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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.[MD].No.954 of 2020

and

CRL.M.P.[MD]Nos.405 and 406 of 2020

Shanmugasundaram

... Petitioner / Accused No.3

Vs.

Rajasekaran

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to the criminal case in C.C.No.83 of 2017 on the file of the learned Judicial Magistrate II, Kulithalai and to quash the same in respect of the petitioner.

For Petitioner : Mr.J.Anandkumar

For Respondent : Mr.RM.Sivakumar

ORDER

This Criminal Original Petition is filed to quash the private complaint in C.C.No.83 of 2017 on the file of the learned Judicial Magistrate II, Kulithalai, filed for the offences punishable under Sections 500 and 501 r/w 120B of IPC.

2.The crux of the allegation in the complaint is that the petitioner is the news reporter, has published certain offending article, touching upon the character of the defacto complainant. The report has been published in the newspaper known as "Indraiya Makkal Parvai", which is a monthly magazine, wherein it is reported that the defacto complainant and others were collecting huge amount in the name of Kampathadi Kattuthal, from various persons in the temple, which is under the control of HR & CE Department, thereby the private complaint is filed.

3.The learned counsel appearing for the petitioner would contend that the officials of the HR & CE Department have initiated proceedings against the respondent, preventing such prayer, namely, Kampathadi Kattuthal. Pursuant to the same, the board is also installed by the HR & CE Department. As long as the truth has been published, there cannot be any prosecution against the petitioner for defamation. Therefore, his contention falls within the ambit of exception.



4. In support of the submissions, the learned counsel for the petitioner has relied upon an unreported judgment in **Cr1.O.P. (MD) No.9067 of 2016, dated 05.05.2020 (Grievances Redressal Officer Vs. M/s.V.V.Minerals Pvt. Ltd., and another)**.

5. At the outset, I am unable to countenance the submissions of the learned counsel for the petitioner. It is well settled that it is for the accused to establish that the offending article is truth and his case falls within the ambit of exception under Section 499 of IPC. The Court, while exercising the power under Section 482 of Cr.P.C., cannot assume the role of the trial Court to find out whether such statements published in the magazine are truth or not. It is the matter of evidence. In the judgment referred supra, the learned Judge has observed as follows:-

"14. Unlike the civil law of defamation, the criminal law already stood codified in Section 499 and 500 of IPC. Their constitutionality has also been upheld by the Hon'ble Supreme Court in **Subramanian Swamy vs. Union of India (2016) 7 SCC 221**. The Hon'ble Supreme Court also clarified that the trial magistrate need not take note of the Exceptions to Section 499 of IPC as it is for the summoned accused to prove that his case comes within the Exception. However, a closer look at the Second Exception to Section 499 of IPC would indicate that it broadly resembles the Sullivan principle. The Second Exception reads as follows :

"Second Exception - Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further."

The Third Exception is also relevant and it reads as follows :

"Conduct of any person touching any public question. - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further."

Yet the occasion on hand demands that the law is clarified a little more. The Sullivan principle as amplified in *Rajagopal vs. J. Jayalalitha* (AIR 2006 Mad 312) and *Petronet Lng Ltd vs Indian Petro Group And Another* (2009) 158 DLT 759 (Del) have to be necessarily read into the Exceptions to Section 499 whenever the freedom of the press is involved. There can always be a



margin of error. The permissible width of the margin will depend on the facts and circumstances of each case. The media can avail this defence whether the complainant is a public official or a private entity. Mere inaccuracies in reporting cannot justify initiation of prosecution."

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6. Therefore, it is for the accused to establish that his case falls within the exception. Therefore, merely because some action has been taken by the HR & CE Department, warning the public as to the nature of the pooja conducted in the temple, at this stage it cannot be inferred that statements published in the magazine are only truth. Therefore, at this stage, this Court is not inclined to quash the proceedings.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl side)

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/ /2022

Sub Assistant Registrar(CS)

Myr

To

1. The Judicial Magistrate II,
Kulithalai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-11427[F] dated 11/03/2022)

+1 CC to M/s.RM.SIVAKUMAR, Advocate (SR-11395[F] dated 11/03/2022)

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