

MANU/TN/1458/2017

Equivalent Citation: 2017-1-LW(CrI)637

IN THE HIGH COURT OF MADRAS (MADURAI BENCH)

Criminal Original Petition (MD) No. 7820 of 2010 and M.P. (MD) Nos. 1 and 2 of 2010

Decided On: 14.02.2017

Appellants: **Kalanithi Maran**
Vs.

Respondent: **A. Rathinaraj**

Hon'ble Judges/Coram:

P. Kalaiyaran, J.

Counsels:

For Appellant/Petitioner/Plaintiff: P.S. Raman, Senior Counsel for J. Ravindran

For Respondents/Defendant: S. Palanivelayutham

ORDER

P. Kalaiyaran, J.

1. This criminal original petition has been filed under Section 482 of Cr.P.C., seeking to call for records relating to the proceedings in S.T.C. No. 1172 of 2010 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District and quash the same as against the petitioner. It is averred in the petition that the petitioner is the Chairman-cum-Managing Director of Sun TV Network Limited, which owns and telecasts South Indian Satellite channels in India. The respondent filed a complaint before the Judicial Magistrate, Eraniel, pursuant to the programme, which is said to have been telecast on 06.03.2009 at about 10.00 p.m. and on 07.03.2009 at about 7.30 a.m., wherein, other accused viz., Tmt. Christhumani has given an interview about certain proceedings in C.C. No. 5 of 2009 pending at Manavalakurichi Police Station. The complaint has been filed on the ground that the statement given by Tmt. Christhumani is false and consequently, the telecast is also defamatory.

2. The petitioner as Chairman-cum-Managing Director is only incharge of taking policy and important decisions of the company and he has no role to play in the telecast. There is a separate news department, which is responsible for taking a decision and as to what programme to be telecast and what programme not to be telecast. The complaint lodged is violative of Article 19(1)(a) of Constitution of India, which guarantees the freedom of speech and expression. There is no allegation in the complaint that this petitioner has acted with any malafide intention personally nor is there any allegation that the petitioner was in any manner involved in the telecast. The proceeding is nothing but an abuses of process of law. The alleged notice sent by the respondent/complainant was sent to wrong address. Therefore, the proceedings as against the petitioner are liable to quashed.

3. The learned senior counsel for the petitioner strenuously argued that vicarious liability is not applicable to the electronic media and as per general law, there is absolutely no material to attract the offence under Section 499 of I.P.C. and

therefore, the proceedings as against the petitioner are to be quashed.

4. The learned counsel for the respondent, per contra, contends that the petitioner has not furnished the particulars of the persons, who are responsible for the telecast inspite of the notice of the respondent/complainant; that the petitioner having telecast the interview given by the first accused Tmt. Christhumani without verifying the correctness acted recklessly and therefore, the criminal original petition is liable to be dismissed.

5. As per the complaint preferred by the respondent before the Judicial Magistrate, A1 Tmt. Christhumani gave an interview in a programme of 'Nijam' involving the respondent/complainant in a crime and the same was telecast in the SUN TV owned by the petitioner. The Judicial Magistrate took the case on file for the offences under Section 501 of I.P.C. as against Christhumani and the petitioner herein as A1 and A2.

6. The respondent contends that inspite of notice to the petitioner concern, he has not furnished the particulars about the persons, who are responsible for the telecast. For this, even in the petition, it has been averred by the petitioner that the office of the SUN TV was shifted long back and the notice was sent to a wrong address by the petitioner. In the said circumstances, no document has been filed by the respondent/complainant as to the service of the notice either to the petitioner or to his concern viz., SUN TV Network.

7. This defamation case is against an electronic media. No doubt, the Constitution of India provides freedom of speech and expression under Article 19(1)(a) of the Constitution of India and the same cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any person's honour and reputation.

8. As rightly pointed out by the learned senior counsel for the petitioner that vicarious liability under the Press and Registration of Books Act, 1867, is not applicable to electronic media. Therefore, only general law is applicable to the present case. The offences alleged to have been committed by the petitioner is that the interview given by Mrs. Christhumani, which is defamatory of the respondent/complainant was telecast in the electronic media owned by the petitioner.

9. The Hon'ble Supreme Court in K.M. Mathew v. State of Kerala and another reported in MANU/SC/0434/1992 : 1992 (1) L.W. (Crl.) 14 : 1992 Crl. L.J. 3779 held as follows:

"No person should be tried without a prima facie case. For a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with."

In this case on hand, there is absolutely no averments in the complaint that the Managing Director of the company was responsible for the selection of the interview or it was telecast with his knowledge. The essential ingredients of Section 499 are (i) making or publishing any imputation concerning any person, (ii) such imputation must have been made by (a) words either spoken or intended to be read; or (b) signs; or (c) visible representations and (iii) such imputation must have been made

with the intention of harming or with the knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made. Thus, to attract the offence of defamation, the imputations must have been made with the intention or with knowledge or atleast with reason to believe that it will harm the person concerned.

10. As already pointed out, in this case, there is no averment in the complaint that the petitioner being Managing Director had any intention or knowledge not only about the alleged imputation, but also about the telecast. The petitioner is not connected with the telecast and he cannot be vicariously held liable, which is not permissible in criminal law unless specifically provided by the Statute. Therefore, the Judicial Magistrate is not correct in taking cognizance of the offence as against the petitioner. Therefore, this Court is of the view that it is a fit case to invoke the inherent jurisdiction of this Court under Section 482 of Cr.P.C. and quash the proceedings as the offence alleged is not prima facie made out as against the petitioner. In the result, this criminal original petition is allowed and the proceedings in S.T.C. No. 1172 of 2010 on the file of Judicial Magistrate Court, Eraniel, Kanyakumari District is quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

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