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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)Nos.13317 and 14729 of 2020

and

Crl.M.P. (MD) .Nos6114, 6955 and 6956 of 2020

Crl.O.P. (MD)No.13317 of 2020

1. Madhuri Jaiswal,
Senior Divisional Finance Manager,
Southern Railway,
Madurai.
2. The Divisional Railway Manager,
Southern Railway,
Madurai- 625 016.
3. The General Manager,
Southern Railway, Park Town,
Chennai - 600 003.
4. The Chairman,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001. ... Petitioners/Accused No.8,12,13,14

Vs.

S.Venkatachalam ... Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to in S.T.C.No.1760 of 2020 on the file of Judicial Magistrate No.VI, Madurai and quash the same against the petitioners.

For Petitioners : Mr.S.Manohar

For Respondent : Mr.A.Mohan



Crl.O.P. (MD)No.14729 of 2020

1. B.Ilangovan,
The Divisional Finance Manager,
Southern Railway,
Madurai.
2. S.Selvalakshmi
The Senior Divisional Finance Manager,
Southern Railway,
Madurai- 625 016.
3. Salim Javed,
Deputy Chief Accounts Officer (General),
Southern Railway, Park Town,
Chennai - 600 003.
4. Karunakara K.Mann,
Finance Advisor and
Chief Accounts Officer (General),
Southern Railways, Park Town,
Chennai - 600 003.
5. J.Viswanathan,
Principal Finance Advisor,
Southern Railway, Park Town,
Chennai - 600 003. ... Petitioners/Accused No.2,7,9,10,11

Vs.

S.Venkatachalam ... Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to in S.T.C.No.1760 of 2020 on the file of Judicial Magistrate No.VI, Madurai and quash the same against the petitioners.

For Petitioner : Mr.S.Manohar

For Respondent : Mr.A.Mohan

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in STC.No.1760 of 2020, on the file of the learned Judicial Magistrate No.VI, Madurai for the offence punishable under Sections 499 and 500 of IPC, as against the petitioners.



2.The crux of the complaint lodged by the respondent is that he joined in the Division Accounts Office as Clerk Grade II on 13.07.1977. While being so, he was issued with a charge sheet, dated 11.02.2000, based on the police complaint alleging that the respondent was functioning as Accounts Assistant, he was running finance and chits in the name of his mother and close relatives and complaints have been received from the general public for non-payment of deposits. In pursuant to the complaint, he was arrested on 19.02.2000 and remanded to judicial custody. Thereafter, he was granted bail on 20.04.2000. In the mean time, the first accused in the present impugned complaint, had initiated disciplinary proceedings against the respondent and the said proceedings was not communicated in an appropriate manner as prescribed in the Service Rules. On receipt of the proceedings, the respondent replied by way of an explanation. Thereafter, the first accused initiated preliminary enquiry and an enquiry officer was appointed to conduct the enquiry. Though the respondent submitted so many representations to drop the charges, without considering the same, the accused persons proceeded with the disciplinary proceedings. In continuation of the disciplinary proceedings, by order dated 30.05.2017, the respondent was found guilty for his charges and imposed penalty of dismissal from service. The respondent filed an appeal to an Appellate Authority, namely, the fourth accused. The fifth accused passed an order, dated 15.07.2008, thereby holding the penalty imposed by the disciplinary authority. Aggrieved by the same, the respondent filed a revision and the Revision Authority has also held the penalty has imposed on the respondent herein by order, dated 16.04.2009. The respondent has challenged the said order in O.A.No.537 of 2009 before the Central Administrative Tribunal, Chennai and the same was disposed of by granting subsistence allowance and upheld the punishment. However, in the criminal case, the respondent got acquittal from all the criminal charges in C.C.No.25 to 35 of 2008. On the strength of the acquittal, the respondent submitted a representation on 14.12.2018, requesting the authorities to revoke the charges, which were framed against him and also claimed back-wages. However, the said request was rejected by communication, dated 26.02.2019. Further alleging that the respondent was not given an opportunity of hearing and it is violation of principles of natural justice and the accused persons have violated all the procedures laid down under the Service Law. Therefore, they committed offence under Section 499 of IPC and punishable under Section 500 of IPC.

3.It is relevant to extract 499 of IPC as follows:

'Defamation- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or



having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.'

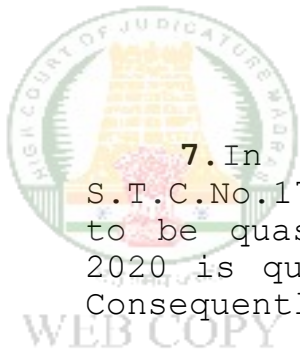
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4.As stated supra, the entire allegations an alleged in the complaint are that the accused persons failed to follow the procedures under the Service Laws proceeded with disciplinary proceedings against the respondent. All the accused persons are officials of the Southern Railway, who had conducted disciplinary proceedings against the respondent. The respondent was dismissed from service and his dismissal was confirmed by the Appellate Authority as well as the Central Administrative Tribunal, Chennai. Infact, based on the acquittal in the criminal case, he submitted revision and the same was also rejected by the authority. Aggrieved by the same, the respondent filed original application in O.A.No.81 of 2020 before the Central Administrative Tribunal and it is pending. That apart, he also claimed compensation of Rs.1 crore. Therefore, there is absolutely no material to attract offence under Section 499 of IPC since all the accused persons are officials and they had taken departmental proceedings against the respondent on their official capacity. Infact, the order of dismissal from service was also confirmed by the Central Administrative Tribunal, against which, the respondent did not prefer any appeal before this Court. That apart the respondent failed to establish that the accused persons have made defamatory statements or made defamatory representations to defame the reputation of the respondent.

5.As stated supra, the respondent involved in the criminal case and on the strength of the same, he was arrested and remanded to the judicial custody. While pending the criminal case, he was charged and he was dismissed from service. Though the criminal Court acquitted the respondent, further representation was also rejected by the authority concerned. Therefore, there is absolutely no ingredients to make out the offence under Section 499 of IPC. It is coming under the second exemption of the provision under Section 499 of IPC. The second exemption as follows:

*'2.Public Conduct of a Public Servant-
When any opinion is expressed in good faith
respectation the conduct of the public servants
in the discharge of their public functions, it
does not amount to defamation.'*

6.Therefore, the learned Magistrate without application of mind, mechanically had taken cognizance as against the accused persons for the offence punishable under Sections 499 and 500 of IPC.



7. In view of the above, the complaint proceedings in S.T.C.No.1760 of 2020, is in legs of stand and further it is liable to be quashed. Accordingly, the proceedings in S.T.C.No.1760 of 2020 is quashed and these Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

lr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Judicial Magistrate No.VI, Madurai.

+2 CC to M/s.S.MANOHAR, Advocate (SR-6724,6729[F] dated 17/02/2022)

+2 CC to M/s.A.MOHAN, Advocate (SR-6881,6880[F] dated 17/02/2022)

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