as null and void on the ground that the governing board has also convened a meeting on 04.12.2021. While passing an interim order in O.A.No.725 of 2021 on 19.11.2021, a learned Single Judge of this Court has held as follows :

“(a) The meeting scheduled to take place at the instance of the third respondent / defendant on 22.11.2021 shall go on without hindrance, however, it shall be subject to the result of this Court in



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O.A.No.725 of 2021.

(b) Similarly, the meeting convened by the first respondent/defendant scheduled to take place on 04.12.2021 shall also be subject to the result of O.A.No.725 of 2021.”

Hence, it is the contention of the learned senior counsel that majority of the members have called the meeting in pursuance of the interim orders.

6. In view of the resolution 100% members present supported the resolution for removal of the respondent and 96.25% members voted to remove Mr.M.M.Philip as interim secretary of the Madras Medical Mission. The Resolution Nos.2 and 3 are in respect of removal of Mr.M.M.Philip and also the respondent herein. Thus, 100% of the members present in the meeting held on 22.11.2021, voted in favour of the removal of the respondent herein.

7. Thereafter, in the meeting convened by the respondent on 04.12.2021, even the majority members were in favour of the petitioner's group and the respondent did not get any favourable resolution. Thereafter, this Court has dismissed the O.A.No.725 of 2021. Contempt initiated against the email publication was also closed by this Court vide order dated



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29.08.2022. Hence it is the contention of the learned senior counsel that what has transpired in the meeting held on 22.11.2021, has been sent to the other members and the said statement will never amount to defamation. The decision arrived at in the meeting was communicated to other members, at no stretch of imagination such statement would amount to defamation and this complaint has been filed only in order to harass the petitioner, who is aged about 92 years by choosing a wrong forum, hence seeks quashing of the private complaint.

8. Whereas, the learned counsel appearing for the respondent would submit that while passing interim order, this Court has clearly held that the two meetings called by the rival members on 22.11.2021 and 04.12.2021, shall go on without any hindrance, however, it shall be subject to the result of this Court in O.A.No.725 of 2021.

9. According to the learned counsel, when this Court has passed an interim order that the result of the resolution will be subject to the result of this Court in O.A.No.725 of 2021, contrary to the same email publication has been sent to all the members by the petitioner informing the decision taken in the



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meeting besides it is also stated in the email that previous actions taken by the respondent and other members removed is not legally binding on the Society or any of its units or institutions and also indicated that the respondent is not authorized to represent the Society in any matter whatsoever and any person dealing with them shall exercise abundant caution and shall do so at their own risk and responsibility. Therefore, according to the learned counsel appearing for the respondent when the result of the EGM is subject to the outcome of the suit, issuing such statement is certainly an imputation which has lowered the reputation of the respondent, therefore submitted that at this stage the complaint cannot be quashed and in support of his submission he relied upon the following judgments:

(i) *Jeffrey J.Diermeier Vs. State of West Bengal* reported in (2010) 6 SCC 243;

(ii) *J.V.Ganatra V.Rameshchandra Nathalal* reported in (1994) 35 2 GLR 1136; and

(iii) *Komari Pothuraju Vs. Krishnapatnam Poliah* reported in AIR 1939 Mad 382

10. The learned counsel for the respondent relying upon the judgment in



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Jeffrey J.Diermeier Vs. State of West Bengal reported in ***(2010) 6 SCC 243***

would contend that whether the statement has been issued in good faith or not is a question of fact, which cannot be decided at this stage and hence prays for dismissal of this petition.

11. Heard the learned counsel on either side and also perused the materials available on record.

12. From the submission made by both the sides, it appears that there is some dispute in the registered Society known as Madras Medical Mission and the majority members appeared to have called for the Extraordinary General Body Meeting (EGM) which was scheduled on 22.11.2021, which was challenged in Civil Suit No.339 of 2021 and an interim injunction was also sought before this Court. While passing the interim order, this Court has not stayed the notice calling for EGM, this Court has held that the meeting scheduled on 22.11.2021, shall go on without any hindrance, however it shall be subject to the result in O.A.No.725 of 2021. Similarly, the other group i.e., the respondent group has also scheduled a meeting on 04.12.2021, which was also allowed by this Court to go on however the same is also subject to the



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result of this Court in O.A.No.725 of 2021.

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13. It appears that thereafter, on 29.08.2022, the O.A.No.725 of 2021 and other application filed for breach of the interim order were also dismissed after a detailed discussion by this Court and it was held that the resolutions passed in both the meetings can be decided only after a full fledged trial and it is subject to the result of the main suit. This Court has also stayed the resolutions passed in both the meetings till the disposal of the main suit. Similarly, the contempt application was also dismissed.

14. Be that as it may, orders in the suit are not germane for consideration to decide the issue in hand and since this case relates to whether the complaint filed by the respondent would attract the offence under Section 499 of Cr.P.C. The main allegation in the complaint is that after convening the EGM on 22.11.2021, the petitioner sent a email to various members of Madras Medical Mission Society stating that the respondent and one Mr.M.M.Philip being the interim Secretary of the Madras Medical Mission are removed from 22.11.2021.



15. According to the respondent/complainant informing the removal of the respondent and another interim Secretary to other members of the Society and doctors would amount to defamation. The email is sent on 29.11.2021. It is relevant to note that while dismissing the application in O.A.No.725 of 2021 on 29.08.2022, this Court has stayed the resolution passed in both the meeting. Though the orders have been passed dismissing the application, the Court has held that validity of the resolution can be decided in the main suit.

16. Be that as it may, meanwhile the result of the resolutions has been circulated by way of email to the members with regard to the removal of the respondent from the management committee of PIMS and as the Presiding Officer of the Enquiry Committee. The email is stated to have been communicated imputing defamation. The said email dated 29.11.202, which has been communicated to others is as follows:

“Dear All,

*Sub: Intimation of the removal of
Mr.M.M.Philip and Mr.Babu Daniel.*

*This is to inform your that by a resounding
majority at the EGM of MMM held on 22nd November
2021, Mr.M.M.Philip has been removed as the*



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Interim Secretary of the Madras Medical Mission. Also, at the same meeting Mr.Babu Daniel has been unanimously removed as a member of the PIMS management committee and as a Presiding Officer of the Enquiry Committee.

With these decisions by a clear majority of the members of the MMM, all the positions that Mr.M.M.Philip held in lieu of being interim Secretary of MMM including that of Chairman of PIMS are removed from 22nd November 2021.

I write this as a Life Member of the Society who requested for the EGM which was held on 22nd Nov 2021 to remove them.

Please note that all opinions, suggestions, recommendations, approvals, orders or decisions of the above 2 members Mr.M.M.Philip and Mr.Babu Daniel from 22nd Nov 2021, whether actually or made out to be on that date or thereafter shall not be legally binding on the Society' or any of its units or institutions. They shall not be binding on any of its managers, officers, or other employees or staff, or any person, individual or and any who shall deal with the said members, who are not authorised to



represent the 'Society' in any matter whatsoever and any person dealing with them shall exercise abundant caution and shall do so at their own risk and responsibility.

Yours faithfully”

17. This communication has been sent by the petitioner to the life members of the society who requested for EGM and informed that the action taken by them shall not be binding on the Society. What was communicated is actually the result of the EGM which took place on 22.11.2021. Merely indicating the result and stating that their action is not binding, this Court is of the view that certainly such statement will not amount to imputation to cause defamation.

18. It is relevant to note that much emphasis has been made on the judgment of the Hon'ble Apex Court in ***Jeffrey J.Diermeier Vs. State of West Bengal*** reported in ***(2010) 6 SCC 243***, wherein, in that case the accused made a statement suppressing the entire interim order and issued defamatory advertisement, which is as follows:

“26. The said statements are patently false and defamatory in nature. The



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accused persons deliberately, wilfully and with malafide intention have not mentioned in the advertisement that the order dated 4.8.2006 passed by the Hon'ble High Court of Delhi, granting temporary injunction, has been made with a rider that the said "order of injunction will not come into effect till the end of the current academic session of the CFA program run by the Society." It is well within the knowledge of the accused that the current academic session of the CFA programme of the Society has not come to an end and as such it cannot be said that there has been unauthorized use of the alleged trade marks of the CFA Institute. Continuance of the current academic session from a University, sponsored by the Society, cannot be said to be in violation of the order of injunction passed by the Hon'ble High Court of Delhi. Moreover, the defamatory advertisement does not mention the fact (which is within the knowledge of the accused) that against the above interim order of injunction, an appeal is pending in the Hon'ble High Court of Delhi. The tenor of the said defamatory statement makes it clear that the accused, with malafide



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intent to injure and harm the Society, had misquoted the order passed by the Hon'ble High Court of Delhi on 4.8.2006....."

In the above case, publication has omitted to mention that the said injunction will not come into effect till the end of current academic session of the CFA programme, which was to conclude in May, 2009, and the order would not mean expression of final opinion in the matter. Hence considering the suppression of interim order the advertisement has been made. Therefore in such a scenario the Hon'ble Apex Court took the view that the statement will not come within the plea of good faith and plea of good faith has to be proved in a trial.

19. Whereas, here in the case on hand, the petitioner has intimated only the resolution passed in the meeting and that the decision taken by the respondent will not be binding on the Society. Therefore, mere intimating the result of the resolution and also indicating that their action will not bind on the society, at no stretch of imagination amount to imputation intended to harm the reputation of the respondent.

20. It is relevant to note that though the meeting has been permitted by



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this Court however the resolution is subject to the result of the application in O.A.No.725 of 2021. This Court has also dismissed the O.A. holding that the validity of the resolution can be decided in the main suit. Therefore, mere communication of the result of the EGM resolution to the other members and stating that action of the removed members will not be binding on the Society, this Court is of the view that such act will not be construed as defamation.

21. It is also relevant to note that the meeting called by the respondent group also passed resolution but the majority voted against them. Since the communication itself is with regard to the decision taken in the EGM, therefore a mere communication of the resolution to the EGM, it cannot be stated that imputation is made to harm the person who is removed from the Society. Hence, this Court is of the view that in order to attract the offence of defamation such communication should have been made with an intent to harm or imputing some harm to the reputation of such person, whereas mere communication of the result of the EGM to the other members and stating that the action of the removed members will not be binding on the society, will not amount to defamation. Therefore, the contention of the learned counsel appearing for the respondent that whether imputation is made in good faith is a question of fact does not arise at all in this case.



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23. Considering the nature of the statement and the entire complaint the allegation that communication of email with regard to the removal of the respondent in the EGM would amount to defamation, this Court is of the view that mere communication of the result of the EGM would not amount to defamation. Yet another fact is that the petitioner is also a resident of Chennai which is not disputed by the respondent during the submissions. But showing address of the guest house of a Medical College at Puducherry, he filed the complaint in Puducherry knowing very well that the petitioner is residing in Chennai and admittedly the petitioner is aged about 92 years, which is also not disputed and choosing the wrong forum giving a different address to file the



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criminal complaint also give raise to a clear inference that the complainant's motive is only to harass the petitioner.

24. Such view of the matter, the Criminal Original Petition is allowed and the S.T.C.No.825 of 2022, pending on the file of the learned Judicial Magistrate-II, Puducherry stands quashed. Consequently, the connected miscellaneous petition is closed.

06.09.2022

Index : Yes / No

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To

The Judicial Magistrate-II,
Puducherry.



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N.SATHISH KUMAR, J.

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PRE DELIVERY ORDER in
Crl.O.P.No.15415 of 2022
and Crl.M.P.No.8641 of 2022

RESERVED ON : **02.09.2022**

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