
(2010) 07 MAD CK 0213

In the Madras High Court

Case No : Criminal O.P. No. 17268 of 2008

Rajagopalan and Jan-Uwe Burmeister

APPELLANT

Vs

Sevalaya

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 292(A), 354, 499, 500

Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 — Section 4

Citation : (2010) 07 MAD CK 0213

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : M. Shreedhar, for the Appellant; B. Vijayakumar, for the Respondent

Judgement

C.T. Selvam, J.—The petitioners herein, who are the accused in case pending in C.C. No. 2489 of 2008 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai seek to quash the proceedings.

2. The petitioners herein and four others are facing prosecution for offences under Sections 292(A) r/w. 499 and 500 IPC in such case. The respondent/complainant had preferred a complaint before the lower Court. The complaint in brief is that the complainant viz., M/s. Sevalaya, a registered Charitable Trust under the Trust Act represented by its Managing Trustee V. Muralidharan, is functioning for more than 19 years at Kasuva Village. It serves as home for the poor, destitute and orphans. It also runs a free recognized unaided Higher Secondary School with a strength of about 1000 students. Its work had been lauded and it has been conferred the TCS Educational World Award in the year 2006. The Managing Trustee of the Trust is informed to be a respectable person having high reputation for social activities. He, being a Senior Manager of Tata Consultancy Services has devoted his whole life for the growth of M/s. Sevalaya. The 1st petitioner/accused, a foreign national of Indian origin is one of the complainant's donors and Sevalaya, believing in maintaining transparency produced all necessary accounts to him. The 1st petitioner introduced a person

as his representative, who according to the complainant was a person of poor habits. The complainant showed no interest in inviting him into its premises and this led to deterioration of the relationship between the complainant and the 1st petitioner. The complainant alleges that being upset thereby the 1st petitioner/accused lodged false and frivolous complaints before the Chief Educational Officer and District Collector and many other government agencies, both central and state. They were rejected by the concerned authorities and the 1st petitioner due to antagonistic feelings towards the trust and the Managing Trustee has challenged that he would close the trust and finish off the Managing Trustee by hook or crook. This, according to the complainant led to illegal and defamatory publications by E-mail, in newspapers and by way of offending wall posters. As the educational and government authorities were satisfied with the functioning and activities of the trust, the 1st petitioner became frustrated and attempted other criminal activities to bring down the reputation of the trust and its members. It is, in this background that the complaint of defamation has been filed against the accused. The accusations are as follows:

(i) the 2nd accused on the instructions of the 1st accused conveyed abusive and derogative language against the complainant by email.

(ii) the 3rd accused in the case displayed posters completely defaming and bringing down the reputation of Savelaya. The same was done at the instigation of the 1st accused.

(iii) the defamatory posters, emails and personal canvassing to other donors made in bad faith call for action against the accused.

(iv) the 1st accused had himself called one of the members of the advisory committee of the trust and informed that he was responsible for instigating the Indian Makkal Mandram to carry out defamatory activities against Savelaya.

(v) the 1st accused using his money power, induced the 3rd accused to print and affix posters defaming the name of the trust and affixing the same in various places in and around Chennai to malign the prestige of the complainant trust.

(vi) the 1st accused approached "Sun T.V." who inspected the premises and videographed the playing children and school premises.

3. The complaint was filed for offences under Sections 292(A) and 499 punishable u/s 500 IPC. The lower Court has taken cognizance for offence u/s 499 punishable u/s 500 IPC.

4. I have heard either side and perused the materials available on record.

5. Though the malafides of the complainant in informing an erroneous address of the 2nd petitioner and causing the issue of non-bailable warrant against the 2nd petitioner was stressed, this Court would allow the petition for quash of the complaint against the petitioners for the following reasons:

(i) the e-mails that are complained of cannot be said to be defamatory in nature.

Admittedly the e-mail can be accessed only by a person who knows the relevant password. Though the learned Counsel for the petitioners would inform that the offending e-mails were sent to the e-mail address of the trust and that it could be opened by many persons belonging thereto, the complaint does not as a fact inform that such e-mail was in fact accessed by any particular person in whose image the trust or the managing trustee stood reduced in estimation. It also is seen that the e-mail wherein the offending text is contained is in the nature of a personal communication to the managing trustee of the trust. Admittedly, the petitioners had greatly supported the trust and been responsible for huge donations to it. There has been exchange of e-mails resulting to the conduct of the trust and its activities. On finding the complainant not forthcoming in furnishing information, the 2nd petitioner had sent an e-mail. The same does reflect pure and intemperate language. However, in the circumstances, the same only can be read as an emotive outburst. It would be extremely difficult to read therein the intent to defame.

(ii) as regards the press/media reports and posters, it is seen that certain wrongful activities relating to the trust and of abuse of its students have found wide coverage in the print media. In fact, as a result of investigation in Crime No. 363 of 2008 on the file of the C5, Vengal Police Station, one of the teachers in a school run by the trust stands charged and faces prosecution for offences u/s 354 IPC and 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1988 in C.C. No. 123 Of 2009 before the Judicial Magistrate I, Tiruvallur. From such fact, it cannot be concluded that the press/media reports and posters are not defamatory and are mere depictions of truth. In fact, truth as a defence in a charge of defamation would have to be established in the course of trial. However, in the circumstances of the case, it easily can be gathered that the petitioners cannot be pinpointed as persons behind such offending publications.

(iii) the allegation in the complaint that the 1st petitioner/accused informed a member of the advisory committee that he was responsible for instigating defamatory activities against the trust really would not carry forward the complaint case in any manner.

(iv) the complaint does not inform who were the other donors, who were influenced against the trust through acts of defamation by the petitioners.

6. We also find that while the editors of three publications have been arrayed as accused, the publishers are not.

7. In the above circumstances, the Criminal Original Petition shall stand allowed. The proceedings in C.C. No. 2489 of 2008 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai shall stand quashed. Consequently, the connected miscellaneous petition is closed.