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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 14/12/2023

Date of Pronounced : 12/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)Nos.17337 and 13793 of 2023

and

Crl.MP(MD)Nos.10757, 10761, 13753 and 13754 of 2023

(1)Crl.OP(MD)No.17337 of 2023:-

S.Jameen : Petitioner/A1

Vs.

M.Ramu
represented through his
Power of Attorney
E.Thangapandi : Respondent/Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in connection with STC No.2910 of 2023 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioner : Mr.K.Bairavan

For Respondent : Mr.C.M.Arumugam



(2) Cr1.OP (MD) No.17793 of 2023:-

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1.Editor-in-Chief

Represented through its

Mr.Shankilan

News Tamil 24 x 7 Channel,

No.145,1-A, Rukmani Lakshmiapthi Road,

Egmore, Chennai-600 008.

2.Mr.Sakilan,

Editor-in-Chief,

News Tamil 24 x 7 Television Chennai,

No.145, 1-A, Rukmani Lakshmiapthi Road,

Egmore, Chennai-600 008.

: Petitioners/A2 and A3

Vs.

M.Ramu

represented through his

Power of Attorney

E.Thangapandi

: Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in connection with STC No.2910 of 2023 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioners

: Mr.K.Suresh Babu

For Respondent

: Mr.C.M.Arumugam

**COMMON ORDER**

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These criminal original petitions have been filed seeking quashment of the case in STC No.2910 of 2023 on the file of the Judicial Magistrate No.VI, Madurai.

2.The facts in brief:-

The respondent herein filed a private complaint with the following averments:-

He owns land in Survey Nos.405/1, 405/2 and 410 of Puliয়ারai Village, Sangottai Taluk, Tenkasi District. He is in possession of the property. He wanted to put a residential building. Proper permission was obtained. Now the construction is also underway. The first accused, who is the local resident started demanding money illegally. He also started threatening that if the demand is not satisfied, he will spread false information. But the complainant did not bother. Now, he started spreading defamatory imputation as if proper approval was not obtained. Now, it is a possibility of intrusion of sewage water. The imputations are made knowing fully well that the construction of the building does not have any nexus either to Moolaperi Dam or to the ground water level. The



first accused also intentionally causing spread these imputations with complete crookedness that some articles were also published in the September-2022 issue. The Accounts Manager lodged a complaint with the Inspector of Police, Puliyarai Police Station, on 07/10/2022. Enquiry was conducted. In the enquiry, the first accused tendered his apology. He also removed the defamatory imputations from the Face-Book pages.

3.A2 telecasted similar defamatory allegations, on 11/10/2022. A2 also distributed pamphlets to the local residents. The above said interview was telecasted without verifying the actual facts. Because of the defamatory imputations published in the Magazine, the reputation of the complainant severally affected. He is a man of reputation running several Companies. He is also listed out several social activities undertaken by him. He filed a suit in OS No.569 of 2022 before the Principal District Judge, Madurai seeking damages. Realising the true facts, the Editor has also published his regret news in November-2022 monthly issue. So, the accused are liable to be punishable under sections 500 IPC r/w 120(B) of IPC.



4. Seeking quashment of the same, these two petitions are filed by the petitioners on the ground that the complaint is filed by the Power of Attorney namely Thangapandi on behalf of the Editor namely M.Ramu. According to the petitioners, the very filing of the private complaint for the alleged defamatory allegation through the Power of Attorney is per se illegal and not permissible under law.

5. Heard both sides.

6. A small issue is involved in this matter.

7. Even though, it has been argued at length on both sides, touching upon the allegation of the matter, it may not be appropriate, since the matter can be disposed of on the settled principles of law. This court need not go into the merits of the allegation mentioned in the complaint, which cannot undertake. We will concentrate only upon the statutory requirements.



8.The petitioners questioned the very maintainability of the private complaint filed by the complaint through its Power of Attorney. One Mr.K.Ramu, represented by his Power of Attorney Thangapandi filed the complaint.

9.The learned counsel appearing for the petitioners, by relying upon the judgment of the Hon'ble Supreme Court in the case of ***S.Kushboo Vs.Kanniammal and another (Criminal Appeal No.913 of 2010, 28/04/2010)*** would submit that the Power of Attorney at no stretch of imagination can be considered as a person aggrieved. If at all, only the person whose reputation has been damaged can be considered as a person aggrieved. So, the Power of Attorney cannot say that he is the aggrieved person. As such, he cannot maintain the complaint barred under section 199(1) of Cr.P.C.

10.Section 199(1) of Cr.P.C is extracted hereunder:-

"199.Prosecution for defamation.

(1)No court shall take cognizance of an offence punishable under Chapter XXI of



the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf."

10.The above settlement of law is reiterated by the Coordinate Bench of this Court in ***Puthiya Thalamurai Television Vs. S.Mukanchand Bothra (Deceased), M.Gagan Bothra and others (Crl.OP(MD)No.12482 of 2017, dated 27/01/2022).***

11.In response to this argument, the learned counsel appearing for the respondent would submit that it



12.Section 460 of Cr.P.C deals about the irregularities, which do not vitiate proceedings, which is extracted herein.-

(d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;



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(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;

(f) to make over a case under sub-section (2) of section 192;

(g) to tender a pardon under section 306;

(h) to recall a case and try it himself under section 410; or

(i) to sell property under section 458 or section 459;
erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."

13. Section 461 of Cr.P.C is extracted hereunder:-

"461. Irregularities which vitiate proceedings. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely -



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(a) attaches and sells property under Section 83;

(b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

(h) makes an order under Section 133 as to a local nuisance;

(i) prohibits, under Section 143, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter X;

(k) takes cognizance of an offence under clause (c) of sub-section (1) of Section 190;

(l) tries an offender;

(m) tries an offender summarily;

(n) passes a sentence, under Section 325, on proceedings recorded by another Magistrate;



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(o) decides an appeal;

(p) calls, under Section 397, for proceedings; or

(q) revises an order passed under Section 446, his proceedings shall be void."

14. Now we will go to section 190 of Cr.P.C, which is extracted as under:-

"190. Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second



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class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

15.By pointing out this difference between the complaint under section 190 Cr.P.C and other sub sections, the learned counsel appearing for the respondent would submit that since, it is a curable defect, even now the complaint can be cured or deleting or removing the Power of Attorney from the complaint and the complainant may prosecute the same on his own. So according to him, on that account, quashment remedy is not available to the petitioners.

16.Per contra, the learned counsel appearing for the petitioners would submit that when the very filing of the complaint is *per se* illegal, it cannot be termed as 'curable defect'. According to him, *sine qua non*, for initiation of the complaint under section 190, sub section (1)(a) presuppose that the complainant itself must be by a proper person.

17.Now, we will go to section 199 of Cr.P.C, which reads as under:-



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"199.Prosecution for defamation.

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory, or a Minister of the Union or of a State, or any other public servant employed in connection



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with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;



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(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

18. By pointing out this specific provision, the learned counsel appearing for the petitioners would submit that the defects mentioned by the respondent is not a curable defect.

19. After hearing both sides of controversy, I am of the considered view that time and again, the proposition of law has been reiterated in many cases.



Again briefly referred to these cases on this point viz.

(i) M.S. Jayaraj Vs. Commissioner of Excise, Kerala (2000) 7 SCC 552; and (ii) G. Narasimhan Vs. T.V. Chokappa (AIR 1972 Supreme Court 2609).

20. So, this court need not trouble the judgments or the orders as the case may be, extracting various authorities on the principles of law.

21. Now, it is more or less well settled. So, the contention on the part of the respondent that it is a curable defect and it can be curable at any time is out of place and cannot be taken into account. But, there is no bar for the aggrieved person to file a fresh complaint by setting out the proper facts.

22. Only for that purpose, I am avoiding the discussion on the merits of the complaint. Merit of the complaint can be proceeded only if the person is competent. When the complaint itself has been filed by the incompetent person, I am afraid that such a discussion can be made.



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23.In the result, both criminal original petitions are **allowed**. The case in STC No.2910 of 2023 on the file of the Judicial Magistrate No.VI, Maudrai is hereby quashed against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

12/03/2024

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate No.IV,
Madurai.



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G.ILANGOVA, J

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Cr1.OP(MD) Nos.17337 and 13793 of 2023

12/03/2024