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Crl.O.P.Nos.7274, 7453 and 7568 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2023

DELIVERED ON : 07.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.7274, 7453 and 7568 of 2021

and

Crl.M.P.Nos.4848, 4890, 4959, 4961, 5009 and 5010 of 2021

Crl.O.P.No.7274 of 2021:-

1. M/s Kumudam Publications Pvt Ltd
represented by its Chairman and Managing
Director P.Varadarajan,
New No.306, Purasawakkam High Road,
Chennai-10.

2. S.K.Murugan, Editor
“Kumudam Reporter”
M/s Kumudam Publications Pvt Ltd
New No.306, Purasawakkam High Road,
Chennai-10.

...Petitioners

-Vs-

N.Jayamurugan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records of the proceedings pursuant to the complaint in C.C.No.1108 of 2020 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the said proceedings.



Crl.O.P.Nos.7274, 7453 and 7568 of 2021

Crl.O.P.No.7453 of 2021:-

1. M/s Kumudam Publications Pvt Ltd
represented by its Chairman and Managing
Director P.Varadarajan,
New No.306, Purasawakkam High Road,
Chennai-10.

2. S.K.Murugan, Editor
“Kumudam Reporter”
M/s Kumudam Publications Pvt Ltd
New No.306, Purasawakkam High Road,
Chennai-10.

...Petitioners

-Vs-

N.Jayamurugan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records of the proceedings pursuant to the complaint in C.C.No.1110 of 2020 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the said proceedings.

Crl.O.P.No.7568 of 2021:-

1. M/s Kumudam Publications Pvt Ltd
represented by its Chairman and Managing
Director P.Varadarajan,
New No.306, Purasawakkam High Road,
Chennai-10.

2. Saravanakumar, Reporter,
“Kumudam Reporter”
M/s Kumudam Publications Pvt Ltd
New No.306, Purasawakkam High Road,
Chennai-10.

...Petitioners



Crl.O.P.Nos.7274, 7453 and 7568 of 2021

-Vs-

N.Jayamurugan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records of the proceedings pursuant to the complaint in C.C.No.1109 of 2020 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the said proceedings.

In all Crl.O.Ps

For Petitioners : Mr.R.Amizhdhu

For Respondent : Mrs.Nalini Chidambaram
Senior Counsel
for Mr.G.Sarath Babu

COMMON ORDER

These Criminal Original Petitions have been filed calling for the records in C.C.No.1108 of 2020, C.C.No.1109 of 2020 and C.C.No.1110 of 2020 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

2. The respondent in Crl.O.P.No.7274 of 2021 filed a complaint in C.C.No.1108 of 2021 alleging that an article in Kumudam Reporter, in the issue dated 13.08.2019 in Page Nos.4 and 5, contained defamatory allegations and published under the caption “Orey Mugavariyil 912 Neruvanangal” contained various disparaging, false, scandalous and defamatory allegations. It also



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contained unprecedented growth of the respondent's company M/s SNJ Distilleries was due to its political affiliation with political party and as a quid pro quo, the second respondent produced the two movies namely “Uliyin Osai and Pen Singam”.

3. It was further alleged as follows:-

“ a. The Accused 1 and 2 have alleged that the Income Tax Department conducted search from 05.08.2019 to 11.08.2019 in the premises of SNJ Distillers owned by the complainant which has close affiliation with the DMK PARTY.

b. The Accused 1 & 2 have alleged a total of Rs.700 Crores was seized by the Income Tax Department which consisted of Rs.2000/- currency notes from the premises of S.N.J Distillers.

c. The Accused 1 and 2 have alleged that as per the first stage of Income Tax Raids conducted in over five states consisting of Tamil Nadu, Kerala, Orissa, West Bengal wherein apart from seizure of money, various evidences were also seized which made the Head Quarters of Income Tax Department located in Delhi 'tremble'

d. The Accused 1 and 2 have alleged that upon further investigation the evidences showcased the fact that Central Eastern Asian Countries have invested in the present case apparently has been brought to light and it can be interesting to witness the evidences seized in the raids.

e. The Accused 1 & 2 have alleged that recently the Complainant has purchased the property opposite to Anna Arivalayam for Rs.100 Crores: The Accused 1 & 2 have alleged that the Complainant has planned to construct a large shopping mall in the said property and has started to work on it in a discreet manner.

f. The Accused 1 & 2 have alleged that the Complainant has purchased a beer and Alcohol factory located in Poonamalee owned by Mr. Purshothaman for a sum of Rs. 100 Crores.



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g. The Accused 1 & 2 have alleged that the purchase of the above-mentioned properties itself gives raise to various doubts. The Accused 1 & 2 have alleged that in the midst of Income Tax Officials conducting raids in various places, questions have been raised as to how the Complainant has boldly gone forth and purchased the afore mentioned properties.

h. The Accused 1 & 2 have alleged that the purchase of the above-mentioned properties itself has shifted the Income Tax officials towards the Complainant. That the information relating to activities of the Complainant in the past six months was collected against the Complainant and as expected the Complainant fell inside the trap."

4. The respondent in Crl.O.P.No.7453 of 2021 lodged a complaint in

C.C.No.1110 of 2021 alleging as follows:-

" a. The Accused 1 and 2 have alleged that the Income Tax Department conducted search from 05.08.2019 to 11.08.2019 in the premises of SNJ Distillers owned by the complainant which has close affiliation with the DMK PARTY.

b. The Accused 1 & 2 have alleged a total of Rs.700 Crores was seized by the Income Tax Department which consisted of Rs.2000/- currency notes from the premises of S.N.J Distillers.

c. The Accused 1 and 2 have alleged that as per the first stage of Income Tax Raids conducted in over five states consisting of Tamil Nadu, Kerala, Orissa, West Bengal wherein apart from seizure of money, various evidences were also seized which made the Head Quarters of Income Tax Department located in Delhi 'tremble'

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h. The Accused 1 &2 have alleged that the purchase of the above-mentioned properties itself has shifted the Income Tax officials towards the Complainant. That the information relating to activities of the Complainant in the past six months was collected against the Complainant and as expected the Complainant fell inside the trap.”

5. The respondent in Crl.O.P.No.7568 of 2021 filed a complaint in C.C.No.1109 of 2020, on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, alleging that the accused time and again published false defamatory articles. It was further alleged that IT raid was conducted over 55 places belonging to the respondent wherein about Rs.700 Crores of unaccounted cash and documents were seized. The first accused has printed and published the above article with a view to tarnish the respondent's name and reputation. Hence, the complaint.

6. The learned counsel for the petitioners submitted that there was income tax raid conducted in the respondent's premises. Therefore, it was a true report as a Magazine published all over Tamil Nadu and the neighbouring States. The contents of the article were published as an information from the sources. Almost in all the Magazines the said news was published. Even then,



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the respondent picked the petitioners' alone and lodged complaints. The article are not defamatory in nature and in order to attempt to muzzle the press and to prevent the magazine from reporting in a fair and free manner, the present impugned complaints were filed. It is an arm-twisting tactic which constitutes an infringement of the fundamental right to speech and expression guaranteed to the Press under Article 19(a) and 21 of the Constitution.

7. He also submits that in order to attract the offences of defamation, mandatorily requires “mens rea” intention to cause harm. It is the most essential sine-qua-non for the offence under Section 499 of IPC. The first petitioner is an artificial person or a juristic entity, it is incapable of having any mind and the question of the company having such a state of mind could not arise. It does not possess mens rea and cannot be prosecuted for the offence of defamation. Further, the first petitioner is neither the Author nor the Printer or Publisher of the Magazine and therefore, it would be not possible to impute any knowledge or intention or especially an intention to cause harm to the reputation of the respondent. In fact, no such allegation was made in the complaint.

8. The learned Senior Counsel appearing for the respondent would



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submit that first petitioner prints and publish a biweekly magazine by the name “Kumudham Reporter”. The second petitioner is working in the said “Kumudham Reporter”. They had printed and published an article in the caption “Orey Mugavariyil 912 Neruvanangal”, thereby reported various disparaging, scandalous and defamatory allegations as against the respondent. They also published news that the unprecedented growth of the company was due to its political affiliation with political party and as a quid pro quo, the second respondent produced two movies namely “Uliyin Osai and Pen Singam”. They also published an article which was written by the second accused as gossip column under the caption “Swami Vambananda”. In the said article, they had made disparaging, false, scandalous and defamatory allegations against the second respondent and his companies, in order to tarnish the respondent's name and reputation.

9. In support of her contentions, she relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2018 1 SCC 615** in the case of **Mohd. Abdulla Khan Vs Prakash K**, wherein it was held as follows:-

“16. We must make it clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods - the newspaper. Those activities if carried on by people, who are employed either directly or indirectly by the owner of the newspaper, perhaps render all of them i.e.,



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the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502 IPC, (as the case may be) if the other elements indicated in those Sections are satisfied.”

10. She also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2001 6 SCC 30** in the case of **John Thomas Vs Dr.K.Jagadeesan**, in which it was held as follows:-

“ 10. The only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.”

11. Therefore, the grounds raised by the petitioners cannot be considered by this Court under Section 482 of Cr.P.C. The averments made in the complaint can be proved before the Trial Court and as such on the said ground itself the proceedings cannot be quashed.

12. She also contended that the complaint is supported by statement of the complainant and other documents. Therefore, it cannot be quashed on the ground that the complaint does not disclose any offence or allegations are vexatious or oppressive. If the allegations set out in the complaint constitute the



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offence of which cognizance is taken by the Trial Court, it cannot be quashed under Section 482 of Cr.P.C.

13. She also relied upon the Judgment of this Court in ***Crl.O.P.No.10277 of 2022 dated 05.09.2023*** in the case of ***Dr.L.Murugan State President BJP, presently Minister of State in the Ministry of Fisheries, Animal Husbandry & Dairying, New Delhi Vs Murasoli Trust, Rep by its Trustee R.S.Bharathi***, wherein this Court held as follows:-

“13. In an offence of defamation, the statements have to be tested only from the point of view of a common prudent man, who comes across the defamatory statements made. Even if the petitioner thinks that there was no imputation and that he had merely put a question, such statements will be understood by others as if the petitioner is repeatedly questioning the right and title of the property, over which, the Murasoli Trust is functioning and he also wants to drive home the point that it is functioning in the panchami land. That is how the respondent has understood the statements made by the petitioner and even in the complaint, the allegations have been made to the effect that many others had understood it in the same manner and started making enquiries with the respondent.”

14. Therefore, while dealing with the quash petition, this Court cannot go into the merits of the case or the disputed questions of fact. It has to be seen that what is alleged in the complaint and prima facie find out as to whether the offence is made out or not. Hence, she prayed for dismissal of these petitions.

15. Heard the learned counsel for the petitioners and the learned Senior



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Counsel for the respondent and perused the materials available on record.

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16. The petitioners are arrayed as A1 and A2 in all the complaints lodged by the respondent, on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai. The first petitioner in all the petitions is a Company. The second petitioner in Crl.O.P.Nos.7274 and 7453 of 2021 are editors of Kumudham Reporter. The second petitioner in Crl.O.P.No.7568 of 2021 is the reporter of Kumudham Reporter. The first contention raised by the learned counsel for the petitioners is that the first petitioner cannot be prosecuted, since it had no mens rea to harm the respondent, since it is a juristic entity.

17. It is relevant to extract the provisions under Section 499 of IPC which is as follows:-

“499. 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.”

18. Thus, it is clear that it is an offence involving personal malicious intent, which is evident from the fact that one of the essential ingredients is



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either intention to harm or knowledge or reasons to believe that such imputation will harm the reputation of the other. Therefore, an artificial/juristic person cannot be prosecuted for an offence under Section 500 IPC for, such an artificial/juristic person cannot be attributed with any malicious intention because malicious intention can be attributed only to a living person. Therefore, the first petitioner, being a company called “M/s Kumudham Publications Private Ltd., cannot be held liable for the offences under Sections 499, 500, 501 and 505 IPC.

19. It is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India, reported in **2013 SCC Online Del 1328**, in the case of **Raymond Ltd., and others Vs Rameshwar Das Dwarkadas P.Ltd.**, which is as follows:-

“In the penal code also there is no provision which makes a company or an association of persons liable for prosecution for the offences of which mens rea is one of the essential ingredients. In this situation and in view of the aforesaid decision of the Apex Court, it is apparent that if a statute defining the offence makes the mens rea or particular state of mind to be essential ingredients of such offence, a company or an association of person cannot be prosecuted for such offences though its officers or directors responsible for the management of the affairs of such company may be liable for prosecution. Similar view was expressed by this Court in an earlier decision in AIR 1949 CAL 689 where it has been held that bank is a juridical person and not an actual person. The bank is such that it cannot be said to have the mens rea required for the offence of cheating. The bank as such cannot be punished for cheating because it has no physical body.”

20. Therefore, the first petitioner cannot be said to have the mens rea in



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order to punish for the offence alleged by the respondent. That apart, in order to make a person liable for the offence of defamation, the complainant must prove that the accused has made an imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. Admittedly, the respondent failed to make any specific allegations as to how the petitioners committed an act to publish the articles and thereby committed defamation. Therefore, it is very difficult to proceed against the petitioners for the offences as alleged by the respondent.

21. It is relevant to extract the Explanation 4 of Section 499 IPC as follows:-

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

22. Thus, the combined reading of Section 499 IPC and Explanation 4 make it clear that there shall be an averment to the effect that because of the imputation, the complainant's reputation had been lowered in the estimation of



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others. It is absent in the complaint and also in the sworn statement. The word “harm” relates to imputations on a person's character and expressed to others so as to lower the person in their estimation and anything which lowers the person merely by own estimation certainly does not constitute defamation.

23. A perusal of the alleged article published by the petitioners shows that it only narrates the income tax raid conducted by the authority concerned. There is no averment either in the complaint or sworn statement that as a result of the imputation, the prestige, image and reputation of the respondent has been lowered in the estimation of the public. Therefore, it cannot be said that sufficient ground is made out for proceeding further. Hence, the complaint cannot be sustained to proceed further.

24. The Hon'ble Supreme Court of India held that there is no averment against the Chief Editor except the motive attributed to him and that even the motive alleged is, general and vague, the presumption under Section 7 of the Press and Registration of Books Act, 1867 is not available as against the Chief Editor. It has no applicability for a person who is simply named as Chief Editor. The presumption under Section 7 of the Press and Registration of Books Act,



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1867 is not applicable for a person, who is simply named as “Editor” as required under Section 5(1) of the Press and Registration of Books Act, 1867.

There is no mandatory presumption that a person whose name is printed as Editor is the Editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Press and Registration of Books Act, 1867 defines “Editor” to mean the person who controls the selection of the matter that is published in a newspaper. Section 7 raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognize any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against the Editor under Section 7 of the Press and Registration of Books Act, 1867. Therefore, there must be positive averments in the complaint of the knowledge by the Editor of the objectionable character of the matter. Further, it is for the respondent to plead that the second petitioner, selected, printing and publishing the alleged defamatory text. Therefore, the second petitioner is not liable to be punished for the offences alleged by the respondent. Mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation



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of the person concerned. By no stretch of imagination could it be said that the articles are published with the intention of harming the reputation of the respondent.

25. Therefore, the present impugned complaint is nothing but a clear abuse of process of Court and it cannot be sustained as against the petitioners and the Judgments cited by the learned counsel for the respondent are not helpful to the cases on hand.

26. Accordingly, the proceedings in C.C.No.1108 of 2020, C.C.No.1109 of 2020 and C.C.No.1110 of 2020 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai, are hereby quashed. These Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

07.12.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

mn

To

The XXIII Metropolitan Magistrate, Saidapet, Chennai.

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