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Crl.O.P.(MD)No.10635 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 18/12/2023

Date of Pronounced : 28/02/2024

CORAM

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

Crl.OP (MD) No.10635 of 2023

and

Crl.MP (MD) No.8439 of 2023

1.P.Karpooram

2.M.Balasubramaniyan

3.R.vivekanantham

4.S.Mohanasundaram

5.R.thillalaraj

6.R.Sankar

7.S.Dinesh

8.S.R.s.Manikandan

9.K.Janarthanan

10.R.Ashok

11.S.R.Venkateshan

: Petitioners/A1 to A11

Vs.

M.Murugesan

: Respondent/Petitioner

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the private complaint filed in CC No.750 of 2023 pending on the file of the Judicial Magistrate No.IV, Madurai and quash the same

For Petitioners : Mr.R.Gandhi
Senior Counsel
for M/s.Gandhi Associates

For Respondent : Mr.M.Rajaraman



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O R D E R

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This criminal original petition has been filed seeking quashment of the private complaint filed in CC No.750 of 2023 pending on the file of the Judicial Magistrate No.IV, Madurai.

2.The facts in brief:-

A private complaint was filed by the respondent herein with the following averments:-

He is running a jewellery shop called 'New Megana Jewellery' and got good reputation among the public and business people. The Association called 'Madurai Jewellery and Bullion Merchants Association' is a registered Society. About 1200 merchants are its members and he is one of the members from 1995. Because of his good reputation, he discharged the function of the administrative member from 2004 to 2013. Later, he became the Secretary from 2013 to 2019 and Treasurer from 2019 to 2022. Later, he was also elected as a member for the year 2022-2025. Election was conducted, on 30/08/2022 by the Ex-District Judge. The documents pertaining to the years 2016-2019 were available in the office of the Society. At that time, a Minister was invited for the function. A memento was purchased for him. Since, the



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Minister did not attend the function, along with the other articles, the gift was also left in his custody. The election pertaining to 2019-2022 was conducted by the District Judge (Retired) and all the documents were in his custody. Later, on 20/09/2022, all the articles mentioned above were handed over to the first accused. Rest of the articles were in his custody. Later, those articles were also handed over to the Manager. At that time, the gift box was also handed over to him. Suppressing all those facts, defamatory allegations have been made as if he has stolen the Association articles. They also created and edited the message by morphing the photo. The above said defamatory messages were spread through whatsapp group.

3.All the accused persons are the admins in the joint whatsapp group. When that was enquired and objected by him, the accused replied that they will do it like that manner. They also criminally intimidated him, on 30/09/2022. Over which, a complaint was given on that day before the South Gate Police Station, Madurai. They also created false records as if he removed the articles. On that account, he was also suspected. Since the defamatory allegations were created intensionally to lower his reputation in the Society, he filed a private



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complaint seeking punishment of the accused under section 500 of IPC.

4. Seeking quashment of the same, this petition is filed by the petitioners with the following allegations:-

The complainant was suspended from the membership for misappropriation. So, show-cause notice was issued, on 21/11/2022. Reply was issued by the complainant. In the Executive Committee Meeting held, on 02/12/2022, a resolution was adopted to take action, he was removed from the membership also. Challenging the same, he filed the suit in OS No.593 of 2023 before the Sub Court, Madurai. No interim order was passed. So, to achieve his object, he filed a private complaint as if he was defamed. In the General Body Meeting, more than 1000 members were present. They succeeded in the election. At the instigation of the defeated Office-bearers, he filed the private complaint. Apart from that, it is also stated that 9th exception to section 499 of IPC stands attracted.

5. Heard both sides.

6. Elaborate submission was made on either side.



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7.As stated in the preamble portion, it is seen that it is an issue between the members of an Association. Now the petitioners says that the complainant namely the respondent herein was removed from the membership. They became the office-bearers by way of election. At the instigation of the defeated persons, this false complaint is filed. Apart from that, it is also stated that 9th exception to section 499 of IPC will stands attracted. Instead of redressing his grievance in the civil Court, he has chosen to adopt a shortcut method by filing this complaint.

8.Per contra, the learned counsel appearing for the respondent would submit that the petitioners are the admins of 4 whatsapp groups, have created, having known that the silver article intended for the Minister was handed over to the Manager. Only to defame him, such messages were spread. According to him, when serious defamatory allegations are made against him, he got the right to pursue the matter to its logical conclusion. Exception 9 to section 499 of IPC will not be attracted.

9.Now we will go to whether any legal ground is made



out by the petitioners to sustain this petition.

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20.We will straight way go to section 499 of IPC.

"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."

21.So, the ingredients will show that if there any intention on the part of the accused to defame a particular person, punishment under section 500 of IPC will be attracted.

22.Exception 9 to section 499 of IPC reads as under:-

"Ninth Exception.-Imputation made in good faith by person for protection of his or other's interest.-It is not defamation to make an imputation on the



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character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good."

23.This exception shows that if the statement is made in good faith to protect the interest of any one or the Public, it will not amount to defamation.

24.Whether the statement made by the petitioners comes within the exception can be a matter for consideration only by the trial court. It is purely a factual aspect. The petitioners have to prove that the above said statement was made in good faith.

25.What is good faith is defined in section 52 of the IPC which reads as under:-

"52."Good faith".-*Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."*

26.As per the above said definition before making the statement, it must be proved that with due care and attention the act was done. So, it is purely a factual



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aspect revolves around the mental element of the accused.

So, I am of the considered view that this ground does not lie at this stage. It must be decided only at the time of trial.

27.The learned counsel Senior appearing for the respondent would rely upon various judgments as to the power of the Court to quash the proceedings. Suffice to refer the judgment of the Hon'ble Supreme Court reported in ***Kaptan Singh Vs. The State of Uttar Pradesh and others [2021(6) 640]*** and ***Dineshbuai Chandubai Patel and others Vs. State of Gujarat and others [(2018)3 SCC 104]***

28.Per contra, the learned counsel appearing for the petitioners would rely upon the following judgments namely ***(i)Manual Vs. State of Kerala, represented by Public Prosecutor and another (2022 SCC OnLine Ker 990); (ii)unreported judgment of this court made in Crl.RC(MD)No.628 of 2022, dated 24/02/2023 (V.Solairaj vs. P.Ambuchezhiyan and 5 others); and (iii)unreported judgment of this court made in Crl.OP(MD)No.15546 of 2017, dated 19/04/2021 (Balamurugan @ Bala Vs. State rep. by the Inspector of Police, District Crime Branch, Tirunelveli and another).***



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29.We need not go into depth in the factual aspects mentioned in the judgments. Suffice to say that when the mental state of a particular person is involved, as stated above, it got to be tried to its logical conclusion.

30.Whether the message was sent *bona fidely* with due care and attention, cannot be a matter for consideration by this court sitting under section 482 of Cr.P.C. It is a factual aspect, which cannot be decided by this court.

31.The judgments relied upon by this petitioners are entirely dealt with the some other issue. Here, the messages forwarded and spread by the petitioners are also placed before this Court. Calling a person as a thief will *prima facie* indicate the fact that it is a defamatory allegation. So the judgments cited by the petitioners will not help them.

32.More-over, it is also submitted by the petitioners that in-spite of, as mentioned above, the complainant must resort to his remedies only in the pending civil suit. It is completely out of place. Civil remedy is entirely different from criminal remedy. Both



cannot be equated. They are operating in different field.

There is no basis for the petitioners to say that only a short cut method to gain his goal, this complaint is filed, is now a premature stage to take into account.

33. Similarly, the contention on the part of the petitioners that since it is an issue between the members of the Association, as suggested by this court in the order passed in CrI.RC(MD)No.628 of 2022, it must be sorted out between them is also completely out of place. That advantage also cannot be extended to the petitioners herein.

34. The further contention that there is no material placed by the respondent herein to show that these petitioners are the admins or the persons, who created messages, for which, the learned counsel appearing for the respondent would rely upon the order passed by the Coordinate Bench of this Court in ***S. Ve. Shekhar Vs. Al. Gopalsamy and other (2023-4-LW-61)***, for the purpose of argument that even forwarding messages without due care and attention will amount to an offence. I need not go into this aspect now.

35.Suffice to say that the grounds, that have been raised by the petitioners are not available to them. So,



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I am of the considered view that when serious issues are involved, it must be taken to its logical conclusion. I find no merit in this petition.

36.In the result, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petition is closed.

28/02/2024

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate No.IV,
Madurai.



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G.ILANGOVAN, J

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