



Crl.O.P.No.397 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 18.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.397 of 2023 and
Crl.M.P.Nos.161 & 163 of 2023

1.S.M.R.Sultan Kabeer Sahib,
Hereditary Trustee,
Nagore Dargah Sharif,
Kabeer Mahal,
34, Manavara Vadapuram Street, Nagore.

2.M.S.Mohamed Backer Sahib,
Hereditary Trustee,
Nagore Dargah Sharif,
Aysha Manzil,
10/11, Nool Kadai Street,
Nagore.

3.S.Syed Mohamed Kazi Hussain sahib,
Hereditary Trustee,
Nagore Dargah Sharif,
Haja Mahal,
2/18, Manavara Vadapuram Street,
Nagore.

4.H.N.Syed Haja Mohideen Sahib,
Hereditary Trustee,
Nagore Dargah Sharif,
43, Syed Palli Street, Nagore.

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5.N.S.Abdul Fathah Sahib,
Hereditary Trustee,
Nagore Dargah Sharif,
Kuthus Mahal,
Dargah Kulam Keelakarai street,
Nagore.

6.Haja Noorudeen Sahib @ S.Syed Kamil Sahib,
Managing Trustee,
Nagore Dargah Sharif,
19, Mohideen Palli Street,
Nagore.

... Petitioners

Vs.

K.M.Khalifa Masthan Sahib

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to S.T.C.No.1486 of 2022 on the file of the learned Judicial Magistrate – I, Nagapattinam and quash the same as illegal on jurisdictional and arbitrary.

For Petitioners : Mr.M.M.I.Khaleel
For Respondent : Mr.D.Jayasingh

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to S.T.C.No.1486 of 2022, on the file of the Judicial Magistrate – I, Nagapattinam and quash the same as illegal on jurisdictional and arbitrary.



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2.The learned counsel for the petitioners submitted that petitioners are accused in S.T.C.No. 1486 of 2022, pending on the file of the Judicial Magistrate – I, Nagapattinam. S.T.C.No. 1486 of 2022 was filed by the respondent for the offences allegedly committed under Section 500 IPC. The learned counsel for the petitioners sought to quash the complaint on the following grounds:

(i) There are contradictions with regard to the date of persons enquiring about the defamatory message given in the complaint dated 24.05.2022 before the Sub Inspector of Police, Nagore Police Station and the sworn statement.

(ii) Complaint was not given immediately after the alleged defamatory statement and there is a delay in filing the complaint.

(iii) Respondent relies on the electronic documents and no certificate under Section 65B of Indian Evidence Act was filed along with the complaint.

On these grounds, the learned counsel for the petitioners prayed for quashing the proceedings against the petitioners.



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3.In response, the learned counsel for the respondent submitted that respondent is discharging his duties as Kalifa based upon the hereditary and customary rights. He received a letter dated 16.05.2022, on 24.05.2022, which contains per se defamatory allegations. The complaint allegations constitute the commission of offence of defamation by the petitioners. The points canvassed by the learned counsel for the petitioners can only be considered in trial and not in this quash petition. Thus, the learned counsel for the respondent prayed for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.The complaint allegations shows that respondent is performing his duties as Muhalli and Muthavalli at Nagore Dhargah for long time. He was conferred with various titles by several organization. Petitioners made false and defamatory allegations against the respondent among the general public with a view to dishonour him and defame his reputation. Petitioners 1 to 5, as Trustees of the Hazarath Board, gave complaint to sixth petitioner on 13.05.2022 alleging that respondent suffers from



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unsound mind and he is acting as a person affected with mental illness. It was also stated that respondent should get proper certificate from the psychiatrist to show that his mental condition is good. This letter was received by the respondent on 24.05.2022. Respondent gave police complaint on 24.05.2022. However, no action was taken. When it is alleged by the petitioners that respondent suffer from unsound mind, it is their duty to prove this allegation. Even before the respondent received the aforesaid communication, the allegation that respondent suffers from unsound mind was published in Facebook and Whatsapp on 21.05.2022. On seeing the publication in Facebook and Whatsapp, several persons contacted the respondent through his phone and questioned about his mental condition. On 28.05.2022, one Sahabava fakurudhin sahib and on 05.06.2022, one Hajasahib enquired him about the Whatsapp message. When they enquired, there were about 25 persons. They also informed that they had seen the Whasapp message and also enquired about the respondent's mental condition. These false and defamatory allegations made against the respondent affected his reputation in the eyes of the general public. Therefore complaint was given.



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6.The learned Judicial Magistrate – I, Nagapattinam, on going through the sworn statement of the complainant and two witnesses and the materials produced along with the complaint, *prima facie* satisfied that the petitioners committed the offence punishable under Section 500 IPC and therefore, taken cognizance of the offence under Section 500 IPC against the petitioners.

7.This Court, on going through the complaint allegations, materials produced along with the complaint, the sworn statement of the complainant and the statement of the witnesses concurs with taking cognizance of the offence under Section 500 IPC against the petitioners. All the necessary ingredients for taking cognizance of the offences under Section 500 IPC against the petitioners are made out in this case.

8.When there is *prima facie* materials available against the petitioners for taking cognizance of the offence under Section 500 IPC against them, the aforesaid points raised by the learned counsel for the



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petitioners in the considered view of this Court cannot be considered by this Court in an enquiry under Section 482 Cr.P.C. These are all disputed question that have to be raised during the course of trial. This Court cannot venture into investigation as to whether the allegations made are true or false, whether there are any material contradictions in the complaint, police complaint, statement of witnesses etc., These are matters for trial. Certificate required under Section 65-B of the Indian Evidence Act can be produced even at the time of trial. It is pertinent to refer to the judgment of the Hon'ble Supreme Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, reported in 2020 SCC OnLine SC 571. The relevant portion of the judgment is extracted hereunder:

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer; (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking



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to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.

57. The High Court of Rajasthan in Paras Jain v. State of Rajasthan [Paras Jain v. State of Rajasthan, 2015 SCC OnLine Raj 8331] , decided a preliminary objection that was raised on the applicability of Section 65-B to the facts of the case.



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57.1. *The preliminary objection raised was framed as follows : (SCC OnLine Raj para 3)*

“3. (i) Whether transcriptions of conversations and for that matter CDs of the same filed along with the charge-sheet are not admissible in evidence even at this stage of the proceedings as certificate as required under Section 65-B of the Evidence Act was not obtained at the time of procurement of said CDs from the service provider concerned and it was not produced along with charge-sheet in the prescribed form and such certificate cannot be filed subsequently.”

57.2. *After referring to Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , the High Court held : (Paras Jain case [Paras Jain v. State of Rajasthan, 2015 SCC OnLine Raj 8331] , SCC OnLine Raj paras 15-23)*

“15. Although, it has been observed by the Hon'ble Supreme Court that the requisite certificate must accompany the electronic record pertaining to



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which a statement is sought to be given in evidence when the same is produced in evidence, but in my view it does not mean that it must be produced along with the charge-sheet and if it is not produced along with the charge-sheet, doors of the court are completely shut and it can not be produced subsequently in any circumstance. Section 65-B of the Evidence Act deals with admissibility of secondary evidence in the form of electronic record and the procedure to be followed and the requirements be fulfilled before such an evidence can be held to be admissible in evidence and not with the stage at which such a certificate is to be produced before the court. One of the principal issues arising for consideration in the above case before the Hon'ble Court was the nature and manner of admission of electronic records.

16. *From the facts of the above case, it is revealed that the election of the respondent to the Legislative Assembly of the State of Kerala was challenged by the appellant Shri Anwar P.V. by way of an election petition before the High Court of Kerala and it was dismissed vide order dated 16-11-2011 by the High Court and that*



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order was challenged by the appellant before the Hon'ble Supreme Court. It appears that the election was challenged on the ground of corrupt practices committed by the respondent and in support thereof some CDs were produced along with the election petition, but even during the course of trial certificate as required under Section 65-B of the Evidence Act was not produced and the question of admissibility of the CDs as secondary evidence in the form of electronic record in absence of requisite certificate was considered and it was held that such electronic record is not admissible in evidence in absence of the certificate. It is clear from the facts of the case that the question of stage at which such electronic record is to be produced was not before the Hon'ble Court.

17. It is to be noted that it has been clarified by the Hon'ble Court that observations made by it are in respect of secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act and if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance



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with the conditions in Section 65-B of the Evidence Act.

18. To consider the issue raised on behalf of the petitioners in a proper manner, I pose a question to me whether an evidence and more particularly evidence in the form of a document not produced along with the charge-sheet cannot be produced subsequently in any circumstances. My answer to the question is in negative and in my opinion such evidence can be produced subsequently also as it is well-settled legal position that the goal of a criminal trial is to discover the truth and to achieve that goal, the best possible evidence is to be brought on record.

19. Relevant portion of sub-section (1) of Section 91 CrPC provides that whenever any court considers that the production of any document is necessary or desirable for the purposes of any trial under the Code by or before such court, such court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons. Thus, a wide discretion has been



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conferred on the court enabling it during the course of trial to issue summons to a person in whose possession or power a document is believed to be requiring him to produce before it, if the court considers that the production of such document is necessary or desirable for the purposes of such trial. Such power can be exercised by the court at any stage of the proceedings before judgment is delivered and the court must exercise the power if the production of such document is necessary or desirable for the proper decision in the case. It cannot be disputed that such summons can also be issued to the complainant/informer/victim of the case on whose instance the FIR was registered. In my considered view, when under this provision court has been empowered to issue summons for the production of document, there can be no bar for the court to permit a document to be taken on record if it is already before it and the court finds that it is necessary for the proper disposal of the case irrespective of the fact that it was not filed along with the charge-sheet. I am of the further view that it is the duty of the court to take all steps necessary for the production of such a document before it.



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20. As per Section 311 CrPC, any court may, at any stage of any trial under the Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Under this provision also wide discretion has been conferred upon the court to exercise its power and paramount consideration is just decision of the case. In my opinion, under this provision it is permissible for the court even to order production of a document before it if it is essential for the just decision of the case.

21. As per Section 173(8) CrPC carrying out a further investigation and collection of additional evidence even after filing of charge-sheet is a statutory right of the police and for that prior permission of the Magistrate is not required. If during the course of such further investigation additional evidence, either oral or documentary, is collected by the police, the same can be produced before the court in the form of supplementary



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charge-sheet. The prime consideration for further investigation and collection of additional evidence is to arrive at the truth and to do real and substantial justice. The material collected during further investigation cannot be rejected only because it has been filed at the stage of the trial.

22. As per Section 231 CrPC, the prosecution is entitled to produce any person as a witness even though such person is not named in the charge-sheet.

23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured along with the electronic record and not produced in the court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced along with the



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charge-sheet but it was not in a proper form but during the course of hearing of these petitioners, it has been produced on the prescribed form.”

Therefore, this Court finds no merit in the prayer of the petitioners seeking quash of the proceedings in S.T.C.No.1486 of 2022, on the file of the learned Judicial Magistrate – I, Nagapattinam.

9.Further, this being a case under Section 500 IPC, this Court directs the learned Judicial Magistrate – I, Nagapattinam, not to insist on the presence of the petitioners on every hearing. The personal appearance of the petitioners is dispensed with except on specific occasions like first questioning, questioning under Section 313 Cr.P.C., judgment and as and when required by the learned Judicial Magistrate I, Nagapattinam and when the learned Judicial Magistrate I, Nagapattinam, feels that the presence of the petitioners is necessary. The petitioners shall be represented by their counsel on all other hearing dates for the smooth and uninterrupted conduct of the trial.



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10. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

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To

The Judicial Magistrate – I,
Nagapattinam.



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G.CHANDRASEKHARAN, J.
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