



Crl.O.P.No.1417 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

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

Crl.O.P.No.1417 of 2022
and Crl.M.P.No.560 of 2022

1. Saradha Kannuchamy
2. T.K.Ramakrishnan

...Petitioners

-Vs-

R.Selvaraj

...Respondent

Prayer:- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in CC.No.1172 of 2020, on the file of XVIII Metropolitan Magistrate, Saidapet and to quash the same as abuse process of law.

For Petitioners : Mr.Mohamed Ashick
For Respondent : Mr.S.Suresh

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1172 of 2020, on the file of XVIII Metropolitan Magistrate, Saidapet.



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2. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

3. The respondent lodged a complaint alleging that the respondent is one of the resident at “Bay View Apartment”, situated at Parvathi Street, Besant Nagar. The C block Residents Welfare Association has been functioning to maintain the above apartments. In the general body meeting held in the month of July, 2017, the then outgoing President one Azad proposed the name of the respondent as Secretary of the Association. In the same meeting, one Chendurnathan was selected as the Treasurer of the Association. Thereafter, the respondent, along with other office bearers including the President, had taken several works concerning their apartment safety and security. They had raised the ground level of the open area to avoid inundation during the rainy season and white washed the entire building. There are 43 flats and except 4 to 5 people, all the residents are appreciating the works done by the respondent and other office bearers. In fact, the said work was carried out



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after obtaining the consent of the members of the Association and determining the quantum of the contribution of each flat owner. As per the estimation, each flat owner had accepted to pay Rs.30,000/- towards the renovation work of the apartment. The petitioners and other two persons, in order to avoid the payment of their due share to the Association, have joined together and started to make problems one after another. The petitioners are mother and son. They sent a letter dated 05.07.2018, addressing to the President of the Association and copies to all the members of Association to form a fact-finding committee regarding various issues. They have raised various issues including the validity of the position of the President and other office bearers. They called them as culprits, unruly elements and rogues. The President had sent a reply dated 18.07.2018 giving explanation to the issues raised by the petitioners and demanded them to tender apology for making derogatory remarks against them. It caused severe damage to their reputation apart from putting them in great embarrassment before the members of the Association. The petitioners replied without expressing their remorse for describing them and other office bearers as culprits,



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unruly elements and rogues. Hence, the complaint.

4. On receipt of the complaint, the Trial Court had taken cognizance for the offence under Section 500 of IPC.

5. The learned counsel for the petitioners would submit that in order to elect the office bearers for the Bay View Apartments Association, elections were conducted in the month of July, 2017. Several representations were made as against the illegal conduct of the elections by various residents of the apartments. Finally, the elections were conducted and officer bearers were elected, in which the respondent was elected as Secretary of the Association. There were several malpractices regarding the conduct of the Association and the same were reported by residents to be Governing Body during election. Therefore, the first petitioner in her letter dated 05.07.2018, addressed to the President of the Association and marked copies to the erring office bearers and members of the Association. However, there was no action, since the election itself conducted by violating the bye-laws of the



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Association. Therefore, the same was declared as null and void in view of breach of the provisions of the bye-law. The new Governing Body consisted of individuals, who were not members of the Association and office bearers were not permitted to occupy their posts in the Governing Body. They also caused police complaint as against the residents for trivial issues and therefore, the first petitioner suggested a fact-finding committee be formed to sort out the grievance of the residents of the Apartments. Therefore, the petitioner had no personal imputation as against any person of the Governing Body. Instead of forming the fact-finding committee, the President and the respondent replied by reply notice dated 18.07.2018, thereby threatened to invoke criminal proceedings as against the petitioner. The basic ingredients required to attract the offences under Sections 499 and 500 of IPC is that the defamatory content must impute motive against a particular individual.

6. A perusal of the letter dated 05.07.2018 revealed that no defamation has been committed by the petitioners. The grievances of the petitioners were general and pertaining to a body of the individuals, who



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were controlling the affairs of the Association through the Governing Body. Therefore, no specific imputation was made as against any individual.

7. It is relevant to extract the provisions under Section 499 of IPC 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 expected, to defame that person.”

Eighth Exception to Section 499 of IPC to which reliance has been placed by the learned counsel for the petitioner, reads as under:-

Eight Exception —Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

8. Therefore, the Trial Court had committed serious error in taking cognizance on a complaint, which fails to disclose commission of any offence. The petitioner, in good faith, brought to the notice to the



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Association and office bearers of the Association in respect of various issues and they also requested to form a fact-finding committee. The relevant portion of the notice is extracted hereunder:-

“ The fact-finding committee should therefore be empowered to set deliberate and proceed to impeach the office bearers if found guilty.

Or else the culprits should be allowed to resign on their own volition with a short notice of 7 to 10 days.

During the tenure of the committee, the office bearers should stop all activities pertaining to the functioning of our association and they should desist from collecting funds from the residents and transacting at the bank.

In the event of the guilty not opting to resign or refuse to follow instructions, the fact-finding committee should approach legal help and initiate a proceeding that forces them to vacate office within a week.

Let's join hands together, volunteer to work for the fact-finding committee and thus help clearing this association of unruly elements.

There are already a handful of owners/residents who have initiated on their own legal actions against the erring office bearers.

Its time we had stopped the rogues from occupying such noble positions as office-bearers of our association.”

9. Therefore, the entire issues raised by the petitioners are not defamatory in nature and the main ingredient to attract the offence of defamation is publication which is absent in this case. Even according to



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the complainant, the petitioner issued notice to all the office bearers of the Association and its members. Therefore, it would not amount to any defamation and it is coming under eighth exception to Section 499 of IPC.

10. In view of the above, the proceedings in C.C.No.1172 of 2020, on the file of XVIII Metropolitan Magistrate, Saidapet, is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous petition is closed.

28.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

To

The XVIII Metropolitan Magistrate, Saidapet.



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G.K.ILANTHIRAIYAN. J,

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