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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 22.04.2022	Orders Pronounced On 27.05.2022
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CrI.R.C.No.834 of 2017

L.Nandagopal Yadav

... Petitioner

Vs.

1.Mr.Udai Pratap Singh

President, All India Yadav Maha Sabha
No.6, Mahatma Gandhi Road,
Hazratgang, Lucknow - 226 001.

2.Mr.Sathya Prakash Singh Yadav

Secretary General,
All India Yadav Maha Sabha,
Sree Krishna Bhavan
Ghaziabad - 201 011.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed by the II Metropolitan Magistrate Court, Egmore @ Allikulam, Chennai-8 in M.P.No.718 of 2017.

For Petitioner : Mrs.C.Celastina
for Mr.B.Manivannan

For Respondents : Mr.R.Ashwin Kumar
Legal Aid Counsel

ORDER

The petitioner filed a private complaint for the offence under Section 500 IPC against the respondents herein before the learned II Metropolitan Magistrate, Egmore, Chennai in C.M.P.No.718 of 2017. The Trial Court by order dated 23.05.2017 dismissed the complaint under Section 203 Cr.P.C. since no



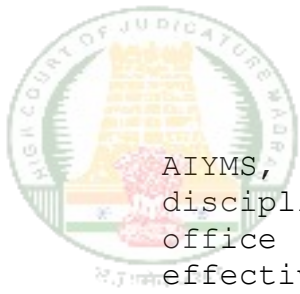
2.The respondents failed to appear before this Court, private notice sent was also returned with an endorsement 'unclaimed' and the name of the respondents printed in the cause list. Since the case is pending from the year 2017 for the service of notice and all the efforts went in vein, this Court appointed Mr.R.Ashwin Kumar, as Legal Aid Counsel for the respondents by order dated 11.04.2022.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The contention of the petitioner is that the order passed by the Trial court in dismissing the complaint is not justifiable either in law or on the facts of the case. The Trial Court ought to have taken cognizance of the offence on the complaint and issued summons to the accused. The Trial Court at the stage of entertaining the complaint is only to see whether prima facie case is made out and need not look into the materials to find out whether case would end in conviction. Further, the Trial Court given the reason that the public notice issued would fall under the 9th Exception to Section 499 IPC is not proper. This Court as well as the Apex Court have time and again held that when any defamatory material is sought to be defended under exemption, the same is a matter of fact, to be decided only in a trial. Further, it was stated that the petitioner acted against the interest of AIYMS and spreading false messages about AIYMS through various social media creating lot of confusion, disharmony and conflicts among the Sabha members are not supported with any materials. It is further submitted that making false allegation and advertising the same in the newspaper by public notice would amount to per se defamation. It is submitted that earlier to the public notice, the petitioner sent letters to the General Secretary of the Sabha from April 2015 and continuously following with the Secretary, President and others about the misappropriation/mismanagement of the Sabha funds by the office bearers in the guise of enrolling new members and District units. The respondents failed to take any effective action to rectify the defects, on the other hand expelled the petitioner. The respondents though received the notice, kept quiet and not replied to the same. Further, the petitioner relied upon the decision of the Kerala High Court in the case of M..N.Meera vs. A.C.Mathew and another reported in 2002 Cri.L.J. 3845, wherein it is clearly held that under 9th Exception to Section 499 IPC, the question whether the statement in question was made for public good is a matter to be considered based on prospective evidence, the burden lies on the accused and it is for him to adduce sufficient evidence which would enable an interference that there was some public good involved in the matter of particular statement.

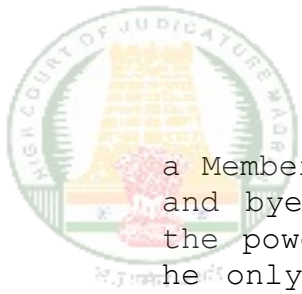
5.The learned counsel for the respondents on the contrary submitted that the petitioner if aggrieved on his suspension from the post of Vice President of AIYMS, his grievance to be addressed by filing a civil suit questioning the same and not by filing a defamation case. It is submitted that the petitioner admits that respondents are the President and Secretary of



AIYMS, as per the bye law they are empowered to take disciplinary action against the misconduct of its members and office bearers. The bye law is formulated in such a manner to effectively run the Sabha in a structured and orderly manner. It is further submitted that the Sabha consists of lakhs of members, if such control is not there, the functioning of the Sabha could not be in an orderly manner and total chaos would prevail. The petitioner had not questioned the authority of the respondents to take action for misconduct. The grievance of the petitioner is that the order of removal was not communicated to him and it was made by a public notice, which is not so. The order was sent to the petitioner by registered post. Further the Sabha consists of members in various walks of life, every nook and corner, sending communication to each and every member would take some time, to immediately inform the members about the functioning of the Sabha and the disciplinary action taken, public notice was issued. Since the office bearers of the Sabha take a public role among the members of the Sabha, it would be appropriate that such public notices are issued. Further, from going through the public notice nowhere any imputation was caused to the petitioner. It is only stated that since the petitioner acted against the interest of the Sabha and creating confusion among the members, he was kept under suspension for six years. In the meanwhile, he could very well challenge the same in the manner known to law and not by filing a defamation case.

6. It is further submitted that from the complaint as well as the sworn statement of the petitioner which was filed in the typed set of papers, it is seen that the petitioner had merely stated about the public notice dated 16.12.2016 and non-receipt of the suspension notice personally. The allegations seem to be general in nature and no specific incident giving the names of the person who enquired the petitioner about the imputation which lowered the petitioner in any manner in the estimation of others. Further in support of his contention, the learned counsel for the respondents relied upon the decision of this Court in the case of S.Soundarapandian vs. R.Srinivasan and another reported in 2015 SCC Online Mad 14221, wherein this Court held that the person having lawful authority shall conduct proceedings against the erring persons in the interest of the Management and it would not amount to defamation.

7. Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner is the Vice President of AIYMS, he admits that the respondents are the President and Secretary. The petitioner as



a Member of the Sabha, who is bound by the rules and regulations and bye laws of the Sabha. The petitioner has not questioned the power and authority of the respondents in taking action and he only questioned the mode of publishing the suspension order issued against him by way of public notice in a daily newspaper. The petitioner further questioned that suspension order was not sent to him personally on the other hand without any reason, a public notice was issued in the Tamil daily "Malai Malar". The petitioner admittedly involved in the Sabha which is working for the welfare of the community which is spread throughout India and he being the Vice President has interaction with the Sabha members. The President and Secretary of the Sabha after receiving various complaints, given an opportunity to give an explanation and after affording personal hearing, taken the extreme step of suspending the petitioner from the Sabha for the period of six years. The exchange of communication is admitted and it was from April 2015 which is admitted by the petitioner himself, which is an internal matter. The petitioner if aggrieved on his suspension, it is well within his right to approach the appropriate forum challenging the suspension and not by filing a defamation case. The complaint as well as the sworn statement, nowhere it is stated that the imputation had directly or indirectly in the estimation of others lowered the moral or the intellectual character of the petitioner. Further the ingredients of offence was not made out.

8. In view of the above, this Court finds no reason to interfere with the orders of the Trial Court in dismissing the complaint filed by the petitioner. Accordingly, this Criminal revision petition is dismissed.

9. This Court appreciates Mr. R. Ashwin Kumar, appointed as legal aid counsel for the respondents in thorough preparation, effectively defending the respondents and rendering his sincere efforts in this regard.

Sd/-
Assistant Registrar (CO)

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Sub Assistant Registrar

cse



To

1.The II Metropolitan Magistrate Court,
Egmore @ Allikulam, Chennai-8

2.The Chief Judicial Magistrate,
Egmore, Chennai-08.

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