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Crl.M.P.No.17942 of 2022
in Crl.O.P.No.25521 of 2021

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Orders Reserved on: 23.06.2023

Orders Pronounced on: 28.06.2023

M.NIRMAL KUMAR, J.

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 29.04.2022, 21.11.2022 and 12.12.2022, which read as follows:

'Proceedings dated 29.04.2022:

Today at the instance of Mr.Ramesh Kumar, learned counsel this case has been listed under the caption 'for being mentioned'.

2.The learned counsel submitted that Crl.O.P.No.25521 of 2021 filed by the accused in CC.No.9238 of 2018, (Cr.No.30 of 2014) was allowed on the ground of compromise entered between the petitioners/ accused and the 2nd respondent/ defacto complainant.

3.The learned counsel represents that LW2 Dr.George Paul S/o.Dr.G.Paulose is yet another victim who had also suffered due to the anonymous E-mail and other communications sent against Dr.George Paul and his



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daughter and family members. Dr.George Paul had lodged a complaint with the Commissioner of Police in reference No.1764 on 01.11.2013. Since earlier a case in Cr.No.30 of 2014 filed on the complaint of Dr.R.Gunaseelan and the LW2 Dr.George Paul's complaint is for similar cause of action. Hence, no separate case was filed on the complaint of Dr.George Paul following ***T.T.Antony Vs. State of Kerala*** case and his complaint was taken along with Cr.No.30/2014 and Dr.George Paul examined as a witness and his statement recorded.

4.In sum and substance he submits that as victim he ought to be heard and hence sought permission to file appropriate petition before this Court to get clarified, and giving liberty to raise objections on this regard. The counsel further submitted that he is not against the petitioner and defacto complainant Dr.Gunaseelan entering into compromise resolving the issue, as regards Dr.George Paul, no such compromise arrived.

5.Finding reason in the petitioner's submission, the petitioner is permitted to file appropriate petition. The Registry is directed to entertain the same. Thereafter, the petitioner's objection can be decided on merits independent of compromise entered between the petitioner and Dr.Gunaseelan.



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Proceedings dated 21.11.2022:

This petition is posted before this Court under the caption "for maintainability".

2. Based on the compromise entered into between LW1 and petitioners/accused, this Court by order dated 23.12.2021 in Crl.OP.No.25521 of 2021 quashed the criminal proceedings initiated against them in C.C.No.9238 of 2018 on the file of the XI Metropolitan Magistrate Court, Saidapet.

3. Thereafter on 29.04.2022 the case was listed under the caption "for being mentioned" at the instance of Mr.Ramesh Kumar, learned counsel representing Dr.George Paul, who was cited as LW2 in C.C.No.9238 of 2018. The learned counsel submitted that there are seven other victims in this case who have not given their concurrence for compromise; Though, LW1 alone has entered into compromise with the petitioners/accused, the other victims in this case namely, LW2, LW7, LW8, LW11, LW12, LW13 and LW14 who were affected by the petitioners/accused have not yet given their consent for compromise. In view of the above said submission, the learned counsel was permitted to file appropriate petition, enabling the Registry to entertain the same.



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4.In view of the order passed by this Court in Crl.OP.No.25521 of 2021 dated 23.12.2021, quashing the entire case against the petitioners in C.C.No.9238 of 2018, the affected victim/LW2 who is an aggrieved person has filed this petition in Crl.M.P.Sr.No.25207 of 2022 to recall the order dated 23.12.2021 passed in Crl.O.P.No.25521 of 2021 and the same is posted before this Court under the caption 'for maintainability'.

5.The learned counsel for the petitioners/A1&A2 and as well as the learned counsel for the defacto complainant/second respondent in Crl.OP.No.25521 of 2021 are present. The learned counsel for the defacto complainant/second respondent submitted that with regard to LW1, the case has been compromised and he has got nothing to say against the accused/petitioners. Mr.R.John Sathyan, learned counsel appearing for M/s.A.Umapathy for the petitioner submitted that there are seven other victims in this case, since LW1 was the person who had first lodged the complaint, his complaint has been registered and subsequent complaints of the victims have been treated as further statements following the Information Technology Amendment Act, 2008.

6.Heard the learned counsel appearing for the petitioner, learned Govt. Advocate (crl.side) appearing for



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1st respondent as well as learned counsel appearing for respondents 2 to 4.

7.In view of the submissions made by the learned counsel for the petitioner and considering the fact that major of the victims have not given their consent for compromise and also due to the order passed by this Court in Crl.OP.No.25521 of 2021 on 23.12.2021 their rights would be affected, this Court finds this petition is maintainable. The Registry is directed to number the petition, if the papers are otherwise in order and list the case on 29.11.2022.

Proceedings dated 12.12.2022:

Mr.R.John Sathiyam, learned counsel for the petitioner submit that the order passed in Crl.O.P.No.25521 of 2021 on 23.12.2021 quashing C.C.No.9328 of 2018 on the file of XI Metropolitan Magistrate, Saidapet is to be recalled for the reason that in this case there are totally eight victims and the petitioners in Crl.O.P.No.25521 of 2021, entered into compromise with Defacto Complainant Dr.R.Gunaseelan alone, by filing this compromise memo projected as though entire case has been compromised between them amicably.



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2.The learned Government Advocate (Crl.Side) failed to bring it to the notice of this Court, about the eight victims apart from the Defacto Complainant. The victims are L.W.1, Dr.R.Gunaseelan, L.W.2, Mr.George Paul, L.W.7, Dr.Kishore Nayak, L.W.8, Dr.Kiran Nayak, L.W.9, Dr.Ananatanarayanan, L.W.11, Dr.Manjunath Rai, L.W.12, Dr.Tmt.Bini George, L.W.14, Dr.Sanjiv, Nair. It is submitted that there is no compromise arrived between these victims except L.W.1.(Dr.R.Gunaseelan). Further, the victims are very much aggrieved and intend to proceed with the Trial since the defamatory statements and articles are made and published not only as against the victims but also against their family members which has a cascading effect. Hence, they intended to proceed with the trial. Each individual victim now filed an affidavit, who all intend to proceed with the trial. In view of the same, the order passed in Crl.O.P.No.25521 of 2021 has to be recalled, since the grievance of all victims, and complete facts was not before this Court when the order was passed on 23.12.2021. Further, they categorically state that they had not authorized or given permission to the Defacto Complainant to compound the offence and on their behalf. Hence, prayed for recalling the order.

3.The learned counsel for the petitioners in



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Crl.O.P.No. 25521 of 2021 and respondents in Crl.M.P.No.17942 of 2022 submit that learned Senior Counsel who is leading in this case is not available and seeks small accommodation.

4.In view of the above, post the matter under the caption “For orders” on 04.01.2023.

2.The primary contention of the petitioner is that this Court in Crl.O.P.No.25521 of 2021 quashed the proceedings in C.C.No.9238 of 2018 on the file of the XI Metropolitan Magistrate Court, Saidapet, by order dated 23.12.2021 on the petition filed by one Jayaprakash and Dr.S.M.Balaji, who are Accused Nos.1 and 2 in the said Calendar Case. The quash petition was filed primarily on the ground that the defacto complainant in this case Dr.R.Gunaseelan and the petitioners therein had compromised the issue between them and filed affidavits to that effect, defacto complainant Dr.R.Gunaseelan agreed to withdraw the complaint based on Dr.S.M.Balaji tendering apology, pursuant to that, compromise quash order passed. Thereafter, the other victims lead by Dr.George Paul/petitioner herein filed the above petition to recall the order dated



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23.12.2021 since they being victims and witnesses in the case, not heard, they have not condoned the act of the accused in the above case and no compromise entered, the order passed without hearing the victims. Further, affidavits to this effect filed by the victims, namely, L.W.2, L.W.7, L.W.8, L.W.11, L.W.14 and one Krishnamurthy stating that they are victims in this case who were not heard before quashing the proceedings in C.C.No.9238 of 2018.

3.Mr.T.Mohan, learned senior counsel appearing for the petitioner submits that the statement of witnesses disclose the fact that the accused committed the offences under Sections 506(i) and 507 of IPC and Section 66D of the Information Technology Act. There was no compromise without hearing all victims hence quashing the proceedings based on the compromise entered with L.W.1 is not proper. He would submit that earlier the petitioners therein/A1 and A2 filed a quash petition on summoning them and this Court in CrI.O.P.Nos.26924 and 28725 of 2018 by order dated 28.09.2020 passed a detailed order recording that, sufficient materials to proceed against the accused available, e-mails with derogatory contents ont



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eh face of it found against L.W.1, L.W.2 and L.W.7 and thereafter, dismissed the quash petition filed by the accused. He would further submit that the accused suppressing these facts and what they could not achieve directly had indirectly filed quash petition projecting, compromise arrived between the accused and the defacto complainant. He further submitted that the petitioner and the other victims lodged a complaint to the respondent police wherein they referred to the derogatory emails, since already FIR in Crime No.30 of 2014 on the complaint of Dr.R.Gunaseelan/L.W.1 registered, the petitioner and the other victims were taken as witnesses in Crime No.30 of 2014 following the Apex Court directions. He further submitted that during earlier proceedings, vital facts suppressed by the accused, the learned Additional Public Prosecutor failed to inform the Court about the actual status of the petitioner and other victims, hence order obtained by suppression of facts.

4.Learned senior counsel appearing for the petitioner referring to the decisions of the Apex Court in the case of *Indian Bank vs. Satyam Fibres [India] Pvt. Ltd.* reported in *[1996] 5 SCC 550* and in the case of



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A.R.Antulay vs. R.S.Nayak reported in **[1988] 2 SCC 602**, submitted that the Apex Court held that Courts have inherent powers to recall and set aside an order obtained by fraud practised upon the Court when the Court is misled by a party or when the Court itself commits a mistake which prejudices a party the same to be rectified. Thus, the sum and substance is that when an order has been passed by misleading of a party or by fraud, the orders can be recalled. In this case, on the above facts it is clear that there have been suppression of vital facts about the other victims including the petitioner not condoned the act of the accused. In support of his contention, the learned senior counsel referred to the following decisions:

- 1) ***State of Punjab vs. Davinder Pal Singh Bhullar and others*** reported in **[2011] 14 SCC 770**
- 2) ***Budhia Swain and others vs. Gopinath Deb and others*** reported in **[1999] 4 SCC 396**
- 3) ***Ganesh Patel vs. Umakant Rajoria in S.L.P(Crl.)No.9313 of 2021 dated 07.03.2022***
- 4) ***Saravanan vs. The State*** reported in **MANU/TN/2065/2011**
- 5) ***S.Thamaraiselvan vs. The State rep. by The Sub-Inspector of Police, DCB Police Station, Tirunelveli and***



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*others in CrI.O.P./MDJ.No.20572 of 2021 dated
22.12.2021.*

5.Mr.N.R.Elango, learned senior counsel appearing for the respondents 3 and 4/accused referring to the email, submitted that on a bare reading of the alleged derogatory email, it is seen that in the email the allegations are primarily against the defacto complainant/L.W.1 Dr.R.Gunaseelan as though he is involved in series of malpractices supposedly through Dental Council of India and the raid conducted by CBI, further L.W.1 intention to build a Medical College and Hospital for his son at Bangalore except, referring to the name of L.W.2 and L.W.7, there is nothing more. He would submit that the statement of the petitioner/L.W.2 refers to anonymous blog sites www.denthethicblogspot.com and www.dcicorruption.blogspot.com which are passing wrong information against the petitioner, his daughter and family members. He would further submit that there is no material except for the statement of the petitioner, the entire case primarily revolves around the derogatory email received from mfssurgeons@gmail.com. He further submitted that a dispute between the



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Doctors with regard to the functioning of the Association and Society have been blown out of proportion and the accused harassed, to undergo the ordeal of trial. He further submitted that the Investigating Officer directed the petitioner and others to produce the emails connecting, affecting them but they failed to do so, in view of the same, no case is made out to recall the order.

6.In reply, Mr.T.Mohan, learned senior counsel appearing for the petitioner referring to derogatory email submitted that the allegations are common against all the victims, further referred to the earlier order passed by this Court in Crl.O.P.Nos.26924 and 28725 of 2018 dated 28.09.2020, wherein the same points raised and rejected. He further submitted that there is a clear finding by this Court that e-mail ID was created with the mobile No.72999008833 of Jayaprakah who had got no animosity towards either Dr.Gunaseelan/L.W.2 or L.W.7, there was rivalry between the victims and Dr.S.M.Balaji's group in the affairs of the Association, both the accused acted in tandem in creating the e-mail ID and sent the impugned email through the email ID mfssurgeons@gmail.com. He further submitted that



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the quash petition filed in Crl.O.P.No.25521 of 2021 is based on the compromise and not on merits. The points now raised already decided and rejected by this Court. In view of the above, the defence of the accused to be decided during trial and it cannot be a ground to reject the recall order petition filed by the petitioner.

7.Considering the submissions made and on perusal of the affidavit filed by the accused in Crl.O.P.No.25521 of 2021, it is seen that the said petition filed on the ground of compromise entered with L.W.1/Dr.R.Gunaseelan and there is nothing more. Learned Additional Public Prosecutor who is duty bound to disclose the entire facts before this Court not stated anything with regard to the other witnesses who are also victims, similarly placed like that of L.W.1. The Apex Court as well as this Court on several occasions held that if an order has been obtained on misrepresentation or fraud, it has to be recalled. Therefore, this Court finds the order in Crl.O.P.No.25521 of 2022 dated 23.12.2021, passed without hearing the petitioner and other witnesses who are all victims is not proper, legally sustainable one. Further, this Court is satisfied with the affidavits



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filed by the petitioner/L.W.2 and other victims in support of this petition.

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Accordingly, the order passed by this Court in Crl.O.P.No.25521 dated 23.12.2021 is hereby recalled. The Trial Court is directed to proceed with the trial in C.C.No.9238 of 2018 in accordance with law.

8.In the result, Crl.M.P.No.17942 of 2021 is allowed.

28.06.2023

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To

The XI Metropolitan Magistrate,
Saidapet,
Chennai.



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PRE-DELIVERY ORDER MADE IN

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