



Crl.O.P.Nos.20728 and 21155 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 29.03.2023

Pronounced on : 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.20728 and 21155 of 2019

and

Crl.M.P.Nos.10670 and 10921 of 2019

S.Ranganathan

(Singara Chennai)

In - Charge,

“Sindhanai Murasu”

No.15, Sathyamurthy Street,

Korukkupet,

Chennai – 600 021.

...Petitioner/4th Accused
in both petitions

Vs.

1.Radhakrishnan

...Respondent in
Crl.O.P.No.20728 of 2019



Crl.O.P.Nos.20728 and 21155 of 2019

2.Kalayanaragavan

...Respondent in

Crl.O.P.No.21155 of 2019

COMMON PRAYER : Criminal Original Petitions have been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.Nos.8360, 8357 of 2017 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : M/s.P.T.Perumal

For Respondents : Mr.N.Gnanalingam
for Mr.S.Arivazhagan

COMMON ORDER

The petitions are to quash the complaints filed for the offence under Section 500 IPC by the persons aggrieved by the publications made by the accused in the March 2017 Edition of Tamil Magazine called “Sindhanai Murasu”.

2. It is alleged in the complaints that the respondents in the above Criminal Original Petitions were defamed by the publications made in the said Magazine;



that the petitioner was shown as a person in charge of the said Magazine.

Broadly, the allegations in the complaints are that the Magazine had published an article, accusing the respondent in both the petitions herein of misappropriation of the funds of Sri Agastheeswarar Prasanna Venkatesaperumal Devasthanam (APVP) Trust in their capacity as permanent Trustees. The respondents, therefore, had filed separate complaints alleging defamation.

3. Mr. P.T.Perumal, the learned counsel for the petitioner, submitted that in the impugned complaints necessary ingredient for the offence under Section 500 IPC that the publication had lowered the moral or intellectual character of the respondent in the estimation of others has not been made. In order to satisfy whether the allegation constitutes the offence of defamation, the learned Magistrate has to conduct an inquiry under Section 202 Cr.P.C., in all cases of defamation. The learned counsel further submitted that, in any event, the petitioner is not the person who would be liable as he is not the Printer or Publisher or Editor found in the statutory declaration. There is no allegation that he was responsible for the selection of the article. The learned counsel relied upon the following Judgments in support of his submission:-



Sl.No.	Judgments and Citations
1.	<i>J.Jayalalitha vs. Arcot N.Veerasingam</i> reported in <i>1997 Crl.L.J. 4585</i>
2.	<i>V.S.Achuthanandan Vs. Kamala & another</i> reported in <i>2008 Crl.L.J.4221</i>
3.	<i>Smt.Veena Sood Vs. Ramesh Kumar Sood</i> reported in <i>2012 SCC Online HP 4955</i>
4.	<i>K.M.Mathew vs. State of Kerala</i> reported in <i>(1992) 1 SCC 217</i>
5.	<i>Chandramouli KR Prasad Vs. Gopala Gowda</i> reported in <i>2013(2) CTC 579</i>
6.	<i>Prabhu Chawla & Others Vs. A.V.Sheriff</i> reported in <i>1995 Crl.L.J. 1992</i>

4. Mr. N.Gnanalingam, the learned counsel for the respondents, submitted that the allegation in the complaint is that the respondents were defamed in the publication. The publication states that the respondents misappropriated funds of Sri Agastheeswarar Prasanna Venkatesaperumal (APVP) in their capacity as permanent Trustees. The said publication is bound to lower the character of the respondents in the estimation of others. In the impugned complaints, there are necessary allegations to attract the offence under Section 500 IPC. As regards the role played by the petitioner, the learned counsel for the respondents pointed out



another publication made in the same Magazine wherein the Editor had stated that their publication about the respondents was based on the false information given by the petitioner and that they were tendering unconditional apology for the said publication. In the said publication, they had also stated that subsequently they came to know that the petitioner on account of prior enmity with the respondents, had spread false news about the respondents. Hence, the learned counsel prayed for the dismissal of the quash petition.

5. The offence of defamation is defined under Section 499 IPC which reads 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.

Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the



reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. – No imputation is said to harm a person's reputation, unless the 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.

It can be seen that Explanations 1, 2 and 3 expands the meaning of defamation. Whereas, Explanation 4 tends to curb its meaning by restricting it to cases where the imputation directly or indirectly in the estimation of others lowers the moral or intellectual character of that person etc. Thus, unless the



imputation falls within the meaning given in Explanation 4, it would not amount to defamation. Therefore it is essential to allege and prove that the imputations had lowered one's character in the estimation of others. This Court in ***J.Jayalalitha Vs. Arcot N.Veerasingam*** reported in ***1997 Crl.L.J.4585*** held as follows:

“33.Thus, the conjoint reading of Section 499 I.P.C., with this Explanation 4, would make it clear, that in the complaint, there shall be an averment to the effect, that because of the imputation, the complainant's reputation had been lowered in the estimation of others. As indicated earlier, this important ingredient is absent in the complaint and in the sworn statement.”

Similarly the Kerala High Court in its Judgment in ***V.S.Achuthanadan vs Kamala and another*** reported in ***2008 Crl.L.J. 4221*** had held as follows:-

“17.Another point argued by the learned counsel for the petitioners is that in view of Explanation 4 to Section 499, Annexure A report will not come within the purview of Section 499. Explanation 4 to Section 499 reads:

“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 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. The Counsel took me through Annexure A article proceedings and submitted that nowhere in Annexure A news article mentioned the name of the complainant and further submitted that therefore it cannot be said that the report was intended to adversely affect the reputation of the complainant in the estimation of others. It is true that there is no averment in the complaint that some of the witnesses or persons have read Annexure A report and there is no details regarding the places where it has been read, the date on which the article was read and the name of persons who read the article and as to how in their mind lowered the reputation of the complainant. It is also an admitted fact that both the complainant and the accused have no previous acquaintance and the complainant is not a public figure so as to come into a conclusion that the article was prepared and calculated in such a manner so as to lower the reputation of the complainant in the estimation of others. Regarding all these aspects, the complaint is silent and there are no sufficient averments and allegations so as to attract the ingredients of Section 499. But the available materials and averments will show that Annexure A article will come within the clutches of Explanation 4 of Section 499



of IPC. Therefore, I am of the view that no complaint will lie against the petitioners accused.”

8. As per Explanation 4, the following ingredients are necessary to attract the offence of defamation.

- (a) Imputation.
- (b) Directly or indirectly in the estimation of others.
- (c) (i) Lowers the moral or intellectual character of that person or
(ii) Lowers the character of that person in respect of his caste or of his calling or
(iii) Lowers the credit of that person or
(iv) Causes it to be believed that the body of that person is in a loathsome state or in a state generally considered disgraceful.

There must be necessary averment in the complaint to satisfy the above ingredients.

9. In the impugned complaints, it is seen that the averments made in this regard read as follows:-



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“12.The Complainant states that the said news report was published with actual some ulterior motive and without enquiring or investigating into the truthfulness or otherwise by exercising due care has reported the false news by the Accused and has also effected publication of the same without disclosing verifying the authenticity of the statements and testing its veracity. Further as a result of unscrupulous sensationalism by printing "Rumour and Gossip" and due to the same the Complainant's reputation among their friends, relatives and society in particular has been tarnished.

13.The Complainant states that the utterances made by the Accused in public by printing and publishing a false news in the magazine with an intention to be read such imputation concerning the Complainant intending to harm, knowing and having reasons that such imputation will harm the reputation of the Complainant among the right thinking public who had hitherto, held him in high esteemed, have withdrawn his association from them and adverse remarks had spoiled his image.”

10. It can be seen from a reading of Section 499 of IPC that it penalises making or publishing any imputation with the requisite *mens rea* to harm the reputation of that person. In order to attract the offence of defamation, it is not enough that the publication is made with the requisite *mens rea* but the



publication must have actually harmed the person's reputation. The *actus reus* in

the offence of defamation is the actual harm caused to the person's reputation.

Explanation 4 of the definition clarifies when a person's reputation can be said to be harmed. Harm is caused to a person's reputation when it has lowered the character of the victim in the ways mentioned in Explanation 4 to Section 499 IPC in the estimation of offences. The complaint must *prima facie* satisfy the ingredients of the offence. The learned Magistrate also has to satisfy himself about the commission of an offence. Unless it is shown that the imputation had lowered the character of the victim in the estimation of others, the learned Magistrate may not take cognizance of the offence. For that purpose, it is desirable as rightly contended by the learned counsel for the petitioner that in all cases of defamation, an enquiry under Section 202 of Cr.P.C is conducted to ascertain if *prima facie* an offence of defamation is made out. The examination of the complainant alone would, at best, reveal that there was a publication which in his own estimation has lowered his character. That is insufficient to attract the offence, as elaborated earlier. Thus, this Court is of the view that in all cases of defamation, it is essential that the learned Magistrate conducts an enquiry under Section 202 Cr.P.C and examines witnesses other than the complainant to



ascertain if Explanation 4 to Section 499 is satisfied in the facts of the case. This

Court in several cases had held that this is a basic requirement even to initiate the prosecution. While so, the learned Magistrate cannot come to a conclusion only on the basis of the complainants' sworn statement that the imputation had lowered his reputation in the estimation of others. The fact that the others have read the imputation and in their estimation, the victim's character was lowered has to be established. It is needless to reiterate that the process of taking cognizance is not an empty formality. The Hon'ble Supreme Court in ***Fakhruddin Ahmad vs State Of Uttaranchal & Anr*** reported in ***(2008) 17 SCC 157*** had held as follows:-

“15.Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of



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the offence. Cognizance is in regard to the offence and not the offender.”

11. Therefore, this Court, without going to the other submissions made by the learned counsels on either side, is of the view that the order taking cognizance by the learned Magistrate is liable to be set aside. This Court, however is not inclined to quash the proceedings on that ground. The learned Magistrate may conduct an inquiry under Section 202 Cr.P.C and take such action as deemed fit in accordance with law without being influenced by any of the observations made in this order. Hence the matter is remitted back to the learned Magistrate for conducting such an inquiry.

12. With the above observations, the Criminal Original Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed.

25.04.2023

dk

NCC: Yes/No

Index : Yes/No

Speaking /Non Speaking Order



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To

The XIV Metropolitan Magistrate,
Egmore,
Chennai



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SUNDER MOHAN. J,
dk

Pre Delivery Common Order in
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