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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 24/02/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.RC(MD)No.628 of 2022

V.Solairaj
President of "Madurai Parsn Srishti
Apartment Owners Association",
No.9/GF, Varun Block,
Parsn Apartment,
Opp. to Fatima College,
Madurai-625 018. : Petitioner/Petitioner

Vs.

- 1.P.Anbucheziyan,
Ex.Manager,
Teachers Colony,
Vilangudi, Madurai.
- 2.K.Alagusingam, (Owner),
Ex.Secretary,
2SF, Akash, Parsn Apartment,
Opposite to Fatima College,
Madurai-Dindigul Highways Road,
Madurai-625 018.
- 3.S.Vijayakar, (Tenant),
12-A, Prithvi Block,
Parsn Apartment,
Opposite to Fatima College,
Madurai-Dindigul Highways Road,
Madurai-625 018.



6.C.Mani (New Owner),
10 SF, Prithvi Block,
Parsn Apartment,
Opposite to Fatima College,
Madurai-Dindigul Highways Road,
Madurai-625 018. :

:Respondents/Respondents

For Respondents : Mrs.V.Muthumani

**O R D E R**

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This Criminal Revision has been filed seeking in order to set aside the order passed in CrI.MP No.8331 of 2021, dated 16/03/2022 by the Judicial Magistrate No.II, Madurai.

2.The facts in brief:-

The petitioner filed a private complaint against the respondents with the following allegations:-

In 1997, the petitioners purchased a flat (9GF Varun) from Parsn Apartment and living there with the family. In 1992, an Association called 'Parsn Shrishti Housing Welfare Society' was formed. It is a registered Society. As per the bye-law', once in two years, general body meeting will be conducted and the office-bearers will be elected and the Association accounts must be submitted to the District Registrar and every year, it must be renewed.

3.On 25/06/2016, he was elected as Association President'. At that time, the 1st respondent



P.Anbuchezihiyan was the Manager. When the accounts were perused and scrutinized, it was found that from 2000 onwards, proper accounts were not submitted to the Registrar. They have also swindled huge amount. So extraordinary general body meeting was convened, on 03/09/2016. By resolution, the above said P.Anbuchezihiyan was removed from the post and WP(MD)No.11664 of 2017 was also filed for direction. Because of the above said action, the above said P.Anbuchezihiyan and others, who were the erstwhile office-bearers become inimical, conspired and wanted to remove him from the post. On 01/09/2016, the above Anbuchezihiyan tried to assault him. Later, they started conducting their own association meeting against the bye-laws. Over which, a complaint was given before CCB, Madurai and that was closed with a direction to take civil action for recovering money. On 20/12/2018, at about 08.00 pm, he was assaulted by several persons, over which, a case in Crime No.2050 of 2018 was registered for the offences punishable under sections 294(b), 323 and 506(i) IPC.

4.On 12/08/2018, the President as well as the Secretary resigned at the same time. So this petitioner



was elected as President and one Dr.Selvarajan as Secretary and several measures were taken by the newly elected office-bearers to administer the Association properly and maintaining the Campus and an attempt was also made to assault him, over which, another case in Crime No.1018 of 2019 was also registered. They also sought police protection. Again, another occurrence took place, on 04/09/2019 at about 08.30 am. Over that occurrence also, a complaint was given, but no action was taken.

5.On 04/08/2019, they declared that one Vijayaker is the President and they are also extracting money by raising charges. They also discontinued the water pipeline and other amenities to the flat owned by the complainant and foods were also prevented to be supplied to him. Because of the pathetic situation for two years, no election was conducted and even no steps were taken to convene a general body meeting for electing the office bearers. A whatsapp group was created, in which, the respondents 3 to 6 are administrators. They also commending and spreading defamatory whatsapp messages and defamatory messages were sent by the 6th respondent and



registered against the Association members in respect of the administration of the Association. But even though, the matter was referred to the Mediation Centre, no settlement could be arrived. So the matter was referred back to the court for consideration on its own merit.

10. Straightway, the petitioner was directed to produce the alleged defamatory statement, that was spread by the respondents. It has been produced in the form of typed set of papers.

11. Reading of the above said whatsapp chat messages, it does not remotely indicate the above said events took place between the members of the Association or defamatory in nature. They are making some sort of allegation against the petitioner.

12. With regard to the maintenance and management of the Association and the premises, it was also seen that two rival Associations are now operating. One under the Presidential ship of this petitioner and another under the Presidential ship of Vijayakar. The photographs, which have been produced before this court



also shows that some sort of trouble has arisen in the meeting held, on 07/07/2009. So who are representing the Association is a matter for consideration by the Registrar of Societies.

13.As pointed out by the respondents, because of the election issue only, it appears that repeated complaints have been registered against the respondents at the instance of this petitioner and similarly the respondents also making allegations against the petitioner. In such circumstances, whether the ingredients of section 499 IPC are attracted or not is a short matter arises for consideration.

14.Section 499 IPC reads as under:-

"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."



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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 person 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 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 of generally considered as disgraceful..."



15.The ingredients of this offence clearly discussed by the Hon'ble Supreme Court in the case of S.Khushboo Vs. Kanniammal and another (Criminal Appeal No.913 of 2010, dated 28/04/2010, Wherein, it has been stated that the intention on the part of the person making allegation is the deciding factor.

16.So when we take the circumstances of the case, as rightly pointed out by the trial court, absolutely, there is no intention on the part of the respondents herein to make any imputation with dishonest intention to lower the reputation of the petitioner among the Association members namely the Flat Owners Association Members.

17.We can go in deep regarding the issue also, so that the above said observation can also be verified. Originally Prasn Srishti Housing Welfare Society was formed in 1992. Later, another Association called 'Madurai Prasn Srishti Apartments Owners Association was formed in 2021. So from the whatsapp message, that has been exchanged between the Association members, it is seen that two rival Associations started functioning and



similarly rival general body elections were also appears to have been conducted. So which one of the Association is truly representing the affairs of the flat owners is a matter for consideration by the competent agency. Now, I am not going into those aspects, since the registration certificates are not before this court. Even though, it has been stated that one of the committees, which was the earlier committee, has become defuncted. As it seen from the registration numbers of the Association, this petitioner claims that he is the President of the Madurai Prasn Srishti Apartment Owners Association. The registration No. 113/2021. But whereas, the erstwhile Association namely Parsn Srishti Housing Welfare Society is having registration No.167/1992. Only in the above said capacity, the petitioner filed WP(MD)No.21453 of 2021 seeking police protection for conducting the annual general body meeting and it has been clearly observed by this court in that writ petition that the court need not interfere into the contradictory with regard to the Association as to which of the Associations are legal. So this order itself indicate the issue. In such of the matters, I am of the considered view that the criminal proceedings has been lodged with an ulterior motive.



18. Further in the written arguments, it has been stated that the trial court, without giving opportunity for examining the witnesses, posted the case in a hurried manner. But all those allegations are without any basis. If it was their grievance, they ought to have redressed the same before the concerned court itself. But at the revisional stage, this court cannot go into the disputed facts, since they are not available on record.

19. So, the continuation of criminal proceedings will amount to abuse of process of court, as rightly pointed by the trial court. I find no merit in this criminal revision and it is liable to be dismissed.

20. In the result, this criminal revision is **dismissed.**

24/02/2023

Index: Yes/No
Internet: Yes/No

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The Judicial Magistrate No.II,
Madurai.



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G.ILANGOVAN, J

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