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Crl OP No.25394 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.25394 of 2019

and

Crl.M.P.Nos.13576 & 13578 of 2019

1. Nazeera Afzal Rahman

2. Afzal Rahman

... Petitioners/Accused

Versus

Ms.Preetha Prasad

... Respondent/Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the proceedings in C.C.No.2927 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, quash the same.

For Petitioners : Mr.Vigneswar Elango
for M/s.P.Elango

For Respondent : Mr.S.Anil Sandeep



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ORDER

This Criminal Original Petition has been filed to quash the complaint for the offences under Section 500 of IPC

2. It is alleged in the complaint that a suit in OS No.5166 of 2016 on the file of XIX Additional City Civil Court is pending between the parties; that in the written statement filed in OS No.5166 of 2016, the second petitioner had stated that the first petitioner was in intimate relationship with the respondent owing to the immoral acts/infidelity of the respondent.; and that the said statement lowered the respondent's character in the estimation of the others and hence the imputation amounts to defamation within the meaning of Section 499 of the Indian Penal Code.

3. The learned counsel for the petitioners would submit that the statement made in the pleadings before the Court in good faith cannot be subject to a prosecution under Section 500 IPC. The petitioners never intended that the said affidavit be published or read by third parties. Even according to the statements of the relatives of the respondent the imputation made in the affidavit was shown to them only by the



respondent. The petitioners never intended to publish it.

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4. The learned counsel relied upon the judgment of this Court in *N.Sathya & another v. V.Sekar*, reported in **2009 (3) MWN(Cr.) 266**, wherein this Court had quashed the proceedings on the ground that the imputation was not published by the petitioners. The learned counsel also relied upon the judgment of the Bombay High Court in *Manoharrao and another v. State of Maharashtra and another*, reported in **2016 SCC Online Bom 3866**, wherein the Bombay High Court had held that statements made in the written statement are restricted to the parties to the case and the Court, and the said statement cannot amount to an act of defamation under Section 499 of the Indian Penal Code.

5. The learned counsel for the respondent however submitted that this Court and the Hon'ble Supreme Court had repeatedly held that the protection under Eighth Exception to Section 499 IPC to statements made to any public authority is not absolute. The question whether it has been made in good faith or not is a matter for the Trial Court. The learned counsel relied upon the following judgments.



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- (i). *Thangavelu Chettiar v. Ponnammal*, reported in *AIR 1966 Mad 363*;
- (ii). *M.N.Damani V. S.K.Sinha and others*, in *Appeal (Crl.) No.596 of 2001 dated 02.05.2001*
- (iii). *Dr.J.Sundarshan v. R.Sankaran*, reported in *1992 Crl LJ 2427*; and
- (iv). *M.C.Verghese v. T.J.Ponnan & another*, reported in *1970 AIR 1876*.

6. This Court on perusal of the impugned complaint finds that the imputation has been made in the written statement filed before the Court in OS No.5166 of 2016. The only point raised by the petitioners is that it was not intended to be published or spread to third parties, and that the imputation was made in good faith. This Court finds that after hearing the submissions of the counsels on either side that the protection for statements made in the pleadings before the Court is not absolute. The said statement has to be made in good faith in order to fall within Eighth Exception to Section 499 of IPC. Whether the statement was made in good faith or not is a question of fact and it has to be adjudicated only before the Trial Court.



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7. Hence this Court is not inclined to quash the impugned complaint. However the petitioners are at liberty to raise all the contentions before the Trial Court. Since it is stated that the second petitioner is a resident of Calicut, the personal appearance of the second petitioner before the Trial Court is dispensed with, unless the Trial Court deems his presence necessary for the progress of the Trial. As far as the first petitioner is concerned, this Criminal Original Petition is dismissed as withdrawn by the order dated 27.03.2023.

8. With the above observation, the Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petitions are closed.

18.04.2023

jv

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To
The IX Metropolitan Magistrate,
Saidapet, Chennai.



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SUNDER MOHAN, J.

jv

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