



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.O.P. (MD) No.10738 of 2019

and

CrI.MP (MD) Nos.5469 and 6775 of 2019

WEB COPY

1.K.Shanthi

2.K.Alagarsamy

: Petitioners/A1 & A2

Vs.

A.Sundararajan

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records pertaining to the private complaint filed by the respondent before the learned Judicial Magistrate No.1, Madurai, in CC No.127 of 2012 and quash the same.

For Petitioners : Mr.Niranjana S.Kumar

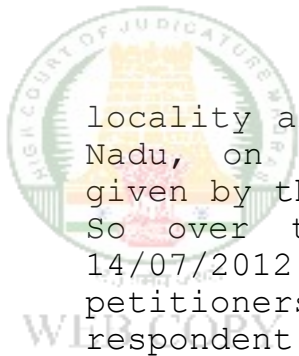
For Respondent : Mr.C.M.Arumugam

O R D E R

This petition has been filed by the petitioners seeking quashment of the case in CC No.127 of 2012 on the file of the Judicial Magistrate No.I, Madurai.

2.The case of the prosecution in brief:-

The case of the respondent before the trial court is that the respondent is a practising Advocate and the first petitioner is working in the Postal Department and she used to give false information through complaint. The petitioners 1 and 2 made several defamatory intimation against the respondent in the complaint, on 24/10/2009 and 29/03/2009. It is further stated that the first petitioner lodged a complaint before police, wherein the respondent was directed to appear for enquiry. But the first petitioner did not appear. Similarly, the first petitioner alleged to have lodged a complaint against the respondent before the District Police, Madurai. In the complaint, the respondent attended enquiry. But the first petitioner did not attend the enquiry and co-operate with the investigation and thereafter, the another complaint was forward to the Inspector of Police, Thallakulam, wherein also the first petitioner did not appear. But she sent a letter stating that the complaint may be closed. Another complaint was given by A2 and the same was also forwarded to the Tallakulam Police Station and it was closed as 'settled out court' by advising the parties to settle the dispute before the civil court. In the 4th week of December 2010, the petitioners circulated defamatory pamphlets in the respondent's



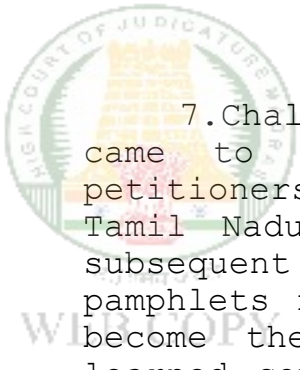
locality and also gave a complaint before the Bar Counsel of Tamil Nadu, on 21/10/2020 with the defamatory averments. A report was given by the respondent on 22/10/2011 and that complaint was closed. So over that issue, the respondent issued a legal notice on 14/07/2012. But there was no response and the charge against the petitioners. They spread the defamatory allegation against the respondent.

3. Seeking quashment of the proceedings, which was taken cognizance in CC No.127 of 2010, this petition has been filed mainly on the ground that the complaint alleged to have given by the petitioners comes within exception stated under section 499 IPC. More particularly, the exception under section V and IX apply to the facts and circumstances of the case. In order to wreck vengeance over filing of the civil suit, the case has been filed.

4. Heard both sides.

5. A family dispute has been expanded to make serious allegation and defamatory statement against the respondent, who is stated to be a practising advocate. There is a long standing civil dispute between the de-facto complainant and the petitioners. As mentioned in the preamble portion, a suit in O.S No.594 of 2012 was filed by the petitioners against the respondent, wherein the de-facto complainant is the defendant and the first petitioner is the first plaintiff and the second petitioner is the second plaintiff and one K.Krishnakumar and minor K.Karpagam is also the plaintiffs. The suit has been filed for permanent injunction in respect of the property situated in Door No.15A/1/2 in Syed Ismailpuram 12th Street, Munichalai, Madurai-625 009, wherein it has been mentioned that the father of the respondent by name Alagar and one Sundaram, who is his brother were original owners of the properties and they divided the same on 08/12/1977 by metes and bounds and in the oral partition, Plot Nos.8,9,10 and 14, which was annexured in the plaint sketch were allotted to the father of the respondent by name Alagar. Later, it appears that trouble arose between the parties and this case has also been filed. The suit is of the year 2012. Before that, a complaint was given by the second petitioner before the Tamil Nadu Bar Counsel, which is dated 24/10/2009 and later the complaint came to be closed, after due enquiry.

6. Now in the complaint, according to the respondent, defamatory allegation was made against him. So it is nothing, but the publication, which is defined under section 499 IPC. After closure of the above said complaint, it appears that another complaint was filed by the petitioners, making defamatory allegation against the respondent. Later many complaint was filed by the respondent against the petitioners under 200 Cr.P.C for punishing the petitioners for having committed the offence of defamation under section 500 IPC.



7.Challenging the above said proceedings only, this petition came to be filed. Even though the complaint given by the petitioners, before the Bar Council of India and the Bar Council of Tamil Nadu, in view of the exception under sections V and IX, subsequent event which took place in the form of issue of the pamphlets making defamatory allegations against the respondent has become the main point of controversy and argument between the learned counsel appearing for the respective parties. The contents of the pamphlet run thus:-

வாதுமக்களே உஹர்
வக்கீல் A.கந்திராஜன் தனது வக்கீல் தொழிலை பயன்படுத்தி
எங்கள் குடும்பச் சொதீதை மோசடி செய்ய முயற்சி!
வாதுமக்களே மேற்படி வக்கீல் A.கந்திராஜனிடம் கேஸ் கொடுத்து ஏமாற வேண்டாம்.

உஹர்!!! உஹர்!!! உஹர்!!!

A.S.காஸிதாஸன் குடும்பத்தினர்
மதுரை

8.Reading of the pamphlets per se shows, it is nothing, but defamatory statement. According to the learned counsel appearing for the petitioners, such a defamatory pamphlet was not issued or published by them. But it is the handy work of the respondent for the purpose of filing the private complaint, has himself published the above said pamphlets and on the basis of that pamphlets, the private complaint has been filed.

9.I am absolutely not accepted this line of argument by the learned counsel appearing for the petitioners. Who issued the pamphlets cannot be a matter for consideration in this petition. It is a matter for trial. So even though the allegations mentioned by the petitioners in the complaint before the Bar Council of Tamil Nadu, has saved under section 500 IPC, no saving clause or exception clause is available as on date to the petitioners. The judgment cited by the petitioners in the case of K.Krishnasamy Vs. K.Arunan and others [(2007)I MLJ (Crl) 934], N.Sathya and another Vs. V.Sekar [(2010)1 MLJ (Crl) 229] and the decision of this court made in the case of Dr.S.Ramadosh Vs. The Public Prosecutor represented the Government of Tamil Nadu (Crl.OP(MD)No.19555of 2013, dated 05/04/2018) are not attracted to the facts and circumstances of this case.

10.As mentioned above, the issuance of pamphlets is the only point to be decided during the course of trial. So this is not the fittest case to exercise the jurisdiction under 482 Cr.P.C to quash the proceedings and the petitioners have to undergo the process of trial.



11.In the result, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

12.After passing the order, the learned counsel appearing for the petitioners would submit that the petitioners are working persons, so on that ground, he wants to dispense with their personal appearance before the concerned trial court.

13.The said request is considered. The personal appearance of the petitioners is dispensed with. Within 15 days from the date of receipt of a copy of this order, the petitioners must appear before the trial court and file an undertaking affidavit that they will appear as and when required by the court, the attested photograph must be attached in the affidavit and they must ensure that they are properly represented by an Advocate.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

The Judicial Magistrate No.1,
Madurai.

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-7308[F] dated 21/02/2022)

+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-7663[F] dated 22/02/2022)

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RS (29.03.2022) 4P-4C