



Crl.O.P.(MD)No.153 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.01.2024

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CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.153 of 2022
and
Crl.M.P.(MD).Nos.103 and 104 of 2022

1.Murugaiah
2.Angala Parameswari
3.Selva Ganesh ... Petitioners/Accused Nos.1 to 3

Vs.

Vetrivel Kumar ...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and quash the proceedings in S.T.C.No.777 of 2021 on the file of the Judicial Magistrate Court, Sivagiri.

For petitioners : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : No Appearance

ORDER

This petition has been filed seeking to quash the proceedings in S.T.C.No.777 of 2021 on the file of the Judicial Magistrate Court, Sivagiri.



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2. The case of the prosecution is that the *defacto* complainant / respondent herein involved in conducting share marketing franchise in the year 2017-2018 and that the first petitioner has invested money in the share market through the respondent by opening an account in the name of his daughter viz., Neeladevi and further, closed the business in the year 2018 itself and thereafter, the first petitioner was doing money lending business. It is further alleged that the first petitioner herein has given a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) to one Chander and his wife Rajamani for getting Government job to his children and after that, the said Chander has returned the entire amount to the first petitioner, since he has not made any arrangements for getting Government job. It is further alleged that on 14.06.2019, the above said Chander kidnapped the *defacto* complainant with the help of the first petitioner and has taken the cheque book, some property documents and the promissory notes of the *defacto* complainant. Hence, the *defacto* complainant made a complaint to the Sivagiri Police Station and subsequently, after conducting the enquiry, the concerned Police has warned the first petitioner and thereafter, the first petitioner has given a complaint to the head of the Mahasabai alleging that the *defacto* complainant has borrowed a sum of Rs.48,00,000/- (Rupees Forty Eight



Lakhs only) from him and thereafter, he has not repaid the said amount.

Thereafter, the said allegation was resolved by stating that the first petitioner has no evidence to prove that the respondent has borrowed such huge amount from the first petitioner herein. Thereafter, on 06.02.2020 all the accused persons have threatened the respondent / *defacto* complainant and his wife, for which, the respondent has sent legal notice to the first petitioner on 10.02.2020 and due to which, the first petitioner sent a reply notice on 19.02.2020 and in the reply notice, the first petitioner has made false allegations against the respondent with an intention to cause loss of reputation to the respondent. The respondent made a private complaint under Sections 190(1)(a) r/w 199(6) of Cr.P.C. for the offence punishable under Sections 499 and 500 IPC before the learned Judicial Magistrate, Sivagiri and the learned Judicial Magistrate has taken cognizance in S.T.C.No.777 of 2021 for the offence punishable under Section 500 I.P.C. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the petitioners would submit that the issue arises in the present case is no longer *res integra*. He would further submit that already the very same issue was considered by this Court in the case of ***B.P.Bhaskar Vs. B.P.Shiva*** reported in **1993**



CriLJ 2685 wherein, this Court has framed a question whether sending legal notice to the Advocate of the complainant would make it publication and this Court held that sending a communication to an Advocate on behalf of his client is virtually a communication made to the client himself and as such, there is no publication of the imputation concerning the client. Accordingly, he prays for quashing the proceedings in S.T.C.No.777 of 2021 before the concerned Court.

4. Though the name of the respondent has been printed in the cause list, none appears on behalf of the respondent today and considering the pendency of this petition, this Court is inclined to dispose of this quash petition.

5. The facts of the present case is not in dispute. Initially, the first petitioner has invested some money in the share market through the respondent / *defacto* complainant by opening an account in the name of his daughter Neeladevi and subsequently, the said account was closed in the year 2018 itself and it is further alleged that in order to get Government job for his son and daughter, the first petitioner has given a sum of Rs.30,00,000/- to one Chander and thereafter, the amount was collected from the said Chander and for the above said transaction, the



said Chander kidnapped the *defacto* complainant, for which, the *defacto* complainant made a complaint before the concerned Police and the said matter was compromised. However, it is further alleged that the respondent has borrowed a sum of Rs.48,00,000/- from the first petitioner herein and the amount was not repaid by him, for which, there was exchange of legal notices, and the same was reported to Mahasabai. Aggrieved by the same, the respondent made a private complaint under Sections 190(1)(a) r/w 199(6) of Cr.P.C. before the learned Judicial Magistrate, Sivagiri for the offence punishable under Sections 499 and 500 IPC and the learned Judicial Magistrate has taken cognizance in S.T.C.No.777 of 2021 for the offence under Section 500 of I.P.C. For better appreciation, Sections 499 and 500 of I.P.C., are extracted hereunder:

“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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500. Punishment for defamation —

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

6. On perusal of the above said provision, it is seen that 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 the reputation of such person, is said to defame that person. However, in the present case, admittedly, the respondent / *defacto* complainant made a complaint before the concerned Police and sent a legal notice to the first petitioner on 10.02.2020, for which, the first petitioner sent a reply notice on 19.02.2020. It is alleged that the statement made by the first petitioner has made harm to reputation of the respondent herein and for loss of reputation, a private complaint has been filed before the concerned Judge. The very same issue was elaborately considered by this Court and the relevant portions in the said Judgment is extracted hereunder:

“9. What all allegations made in the complaint in respect of publication is to this effect; "I fact, the witnesses 1 to 7 have also read the applications effected by the accused and also as a result they have come to know the defamatory



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allegations by such imputations in the reply notice dated 25-5-89 and 18-10-1989."

Such an allegation does not take us anywhere. It is not plausible to come to any conclusion as to whether the alleged scurrilous imputations contained in the copy of the notice were read by those witnesses either in Madras or in Mangalore or Bangalore, in such state of affairs. No doubt, the notice containing the alleged scurrilous imputations had been received by the complainant at Madras. The receipt of such a notice by the complainant by itself, as already stated, will not at all amount to 'publication' in the eye of law.

10. Pertinent it is at this juncture to refer to the provisions of Section 179 of the Code, dealing with offences triable where act is done or consequence ensues. The section prescribes, "When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."



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11. It is clear from what has been stated by the sanguine provisions contained in the section referred to, as above, that the cause of action for initiation of a complaint may arise at the place where the act is done or consequences ensue. In the case on hand, the act of issuance of reply, notice had happened at Mangalore and the consequence of receipt of such notice by the complainant ensued at Madras. As already stated, the receipt of notice by the complainant by itself is not sufficient to amount in law as 'publication'. Further, no one in Madras, other than the complainant, as already stated, received a copy of such notice containing the so-called scurrilous allegations. In such state of affairs, it cannot be stated that there is any cause for launching of the prosecution at Madras where the consequence of publication did not at all ensue.

12. As such, the Court of the XVIII Metropolitan Magistrate, Saidapet, Madras, before which the complaint is filed, is not having any jurisdiction to entertain the complaint. In this view of the matter, the petitioner deserves to be allowed.”

7. The above said decision is squarely applicable to the facts

of the present case, wherein, this Court has categorically held that the



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receipt of the notice by the complainant by itself is not amount in publication of imputation and further applying the ratio laid down by this Court, the private complaint in S.T.C.No.777 of 2021 on the file of the Judicial Magistrate Court, Sivagiri, instituted by the respondent against the petitioners is quashed.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

24.01.2024

Index : Yes/No
Internet : Yes/No
TSG
To

1. The Judicial Magistrate, Sivagiri.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

TSG

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