

(2013) 09 MAD CK 0290

In the Madras High Court

Case No : Crl. O.P. Nos. 10194 and 10328 of 2009

Mrs. Sri Priya and others

APPELLANT

Vs

K. Tamil Selvi
R. Sarath Kumar and Others Vs S.
Arivumani and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 1 LW(Cri) 276

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Judgement

T. Mathivanan, J.—Invoking the inherent jurisdiction of this court u/s 482 Cr.P.C., the above petitions have been filed seeking the relief of quashing the criminal proceedings as against the petitioners in respect of the cases in C.C. No. 232 of 2009 pending on the file of the learned Judicial Magistrate's Court No. 1 at Sivaganga; C.C. No. 380 of 2009 pending on the file of the learned Judicial Magistrate's Court No. 1 at Tiruchirappalli; C.C. No. 233 of 2009 pending on the file of the learned Judicial Magistrate's Court No. II at Srivilliputtur and Crl. M.P. No. 4485 of 2009 pending on the file of the learned Judicial Magistrate at Palani.

Crl. O.P. No. 10194 of 2009

That on 27.10.2009, the respondent/complainant in this petition had filed a private complaint against the petitioners 1 to 8/accused before the learned Judicial Magistrate-I Sivaganga alleging that the petitioners had committed the offence punishable under Sections 499 and 500 IPC and the same was taken on file in C.C. No. 232 of 2009 and summons had also been issued to the petitioners to appear before the above said court on 19.11.2009.

Crl. O.P. No. 10328 of 2009

That on 02.11.2009, the respondents/complainants 1 to 3 had jointly verified and filed a joint private complaint against the petitioners 1 to 8 on the file of the learned Judicial Magistrate-I Tiruchirappalli alleging that they had committed the

offence punishable under Sections 294(b), 500 and 506(ii) of IPC, and the same was taken on file in C.C. No. 380 of 2009 and summons had also been issued to the petitioners to appear before the above said court on 27.11.2009.

Crl. O.P. No. 10794 of 2009

That on 03.11.2009, the respondent/complainant in this petition had filed a private complaint against the petitioners 1 to 8 on the file of the learned Judicial Magistrate-II Srivilliputtur; alleging that they had committed the offence punishable under Sections 499 and 500 of IPC, and the same was taken on file in C.C. No. 233 of 2009 and summons had also been issued to the petitioners to appear before the above said court on 30.11.2009.

Crl. O.P. No. 11742 of 2009

That on 26.10.2009, the respondent/complainant had filed a private complaint against the petitioners 1 to 8 on the file of the learned Judicial Magistrate, Palani; alleging that they had committed the offence punishable under Sections 499 and 500 of IPC, and the same was taken on the file of the above said court and summons had also been issued to the petitioners for their appearance before the concerned court on 06.01.2009.

Even though the respondents in all the petitions are significantly different, the petitioners are one and the same, with the facts in issue in all the petitions are common in nature, the above petitions have been clubbed together, heard jointly and disposed of in this common order.

2. On a perusal of the records it is translucently clear that despite service of notice to the sole respondents in Crl. O.P. Nos. 10194 & 10794 of 2009, they have not chosen to appear either in person or through their respective counsels. Heard Mr. A. John Vincent learned counsel for the respondents 1 to 3 in Crl. O.P. No. 10328 of 2009 and Mr. N. Sathish Babu learned counsel for the respondent in Crl. O.P. No. 11742 of 2009, was not present to argue the case. However he was represented by his junior.

The excerpts of the facts which lead the petitioners to come forward with these petitions are as under;

3. Dinamalar, a morning newspaper printed and published from Chennai had brought out a news item in its edition dated 04.10.2009 under the caption of "Periya Vibhachara Nadihaigal" and beneath the said title the photographs of the first petitioner Mrs. Sri Priya (Film Actress) along with six others were published at page 11 in bold letters, in order to attract the readers.

4. The first petitioner and other actresses being aggrieved by the said news item had brought it to the notice of their association called The South Indian Artist Association, to initiate action against the said newspaper as well as all those persons who are responsible for bringing out such highly derogatory and defamatory publication, in accordance with law.

5. At the request of the aggrieved actresses, the association had immediately called for an emergency meeting exclusively for its members to discuss and decide the course of action to be taken and the said in house meeting was held in the auditorium of the association, wherein it was unanimously decided by the entire body to lodge a complaint against the newspaper and accordingly on 05.10.2009, a written complaint was lodged before the Commissioner of Police, Chennai.

6. In pursuant to the directions of the Commissioner of Police, the Central Crime Branch had registered a case in Crime No. 489 of 2009 u/s 4 of Tamil Nadu Prohibition of Woman's Harassment Act as against one Mr. B. Lenin, the news editor of Dinamalar, the morning newspaper and thereafter he was arrested on 07.10.2009 and remanded to judicial custody and later on, released on bail on 09.10.2009.

7. In this connection the respondents in all the above respondents had filed their respective private complaints on the file of the learned Judicial Magistrates specified therein alleging that the petitioners had committed certain offences particularly under Sections 294(b), 506(ii), 499 and 500 of IPC.

8. The respondent Mrs. K. Tamilselvi in CrI. O.P. No. 10194 of 2009 had accordingly filed a private complaint, against the petitioners 1 to 8 on the file of the learned Judicial Magistrate-I, Sivaganga wherein she has stated that she is the wife of a journalist namely Karthikeyan, who is working as a Sub-Editor in Dinamalar, at Sivaganga. That on 09.10.2009, she happened to watch the Win TV, a private television channel in which a news clipping was shown about the speech delivered by the petitioners on 07.10.2009, in a meeting arranged by the South Indian Film Actors Association, Chennai to condemn the publication of the photographs and the news which appeared in various news papers and Dinamalar who had published the above said news items along with the photographs of the artist.

9. Several actors were said to have been participated in the meeting and expressed their opinions and views over the said issue. She has also stated that eventually the petitioners/accused had assaulted the dignity of the Journalists and exceeded their limits while delivering the speech. The petitioners/accused had not only verbally abused all the Journalists in common and in particular, but also the members of the Journalist family. As per her complaint the contents of the speech are as follows;

a. Called the Journalist as "Dog".

b. Called the Journalists in singular form without any due respect.

c. States the Journalist as "It is an animal and it should be treated like an animal. And there is no purpose for it in conducting such condemn meeting for it, since it cannot understand the same. However the hands of the Journalists which is writing should be broken and the eyes of the Journalist which are helpful for

writing should be pulled out.

d. Further also declared in the meeting that they would change the photographs of the female members of the Journalist family by way of graphics with two piece dresses and also would fix the said posters carrying the said pictures of female members of the journalist with vulgar dress all over Tamilnadu.

10. The complainant has also stated that by the above said words, all the petitioners/accused had defamed the entire journalist class and the complainant who is coming from a journalist family was put to shame as on seeing the telecast. The friends and relatives of the complainant had called on her through phone and enquired as to whether her husband would write anything for a Quarter and Biriyan. She has also stated that she was defamed in view of the imputations made by the petitioners/accused on 07.10.2009, and therefore all the petitioners/accused by their act had committed the offence within the purview of the definition of Section 499 of IPC and thus they are liable to be punished u/s 500 of IPC.

11. The respondents 1 to 3 in CrI. O.P. No. 10328 of 2009, have stated in their complaint in C.C. No. 380 of 2009, which was filed before the learned Judicial Magistrate-I, Tiruchirappalli; that they are journalist by profession. The first respondent/complainant is employed as proof reader in Dinamalar, Trichy edition and has been in service for the past 20 years. The second respondent/complainant is employed as a Reporter in Dinamalar, Trichy edition and has been in service for the past 5 years, whereas the third respondent/complainant is employed as Photographer in Dinamalar, Trichy edition and is in service for the past two years.

12. They have stated in their complaint that they being the Journalists used to publish articles based on the information received from various sources and from Police Authorities. The news items are published bonafide in good faith and to keep the public informed of the various happenings from both within and out of the country. The news items are published only in the interest of the genera] public. They have also stated that they came to know about the proceedings of the meeting and the speech of everyone through T.V. Channels, internet and Press releases such as Kumutham Reporter and Nakkheeran. The news on the meeting was given wider coverage and that the respondents/complainants had also got a video coverage of the entire Protest meeting. The accused persons had used provocative, abusive and defamatory words in the meeting. The complainants as journalists wounded and defamed by the speeches of the petitioners/accused persons.

13. They have also stated that a lot of friends and relatives had called on them in person as well as over phone and blamed them that they and other journalists are such a people of bad elements in society as claimed by the accused persons in the meeting. Therefore, they have claimed that the act of the petitioners/accused are liable to be punished under Sections 294(b), 500 and 506(ii) of IPC.

14. The respondent/complainant in Crl. O.P. No. 10794 of 2009, claims himself as a journalist/press reporter working in Dinamalar Newspaper in Srivilliputhur. He had filed his complaint in C.C. No. 233 of 2009 on the file of the learned Judicial Magistrate-II, Srivilliputtur wherein, he has verbatim reproduced the contents of the complaint filed by Mrs. Tamilselvi in C.C. No. 232 of 2009 on the file of the learned Judicial Magistrate-I, Sivaganga (Crl. O.P. No. 10194 of 2009) and therefore, it need not be repeated hereunder.

15. Similarly, the respondent in Crl. O.P. No. 11742 of 2009, Mr. Mathivanan in his complaint before the learned Judicial Magistrate, Palani in Crl. M.P. No. 4485 of 2009, has claimed that he is a journalist/press reporter working in Dinamalar Newspaper in Dindigal District. He has also reproduced the same contents of the complaint filed by the other respondents/complainants before the above said courts. Therefore, the contents of the complaint of this respondent/complainant also need not be repeated.

16. Mr. Rupert J. Barnabas learned counsel appearing for the petitioners while advancing his arguments has pointed out that the petitioners were forced to invoke the inherent jurisdiction of this court u/s 482 Cr.P.C., to quash the entire criminal proceedings pertaining to the case in C.C. No. 232 of 2009 pending on the file of the learned Judicial Magistrate's Court No. 1 at Sivaganga; C.C. No. 380 of 2009 pending on the file of the learned Judicial Magistrate's Court No. 1 at Trichinapalli; C.C. No. 233 of 2009 pending on the file of the learned Judicial Magistrate's Court No. II at Srivilliputtur and Crl. M.P. No. 4485 of 2009 pending on the file of the learned Judicial Magistrate at Palani, as they were aggrieved over the above said private complaints as they appeared to be rather persecution under the guise of prosecution. He has also adverted to that all the petitioners are the permanent residents of the city of Chennai and they had committed themselves to producers and directors with schedule of shootings at various places of India and foreign countries and dubbing involving with huge financial budget and cancellation of a schedule will incur heavy loss not only to the financiers and producers but also to the lively hood of the petitioners.

17. Mr. Rupert J. Barnabas has projected his arguments on the following grounds;

(i) Insofar as the petition in Crl. O.P. No. 10194 of 2009 is concerned, the sole respondent/complainant, in the cause title, in paragraph No. 1 as well as in the verification paragraph of her complaint in C.C. No. 232 of 2009 has stated as if she is the wife of Venkatesan and thereafter it has been erased with whitener and hand written in all those three places saying that she is the wife of Kartikeyan. This fact would clearly manifest that the complainant had not filed the complaint on her own will but it had been filed at the behest of an invisible malicious person with a malafide intention and ulterior motive as the complainant Tamilselvi was the stooge of that person and therefore, it was liable to be quashed.

(ii) That the respondent Tamilselvi/complainant in Crl. O.P. No. 10194 of 2009 in

paragraph No. 7 of her complaint had stated that she was the wife of a journalist whereas in paragraph No. 8 of her complaint she had claimed herself as a well known journalist and in this connection Mr. Rupert J. Barnabas has submitted that the complainant was not sure as to whether she or her husband was a journalist. He has also argued that mere alleged defamatory averments in the complaint would not constitute the offence, but it had to be well placed and founded with material evidence for the accusation.

(iii) That the trial court ought not have taken cognisance of the offences mechanically on its file instead, it's judicial wisdom ought to have resorted to the procedure as contemplated u/s 202 of IPC, to satisfy itself on the evidence which may be adduced by the complainant about the existence of a prima facie case for a regular trial and thereafter, to proceed u/s 203 of Cr.P.C. But in total negation of the settled principles of law, the trial court had erred to proceed u/s 204 of IPC.

(iv) He has also argued that even if the imputations were alleged against the family members of the journalists as a whole which was an unascertainable body of persons, no member of that community could claim that he was individually defamed and therefore, the complainant being the wife of a journalist could not be claimed to be an aggrieved person and in view of this fact she was an incompetent person for filing a complaint of defamation u/s 199(1) of Cr.P.C.

(v) That the allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there was sufficient grounds for proceeding against the petitioners.

18. Mr. Rupert J. Barnabas has also adverted to that insofar as the respondents 1 to 3 in CrI. O.P. No. 10328 of 2009 (C.C. No. 380 of 2009 on the file of the learned Judicial Magistrate-I Tiruchirappalli) are concerned, they, in their individual capacity at the first instance, ought to have sought their remedy under the scheme and scope of Section 154 of Cr.P.C., and thereafter, they should have approached the trial court u/s 200 of Cr.P.C. The respondents/complainants without exhausting the mandatory remedy they were not entitled as a matter of legal right to directly approach the trial court by invoking the provisions envisaged u/s 200 Cr.P.C. He would further submit that in a joint private complaint (C.C. No. 380 of 2009 on the file of the learned Judicial Magistrate-I Tiruchirappalli) there were no averments of any specific imputations to attract the provisions of Section 499 of IPC and therefore, the ingredients of Section 499 IPC would not be attracted.

19. The learned counsel has also argued that the respondents/complainants had not specifically disclosed the names of those various persons, friends and relatives who had called and enquired them over phone and in person excepting the list of witnesses cited in the joint complaint as "The friends and relatives of the complainants" and "the Reporters of Kumudham and Nakkheeran" and

therefore, the joint complaint for defamation was not maintainable in law under the provisions of Section 199(1) Cr.P.C.

20. Further he would submit that the ingredients of Section 120B, 294(b) and 506(ii) of IPC, were not made out in the joint complaint and hence the trial court should not have taken cognisance of the above offences in the absence of necessary elements to constitute those offences. Without following the principles laid down by various High Courts and Apex Court, taking cognisance of the above said offences by the trial court, was a gross abuse of the process of law.

21. He has also maintained that the complainants belonged to Dinamalar Newspapers and they were the persons who had printed and published the derogatory and defamatory statements as against the 3rd petitioner and other actresses and in order to wreck vengeance for the arrest of their colleague, the above complaints were filed on various grounds by the respondents who were not at all competent to file the above said complaints as they were not the aggrieved persons.

22. Insofar as Crl. O.P. No. 10794 of 2009 (C.C. No. 233 of 2009 on the file of the learned Judicial Magistrate's Court No. 1 at Srivilliputhur) is concerned, Mr. Rupert J. Barnabas has submitted that the complaint of the respondent was nothing but a verbatim replica of the complaint of one Mrs. Tamilselvi (complainant in Crl. O.P. No. 10194 of 2009; C.C. No. 232 of 2009) on the file of the learned Judicial Magistrate's Court No. 1 at Sivaganga.

23. With regard to Crl. O.P. No. 11742 of 2009 (Crl. M.P. No. 4485 of 2009) the learned counsel for the petitioners has submitted that whenever a private complaint was filed u/s 200 of Cr.P.C., it was the bounden duty of the learned Judicial Magistrate, on whose file the complaint was filed, to examine the complainant on oath and the witnesses on oath. He has also indicated that whenever a private complaint was filed and if any prima facie case was made out on the allegations averred in the complaint, the learned Judicial Magistrate ought to have assigned a calendar case number to the private complaint through his register, and only after following those procedures he should have ordered to issue summons to the petitioners/accused. Insofar as the instant case was concerned, the learned Judicial Magistrate, Palani had assigned only criminal miscellaneous petition number, which was totally in violation of the guidelines given by the High Court, Madras.

24. On the other hand Mr. John Vincent, learned counsel appearing for the respondent in Crl. O.P. No. 10328 of 2009 has argued that the first respondents/complainants in Crl. O.P. No. 10328 of 2009, (C.C. No. 380 of 2009 on the file of the learned Judicial Magistrate-I, Tiruchirappalli) came to know about the proceedings of the meeting and speech delivered by the petitioners through T.V. Channels, internet and Press releases from Kumutham Reporter and Nakkheeran.

25. In their speech, the petitioners/accused had used provocative, abusive and defamatory words and that the respondent/complainant being journalist had

personally wounded and defamed by the speeches of the petitioners/accused persons. He has also argued that apart from this, a lot of friends and relatives had called on them in person as well as over phone and blamed the complainant, that they and other journalists were bad elements of the society as claimed by the petitioners in their meeting. Therefore, he has contended that the act of the petitioners/accused could very well be brought under the ambit of Sections 294(b), 500 and 506(ii) of IPC and that the learned Judicial Magistrate-I Tiruchirappalli had taken cognisance of the above offences, knowing well about its implications and therefore, the criminal proceedings as against the petitioner did not warrant any interference of this court.

26. When the petition in Crl. O.P. No. 11742 of 2009 was taken up for hearing along with other petitions, a junior counsel representing for Mr. N. Satish babu who is on record for the respondent had sought for time to advance their arguments on behalf of the respondent. In this connection, this court would like to place it on record that since Mr. Rupert J. Barnabas learned counsel for the petitioners and Mr. John Vincent learned counsel for the respondents in Crl. O.P. No. 10328 of 2009 were ready to advance their respective arguments, as the sole respondents in Crl. O.P. Nos. 10194 & 10794 of 2009 were absent despite service of notice on them, this court did not find it expedient to adjourn the matter as the petition in Crl. O.P. No. 11742 of 2009 along with other petitions have been pending from 2009 onwards.

27. In order to take fair decision while disposing the above petitions, this court finds that it would be more expedient to take the assistance of Section 199(1) of the Code of Criminal Procedure (in short hereinafter it may be referred to as code).

Section 199 deals with Prosecution of defamation.

Sub-Section 1 reads as under;

No court shall take cognisance of an offence punishable under Chapter XXI of IPC., (45 of 1860) except upon the complaint made by some person aggrieved by the offence

28. From the context of Section 199(1) of the Code, it is crystallised that except upon the complaint made by some person aggrieved, no court shall take cognisance of an offence punishable under Chapter XXI of Indian Penal Code (45 of 1860).

29. Mr. Rupert J. Barnabas learned counsel for the petitioners has vehemently argued that the respondents in all the petitions were not the persons aggrieved within the meaning of Section 199(1) of the Code and hence, they were not competent to institute a private complaint for the alleged offence said to have been committed by the petitioners/accused.

30. As it appears from the averments of the complaint filed by the respondents before various courts, as well as from the averments of the petitions filed by the

petitioners, the South Indian Artist Association had lodged a written complaint on 05.10.2009 and based on the said complaint a case in Crime No. 489 of 2009 appears to have been registered as against one Mr. B. Lenin the News Editor of Dinamalar Newspaper and in consequence thereof, he was arrested on 07.10.2009 and remanded to judicial custody. However, he was released on bail on 09.10.2009.

31. It is more significant to note here that Mr. B. Lenin, the news editor of Dinamalar Newspaper has not filed any complaint or private complaint against any particular individual or against the complainant in the case in Crime No. 489 of 2009 viz., The South Indian Artist Association. It may also be relevant to note here that one cine actresses by name Mrs. Bhuvaneshwari, was arrested on 03.10.2009 by the Anti Vice Squad of Chennai Police alleging that she had committed an offence punishable under the provisions of the Immoral Trafficking (Prevention) Act and it was published in all printed and electronic visual media in all over Tamilnadu. In this connection the morning newspaper called Dinamalar had printed and published a news item in its edition dated 04.10.2009 titled as "Periya Vibhachara Nadihaigal" and beneath the caption the photographs of the first petitioner along with six others were published on page 11. The copy of the newspaper has also been produced before this court for perusal.

32. The complainants in their respective complaints have reproduced the excerpts of the respective speeches delivered by the petitioners 1 to 8 in Tamil. For the purpose of effective understanding, this court finds that the verbatim reproduction of the alleged speeches in the translated version of English language from the vernacular language would be more appropriate.

1. Sripriya-A1 stated "I have 35 years of experience in cinema. Some mean-minded persons, who were not born to good parents wrote like this, which causes pain" She spat on the stage asking whether these people were not born with sisters. She scolded the editor of the newspaper as "bastard".

2. Vijaykumar-A2 stated I eat food with salt. I have hailed from a traditional family. Dignity is important. If the business of those persons is very dull they shall send their elder sisters and younger sisters to prostitution. I am prone to anger. As and when I received this news from Madurai, I decided to straight away enter that office and hack at least four persons.

3. Sathyaraj-A3 stated: He asked the crowd what is to be done with the hand of those who write slanderously? The crowd replied "break their hand". He asked them as to what is to be done with their eyes. The crowd replied "we have to pluck their eyes". One can be made to wear small underwear and small bra by using graphics. I don't have words to say except filthy language. Sripriya Madam lastly told a word in English. There is a chance for instituting a defamatory case against her. Everybody shall second her word. Therefore, all of you should raise your hand and second her word. We shall see to it, what he can do. Sathyaraj concluded his speech with fury stating that the persons concerned should be

beaten up without the injuries being exposed.

4. Suriya-A4 It is only Suriya, the actor who incited with filthy language in that meeting. These journalists are only the persons who used to take photographs by sitting under the chair of actresses. They are mean minded people. We cannot run after them.

5. Vijay Arun-A5 I would enter the newspaper office of those persons, who make such slanderous remarks, attack and shatter it into pieces, assault the writer, drag him here and will make him to seek apology from her (Manjula), by falling on her legs. But since I, (Arun Vijay) am a small boy, I am bound by the decision of the Nadigar Sangam. He ascended after saying so.

6. Sarathkumar-A In the said newspaper, they have written that I loved an actress, let it be, that I loved her, but at the end of the said matter, they had written as "Nattamai, the lunatic". I went along with 200 persons and attacked the said office. We have come to cheer up the people. Since they have written about us like this, we have been protesting. Had they been written about the Industrialists, like this, they would deal with the matter secretly in some other manner.

7. Cheran-A7 Those Rascals... Rascals... who forget that the girl who are engaged in acting, do also have hearts... You will realize the pain if a member from your family elopes with someone.

8. Vivek-A8 The actor who faired very well in the said meeting is the actor Vivek. It has been written here in the banner as "condemning the Yellow Magazine-". It will be comprehensible, if it has been mentioned as "yellow magazine". Is, it necessary to mention the name of the said newspaper? I myself got engaged with them and had undergone much difficulty and untold suffering. They don't have the courage to mention their names. Perhaps! The person who wrote it, may even be present in this meeting. If he had been born to a single mother and father, let him come to the stage and show the proof for his writing. Are they not the persons, who would publish news for a quarter bottle of brandy and chicken Biriyani. If they have dignity, let them run the newspaper without writing about cinema. They publish the photograph of Trisha by mentioning her as "Bathing Heroine". Whether their mother and grandmother use raincoat while they bath? If those journalists give me the photographs of their wife and daughter, I am ready to do graphics and modify it as if they wear underwear and bra to the lesser and reduced size and paste it as poster throughout Chennai, and he stepped down the stage after roaring so.

33. As already stated in the foregoing paragraphs, Mr. Lenin, the news editor of Dinamalar, has not filed any complaint for the offence punishable under Chapter XXI of the Indian Penal Code. On perusal of the above context i.e., the alleged speeches said to have been delivered by the petitioners this court finds that the important elements which are sin-qua-non to constitute the offence viz., mens rea and actus reas are missing. With reference to the complaint in question, this

court is of considered view that there is neither any intent on the part of the petitioners to cause harm to the reputation of the respondents/complainants nor can this court consider that any actual harm is done to the respondents/complainants.

34. If any complaint is to be lodged it should have been done by Mr. B. Lenin against whom the case in Crime No. 489 of 2009 is registered by the Central Crime Branch, Chennai.

35. On a meticulous analysis of the alleged speech said to have been delivered by the petitioners, this court finds that the respondents/complainants are not the persons aggrieved within the meaning of Section 199(1) of the Code. As rightly observed by the Hon"ble Supreme Court of India in G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa, "Only such person as has directly or indirectly suffered in his own reputation by the defamation complained of can set the machinery of law Court in motion. In short the aggrievement of the complainant should not merely be one shared by every member of an organised society."

36. In the instant case on hand even the respondents/complainants do not make out a case to show that they are indirectly suffered with any legal injury if not directly by the alleged speeches delivered by the petitioners.

37. There may be cases where the wife also would be really aggrieved when the imputation is of such a nature that it has got some direct connection attaching the reputation of the wife. Section 199 Cr.P.C., restricts the powers of the Court in taking cognizance of offence except upon a complaint filed by some aggrieved person. A fanciful or sentimental grievance of the complainant would not suffice. It must be such a grievance as the law can appreciate and it must be that has been termed legal grievance. Only such person as has directly or indirectly suffered loss of reputation complained of can alone set the law in motion. When wife complaints for defaming her husband in respect of materials published in newspaper relating to her husband's official discharge of duty, wife is not an aggrieved person and as such complaint at her instance is not tenable. This dictum is envisaged in Nazeem Bawakunju v. State of Kerala 1988 CrLJ 487 : (1987) 2 Ker LT 755.

38. Where a collection of persons is defamed in such a way that the defamation can be brought home to the individual members, any member can complain. Collection of persons must be identifiable, definite and determinable in relation to the imputations.

39. When an indefinite and unascertainable body of person is defamed it may not be possible to single out an individual to say that he has been defamed. There cannot be defamation fluctuating body, for example Syrian Christian which is an emigrant commenting no member of it can be said to be aggrieved. The above propositions has been laid down in Sahib Singh Mehra Vs. State of Uttar Pradesh, : Tekchand v. Karanjia 1969 Cr.LJ 536 : M.P. Narayan Pillai v. M.P.

Chacko 1986 Ker LT 1005.

40. Chapter XV of the Code deals with Complaints to Magistrates. Section 200 specifically contemplates the examination of complaint. As per Section 200 of the Code;

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate

41. The object of examination u/s 200 is to find out whether there is a prima facie case against the accused and to prevent the issue of process on a complaint which is either false, frivolous or vexatious and intended merely to harass the accused. The inquiry provided u/s 200 and 202 is limited to the ascertainment of the truth or falsehood of the allegations made in the complaint. The decision of the Magistrate can only be based on the materials placed by the complainant.

42. The scope of enquiry u/s 202, Cr.P.C., is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process u/s 204, Cr.P.C., should issue or whether the complaint should be dismissed u/s 203 on the footing that there is no sufficient ground for proceeding on the basis of the statement of the complainant and the witnesses, if any examined by him.

43. Section 202 Cr.P.C., gives the discretion to the Magistrate in the matter of taking cognizance of an offence. Postponing the issue of process and enquiring into the case or directing an investigation by the police will arise only if he does not straightway deem it fit to take cognizance. Nevertheless the discretion involved in the matter is a judicial discretion which has to be exercised taking into account the facts and circumstances of each case.

44. While taking cognizance of the offence on a private complaint filed before him, the Magistrate must be very carefully on close reading of the averments of the complaint, to find out the fact as to whether any false complaint is filed against person or persons residing at far of places, simply to harass them, in order to see that innocent persons are not harassed by unscrupulous persons. This clause in Sub-Section 1 to Section 202 of the Code has been amended by Code of Criminal Procedure (Amendment Act 2005)(Act 25 of 2005 Section 19) to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction, he shall enquire in to the case himself or direct investigation to be made by Police Officer or by such other person as to whether there was sufficient ground for proceeding against the accused.

45. Section 203 of the Code contemplates that;

if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall

dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

46. An intelligent use of Section 203, of the Code, wherever it can be properly invoked, cannot be too strongly emphasized. On taking cognizance of an offence, the Magistrate is bound to examine the complainant and witness, if any, present, as soon as possible, on oath u/s 200, Criminal Procedure Code, except in the cases covered by clause (a) of the proviso to Section 200. The examination of the complainant at that stage should be a thorough and intelligent enquiry into the subject matter of the complaint to enable the Magistrate to find out whether the complainant is really aggrieved, or whether it would amount to an abuse of the process of the criminal court and harassment of the accused. Quite a number of private complaints are designed to put the opposite party to the indignity of being arraigned as accused in a criminal court, and the Magistrate should be vigilant to see that the right of private complaint is not made an engine of oppression.

47. As instructed by this Court in the book namely; A Manual of Instructions for the Guidance of Magistrates in Tamil Nadu 1993, after the examination of the complainant u/s 200 of the Criminal Procedure Code, the case should be given a calendar case number. But the learned Judicial Magistrate, Palani has taken the complaint, filed by the respondent Mathivanan, against the petitioner on his file as Criminal Miscellaneous Petition (Crl. M.P. No. 4485 of 2009) which is absolutely against the instructions given by this court in the Manual of Instructions for the Guidance of Magistrates in Tamil Nadu, 1993. It may be worthwhile to note that usually a criminal miscellaneous petition is filed as an interlocutory application when a main proceedings is pending. But the learned Judicial Magistrate, Palani without knowing even the rudimentary principle of law has taken the complaint on his file just like a criminal miscellaneous petition which is absolutely wrong.

48. As observed by a three Judges Bench of the Hon''ble Supreme Court of India in S. Khushboo vs. Kanniammal & Anr. Criminal Appeal No. 913 of 2010 (Arising out of SLP (Crl.) No. 4010 of 2008), "in respect of the offence of defamation, Section 199 Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as "persons aggrieved" within the meaning of Section 199(1)(b) Cr.PC."

49. In the above cited decision while speaking on behalf of the Full Bench Hon''ble Mr. Justice Dr. B.S. Chauhan has made reference to the decision in M.S.

Jayaraj Vs. Commissioner of Excise, Kerala and Others, , wherein the Hon''ble Apex Court has observed that:

The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or one who is adversely affected in a legal sense.

50. As observed by his Lordship in the above cited decision, based on the reference made to G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa, , the Magisterial Court has to consider whether the complainant had the proper legal stand to bring such a complaint. The Court has also to examine Section 199 of the Code and to find out as to whether the said provision which is laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

51. Insofar as the given case on hand is concerned, the following two points are arisen for the consideration of this court;

1. Whether the allegations made against the petitioners support a prima facie case for the offences mentioned in the respective complaint?
2. Whether the complaints were made in a bonafide manner?

52. In the complaints which has been specifically stated by the respondents/ complainants that the petitioners have committed the offence punishable u/s 294(b), 500 and 506(ii) of IPC.

53. The offence u/s 294(b) is cognizable, bailable and punishable with imprisonment of either description for a term which may extend to three months or with fine or with both. With reference to the offence u/s 506(ii) of IPC, it is non-bailable and punishable with imprisonment with a term which may extend to seven years. Insofar as the offence u/s 500 of IPC is concerned it is non-cognizable, bailable and punishable with simple imprisonment for a term which may extend to two years or fine or with both.

54. Under Chapter II of IPC containing with general explanations Section 40 defines as to what is "offence". It reads that Except in the chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

55. Section 41 and 42 of IPC defines what is special law and what is local law. Section 2(n) of the Code of Criminal Procedure 1973 also defines what is offence

in the following language; "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle-trespass Act, 1871(1 of 1871)"

Section 3 Sub-Section 38 of the General Clauses Act 1897 says that "offence" shall mean any act or omission made punishable by any law for the time being in force.

56. Chapter XXI of IPC deals with "OF DEFAMATION". It encompasses Sections 499 to 502.

Section 499 reads as under;

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.

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 persons 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 loath some state, or in a state generally considered as disgraceful.

57. The definition u/s 499 manifest that the accused must either intend to harm the reputation of particular person or it must be knowing or having reason to believe, and such imputation must harm the reputation of such person. Explanation-II contemplates that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. As per 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 credit of that person, against whom the imputation is said to have been made.

58. This court on examination of the allegations made in the respective complaint filed by the respondents is of considered view that no ingredients are made out to constitute the offences u/s 294(b), 500 and 506(ii) of IPC.

59. As hereinbefore stated, the petitioners have filed these petitions invoking the inherent jurisdiction of this court u/s 482 Cr.P.C., to quash the criminal proceedings which are initiated against them by the complainants.

60. As observed by the Apex Court in *Jeffrey J. Diermeier & Anr. vs. State of West Bengal & Anr.* in Crl. A. No. 1079 of 2010 (Arising out of SLP(Crl.) No. 898 of 2009) it will be useful to notice the scope and ambit of inherent powers of the High Court u/s 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice. 63. In *R.S. Raghunath Vs. State of Karnataka* and another, the Hon"ble Supreme Court of India, after considering a catena of decisions relating to the exercise of extraordinary power under Article 226 of the Constitution of India or the inherent powers u/s 482 Cr.P.C., has given the following categories of cases by way of illustration wherein such power could be exercised either to prevent the abuse of process of the Court or otherwise to secure the ends of justice.

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or made out a case against the accused?
2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code?
3. Where the uncontroverted allegations made in the FIR or Complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
5. Where, the allegations made in the FIR or Complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the

Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

61. Prior to Bajanlal's case, the Apex Court in R.P. Kapur Vs. The State of Punjab, has summarized the following categories of cases, where inherent power can and should be exercised to quash the proceedings: i. where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced.

62. In P. Venugopal Reddy vs. The Commissioner of Police, Egmore, Chennai and 8 others the Hon''ble Apex Court has held that;

It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

63. Besides this, the Apex Court has also made reference to State of Karnataka Vs. L. Muniswamy and Others, . In this case, the Apex Court has held that in the exercise of this wholesome power u/s 482 Cr.P.C., the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice if so required.

64. As observed by the Hon''ble Supreme Court of India in M/s. Medchal Chemicals & Pharma. P. Ltd., vs. M/s. Biological E. Ltd., & Ors.

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its

own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise upto the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount. Factual matrix therefore would thus be relevant in the matter of assessment of the situation as to whether civic profile would outweigh the criminal outfit.

65. The observation in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, lend support to the above statement of law. "Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused."

66. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the Hon"ble Apex Court has held as under;

It is settled that High Court can exercise its power of judicial review in criminal matters. In R.S. Raghunath Vs. State of Karnataka and another, , this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and u/s 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226.

Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

67. In the above context this court finds it better to make reference of the provisions envisaged u/s 95 of Indian Penal Code. It contemplates that;

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

68. The maxim *De minimus non curat lex* defines that "the law pays no regard to trifling matters, the law does not concern itself about trifles.

There are some injuries of so little consideration in the law that no action will lie for them. Courts of law, generally do not take trifling and immaterial matters into account, unless where the right of a party is involved. A bequest of such part of the testator's plate as the legatee shall select, entitles the legatee to take the whole, for he might select the whole except one trifling article, and the law will not care for the remaining trifling article (*Arthur v. Mackinnon*, 11 Ch. D. 385). But in case of an infringement of a right, an action may be maintained, though no pecuniary damage may be shown. See *Injuria cum damno* Where the amount of a poor-rate at so much in the pound on the assessable value of premises involved the fraction of a farthing, a demand by the overseer of the whole farthing was held excessive and illegal (*Morton v. Brammer*, 8., C.B.N.S. 791).

So under the criminal law, nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight, that no person of ordinary sense and temper would complain of such harm (Indian Penal Code XLV of 1860, s. 95).

69. In this connection it may be more appropriate to place reliance upon the decision in *Veeda Menezes Vs. Yusuf Khan and Another*, . In this case the Division Bench of the Hon'ble Supreme Court of India has held in paragraph No. 3 that;

The section applies if the act causes harm or is intended to cause harm or is known to be likely to cause harm, provided the harm is so slight that no person of ordinary sense or temper would complain of such harm.

70. In paragraph No. 4 it has been held that; "The expression "harm" has not been defined in the "Indian Penal Code": in its dictionary meaning it connotes hurt, injury; damage; impairment, moral wrong or evil. There is no warrant for the contention raised that the expression "harm" in s. 95 does not include physical injury. The expression "harm" is used in many sections of the Indian Penal Code. In Ss. 81, 87, 88, 89, 91, 92, 100, 104 and 106 the expression can only mean physical injury. In Section 93 it means an injurious mental reaction. In Section 415 it means injury to a person in body, mind, reputation or property. In S. 469, 126 and 499 "harm", it is plain from the context, is to the reputation of the aggrieved party. There is nothing in S. 95 which warrants a restricted meaning which counsel for the appellant contends should be attributed to that

word. Section 95 is a general exception, and if that expression has in many other sections dealing with the general exceptions a wide connotation as inclusive of physical injury, there is no reason to suppose that the Legislature intended to use the expression "harm" in Section 95 in a restricted sense."

71. On the footings of the above principles, this court is of definite view that the respondents did not disclose any prima facie case to constitute the offence u/s 500 IPC. The respondents did not state in clear words as to which way the speech delivered by the petitioner is defamatory or in which way they are personally affected. Since the specific imputation is absent in the complaint, the complaints are liable to be rejected at the initial stage. The averments of the complaint also did not disclose that the petitioners were having mens rea and criminal intention to defame the respondents.

72. This Court, on a careful perusal of the materials available on record and careful perusal of the complaints filed by the respondents in all the CrI. O.Ps., is of the considered view that no grounds are available to proceed against the petitioners as the ingredients of Sections 294(b), 499, 500 and 506(ii) I.P.C. are not made out

73. Further, as it appears from the records, these petitions are relating to the year 2009 and the complaints as against the petitioners have also been filed by the respondents in the year 2009. For the past four years, these complaints as well as the petitions have been kept pending idle without any progress.

74. It is a common judicial parlance that to prosecute the innocent persons in case where there appears not even a remote chance of conviction is nothing but an abuse of process of the court. This dictum has been laid down in Kurda Ram and Others Vs. State of Rajasthan and Another, .

75. Further, from the face of the records this Court is of the opinion that the chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing the criminal prosecution as against the petitioners to continue and therefore, this Court, while taking into consideration of the special facts of the case, finds that all the above said cases in C.C. Nos. 232 of 2009 on the file of the learned Judicial Magistrate No. I at Sivagangai, C.C. No. 380 of 2009 on the file of the learned Judicial Magistrate No. I, Trichy, C.C. No. 233 of 2009 on the file of the learned Judicial Magistrate No. II, Srivilliputtur and CrI. M.P. No. 4485 of 2009 on the file of the learned Judicial Magistrate, Palani are deserved to be quashed, even though they are at preliminary stage. Accordingly, the above CrI. O.Ps., are allowed quashing the proceedings in C.C. Nos. 232 of 2009 on the file of the learned Judicial Magistrate No. I at Sivagangai, C.C. No. 380 of 2009 on the file of the learned Judicial Magistrate No. I, Trichy, C.C. No. 233 of 2009 on the file of the learned Judicial Magistrate No. II, Srivilliputtur and CrI. M.P. No. 4485 of 2009 on the file of the learned Judicial Magistrate, Palani. Connected M.Ps., are closed.