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Crl OP Nos.5101 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.5101 of 2021

and

Crl.M.P.Nos.3252 & 3254 of 2021

1. M/s.Newsmen Associates Ltd
Rep. by its Chairman R.Muthukumar
No.1, First Main Road, United Colony,
Kodambakkam, Chennai 24.
2. R.Muthukumar
Editor, Publisher and Chairman
Makkal Kural,
No.1, First Main Road, United Colony,
Kodambakkam, Chennai 24.
3. P.Jeevanandam,
Executive Director,
Makkal Kural,
No.1, First Main Road, United Colony,
Kodambakkam, Chennai 24.
4. A.G.Kumar,
Marketing Manager,
Makkal Kural,
No.1, First Main Road, United Colony,
Kodambakkam, Chennai 24.
5. S.Deenadayalan
Makkal Kural,
BS-2. SIDCO Industrial Estate,
K.Pudur, Madurai 625 007.



Crl OP Nos.5101 of 2021

6. M.Kumaresan
Makkal Kural,
No.1, SIDCO Industrial Estate,
Kurichi, Coimbatore 641 021.

... Petitioners/Accused

Versus

M. Gunaraj

... Respondent/Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.1703 of 2020 on the file of the Learned Judicial Magistrate No.1, Coimbatore and quash the same.

For Petitioners : Mr.V.Perumal

For Respondent : Mr.A.Laxmi Raj Rathinam

ORDER

This Criminal Original Petition has been filed to quash the private complaint filed under Section 415 and 109 IPC. The learned Magistrate had however taken cognizance of the offence under Section 505(1)(b) IPC on the basis of the said complaint.



Crl OP Nos.5101 of 2021

2. It is alleged in the complaint that the petitioners as Editor and Publisher of the Magazine called 'Makkal Kural' had published a statement referring to former Chief Minister of Tamil Nadu as “மறைந்த முதலமைச்சர் எடப்பாடி பழனிசாமி” in their publication dated 03.07.2019. It is further alleged that this is a false statement deliberately made to deceive the public and hence the petitioners are liable for the offence under Section 415 read with Section 109 of IPC.

3. The learned counsel for the petitioners would submit that it is true that they made a mistake in the publication. However, he would submit that realising their mistake on the very same day they made another publication correcting the mistake committed by them. In any event, the learned counsel for the petitioners would submit that this would not in any manner constitute the offence alleged. The learned counsel further submitted that no sanction was obtained for the prosecuting the petitioners for the offence under Section 505 (1)(b) IPC.

4. The learned counsel for the respondent would submit that the publication is false to the knowledge of the petitioners; that the learned



Magistrate had rightly taken cognizance of offence under Section 505(1)(b) of IPC, since the publication had a tendency to cause fear and alarm to the public.

5. This Court on the reading of the impugned complaint finds that the only allegation against the petitioners is that they had published a statement in the News Article referring to the former Chief Minister as “மறைந்த முதலமைச்சர் எடப்பாடி பழனிசாமி” and realising their mistake they had published another edition on the same day correcting the mistake. It was a genuine mistake for which they had expressed their regret. In any case, a reading of the complaint would show that the ingredients of Section 505(1)(b) has not been made out. In order to attract the offence under Section 505(1)(b), the statement of the accused must be intended to cause fear or alarm to the public, which may induce any person to commit an offence against State or Public tranquility. In this regard, it would be useful to refer to the Judgment of the Hon'ble Supreme Court in **Kedar Nath Singh vs. State of Bihar** reported in (1962) 2 Cri LJ 103, wherein it has been held as follows:-

“29. It is only necessary to add a few observations with respect to the constitutionality of



Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise, disregard to fail in his duty as such; (b) or to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against the public tranquility; (c) or to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality.”

The Hon'ble Supreme Court held that the essential ingredient for the offences mentioned in Section 505 of I.P.C., is that the act must have direct effect on the security of the State or public order. In the instant case that essential element is not found.



Crl OP Nos.5101 of 2021

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6. That apart Section 196(1)(a) of the Code of Criminal Procedure provides that no Court shall take cognizance of any offence punishable under Sub Section (1) of Section 505 of IPC except with the previous sanction of the Central Government or the State Government. In the instant case, admittedly, no sanction has been obtained for prosecution of the accused under Section 505(1)(b) of IPC.

7. Therefore, for all the above reasons, the impugned proceedings are liable to be quashed and hence quashed. The Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

05.04.2023

jv

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



Crl OP Nos.5101 of 2021

WEB COPY

To

1. The Judicial Magistrate No.1,
Coimbatore.
2. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



WEB COPY



Crl OP Nos.5101 of 2021

SUNDER MOHAN, J.

jv

Criminal Original Petition No.5101 of 2021
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