



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.OP(MD)No.16448 of 2018

and

Crl.MP(MD)No.7276 of 2018

S.O.Moideen : Petitioner/A1

Vs.

1.State:

Rep. by the Sub Inspector of Police,  
Arumuganeri Police Station,  
Thoothukudi District.

(Crime No.163 of 2016) : R1/Complainant

2.Kayal Moulana : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.163 of 2016 on the file of the 1<sup>st</sup> respondent and quash the same.

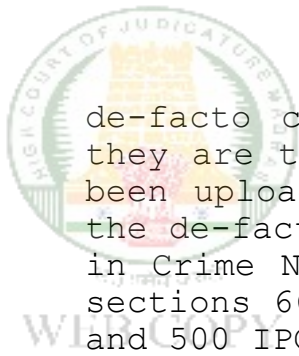
For Petitioner : Mr.C.Christopher  
For 1<sup>st</sup> Respondent : Mr.B.Nambi Selvan  
Additional Public Prosecutor  
For 2<sup>nd</sup> Respondent : Mr.C.Prasanth

### **O R D E R**

This petition has been filed seeking quashment of the case in Crime No.163 of 2016 on the file of the first respondent.

#### **2.The case of the prosecution in brief:-**

The de-facto complainant filed a complaint stating that he, his daughter, son and relatives alleged to have stolen 102 sovereigns of jewels from the possession of the accused, who is the petitioner herein. On that basis, the petitioner lodged a complaint, which was also registered in Crime No.38 of 2014 for the offences under sections 417, 420 and 379 IPC against him and five others. Over that, the de-facto complainant filed criminal original petition before this court and stay was granted and the investigation was stopped. In the meantime, the petitioner alleged to have uploaded the messages in the face book as well as whatsapp stating that the



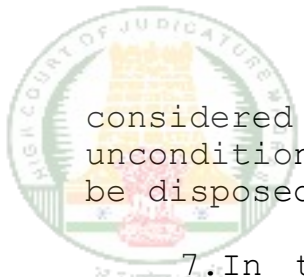
de-facto complainant, his relatives and others are absconding and they are thieves, which caused mental agony and those messages have been uploaded with an intention to defame and tarnish the image of the de-facto complainant and his relatives. Based upon which, a case in Crime No.163 of 2016 has been registered for the offences under sections 66(A) of the Information Technology Act @ 294(b) and 506(i) and 500 IPC.

3. Pending above said investigation process, this petition came to be filed by the first accused on the ground that the offence under section 66(A) of the Information Technology Act, has been struck down by the Hon'ble Supreme Court in the case of **Shreya Singal Vs. Union of India (2015) 5 SCC 1** and later, the police altered the section into sections 294(b) and 506(i) r/w 500 IPC without any material.

4. Heard both sides.

5. It is nothing, but a defamatory message, which was uploaded in the face book as well as in the whatsapp with an intention to defame and tarnish the image of the de-facto complainant and his relatives. It appears that because of some matrimonial issue, one S.O. Moideen s/o. Syed Umar lodged a complaint stating that 102 sovereigns of jewels were stolen and his son-in-law S.M.B. Moosa was suspected and investigation was undertaken in CSR No.226 of 2013. During the course of investigation, the above said complainant namely S.O. Mohideen Sahib withdrew the complaint. But later, on the basis of the very same complaint, a case in Crime No.38 of 2014 has been registered for the offences under sections 417, 420 and 379 (NHO) IPC against the de-facto complainant and others. It is also seen that stay was granted by this court regarding the investigation of the above said matter. But further particulars are not available.

6. Now whatever it may be, it is seen that the petitioner alleged to have uploaded the above said defamatory statement in order to tarnish the image of the de-facto complainant and his relatives. Noting that the petitioner has unnecessarily dragged the de-facto complainant and others into the issue, he was directed to file an unconditional apology affidavit. So, an order was passed, on 26/11/2011. Pursuant to the above said direction, the petitioner was also filed an undertaking affidavit to the effect that he will not indulge in such activities in future. Even though, the offences have been altered into 294(b) and 506(i) IPC, from the averments made in the complaint as well as in the alteration report, it is seen that such offences are not attracted. If at all only a private complaint for the offence under section 500 IPC can be lodged and only on that ground, stay was ordered by this court, by order, dated 17/09/2018. Since it is a dispute between the close relatives and the petitioner has also realized his mistake, continuation of the proceedings may not take no-where, to give quietest to the matter. So, I am of the



considered view that accepting the undertaking affidavit and unconditional apology tendered by the petitioner, this petition can be disposed of.

7. In the light of the above said unconditional apology, the criminal original petition is liable to be **allowed**. Accordingly, it is allowed. The impugned FIR in Crime No.163 of 2016 pending on the file of the first respondent is quashed. If there is any breach of the undertaking, the respondents 1 and 2 are always at liberty to initiate appropriate action against the petitioner in the manner known to law. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

er

**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 Sub Inspector of Police,  
Arumuganeri Police Station,  
Thoothukudi District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.C. CHRISTOPHER, Advocate (SR-20223[F] dated 21/04/2022)  
**Crl.OP(MD)No.16448 of 2018**

**20.04.2022**

SRR(CO)  
GC(28.06.2022) 3P 4C