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CrI.R.C.(MD).No.830 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	20.12.2023
Pronounced On	12.03.2024

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C(MD).No.830 of 2022

S.Mariaselvi

... Petitioner/Petitioner

Vs.

1. A.S.Mani

2. Manikkam

3. The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.

4. The Sub-Inspector of Police,
Kodaikanal Police Station,
Dindigul District.

... Respondents/Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and SET ASIDE the order dated 12.08.2022 passed by the Judicial Magistrate No.II, Kodaikanal in CrI.M.P.No.657 of 2022.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : M/s.R.Porkodi Karnan
for R1 & R2

: Mr.M.Vaikkam Karunanithi,
Government Advocate(CrI.Side)
for R3 & R4



Crl.R.C.(MD).No.800 of 2022

ORDER

WEB COPY This Criminal Revision case is filed to set aside the order dated 12.08.2022 passed by the learned Judicial Magistrate No.II, Kodaikanal, in Crl.M.P.No.657 of 2022.

2.The petitioner, who is aged about 47, is a Pastor of Roman Catholic Thirusabai and also is the Pastor of Dindigul District. He is doing number of welfare activities to all sections of people without any discrimination either on the basis of caste or religion. That being so, a Weekly Journal, namely Naveena Netrikan, published defamatory and derogatory statements as against the petitioner stating that he had given sex torture to number of Sisters and students in Kodaikanal Guest house. The said heading is as follows:-

“கொடைகானல் கெஸ்ட்ஹவுஸில்

கன்னியாஸ்திரிகள்-மாணவிகளுக்கு

செக்ஸ் டார்ச்சர்...

மர்ம மரணங்கள்..!

பேராயர் அந்தோணி பப்புசாமியின் காமலீலைகள்”



3. Thereafter, it was found that the said allegation is false and therefore, the

Weekly Journal submitted its apology. The said report is as follows:-

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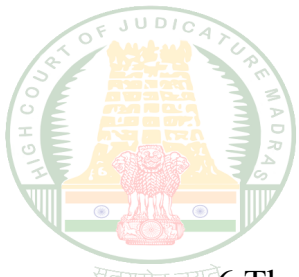
“நெற்றிக்கண் செய்திக்கு பகிரங்க மன்னிப்பு:

60 லட்சம் ரோமன் கத்தோலிக்க கிறிஸ்தவர்களின் ஆண்டவரான

பேராயர் அந்தோணி பப்புசாமியின்!”

4. In the said circumstances, the petitioner filed Crl.M.P.No.657 of 2022 under 156(3) Cr.P.C., on the file of the learned Judicial Magistrate No.II, Kodaikanal to take appropriate action against the Reporter and Proprietor of Naveena Netrikan. The said petition was dismissed by the learned Magistrate stating that they are not connected with the publication of the said report. The said order was challenged before this Court.

5. The learned counsel for the petitioner submits that the Reporter and Proprietor of Naveena Netrikan made allegations intentionally against the petitioner in the report. Before making any imputation against any religious people, the journalist must do some enquiry and thereafter publish the same with adequate material. Without basic verification, they published the matter as if the petitioner committed sexual torture and illegal sex activities by describing it as his “காமலீலைகள்”. The same amounts to punishable offence. But the learned Magistrate dismissed the petition stating that the proprietor and proprietrix are noway responsible for the same.



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6. The learned counsel for the petitioner further submitted that in view of the decision of the Hon'ble Supreme Court in *Mathew Vs. State of Kerala* reported in 2002 6 SCC 670, the Reporter is responsible for the publication of the news. They have no immunity to escape from that stating that they are not responsible for the publication. They are equally responsible. In the said circumstances, the order of the learned trial Judge is liable to be set aside.

7. Now the question in this criminal revision is whether the trial court is correct in dismissing the petition filed by petitioner, seeking to initiate action 156(3) Cr.P.C against the respondent 1, 2 ?

8. The Press is the fourth pillar of this democratic country. They have to discharge their duties responsibly without causing any harm to the reputation of any of the private individuals. The reputation of the Pastor, who discharged his duties to empower the poor people, cannot be criticized with heinous allegation of sexual assault and sexual torture to the female members of the institution. This not only ruffled the feathers of the administration of the petitioner institution but also created false image in the public that all the Pastors are doing such heinous activities.



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8.1. Reputation is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property⁽¹⁾.Reputation is a natural right⁽²⁾.When reputation is hurt,a man is half dead⁽³⁾.An honour which is lost or life which is snuffed out cannot be recompensed⁽⁴⁾.Reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life⁽⁵⁾.A private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society⁽⁶⁾.

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8.2. The importance of a good character and reputation have been emphasized in all scriptures.

8.2.(i) Bhagavad Gita

“22. ... ‘Akirtinchapi bhutani kathaishyanti te-a-vyayam,
Sambha-vitasya Chakirtir maranadatirichyate. (2.34)

(Men will recount thy perpetual dishonour, and to one highly esteemed, dishonour exceedeth death.)’”

8.2.(ii) Subhashitratbandagaram,

“Sa jeevti yasho yashya kirtiyashya sa jeevti,

11. *Kishore Samrite v. State of U.P.*, (2013) 2 SCC 398

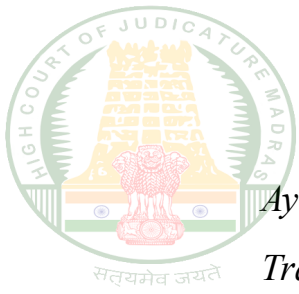
2. *Gian Kaur v. State of Punjab* [*Gian Kaur v. State of Punjab*, (1996) 2 SCC 648

3. *Om Prakash Chautala v. Kanwar Bhan*[*Om Prakash Chautala v.Kanwar Bhan*, (2014) 5 SCC 417]

4. *State of Gujarat v. High Court of Gujarat* [*State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392

5. *Vishwanath Agrawal v.Sarla Vishwanath Agrawal* [*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288

6. *D.F.Marion v. Davis* (55 ALR 171)



Ayashokirtisanyukto jeevannipe mritoopamma”

Translated into English it is as follows :

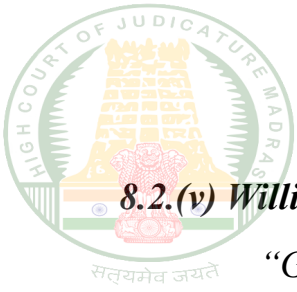
WEB COPY *“One who possesses fame alone does live. One who has good praise does alone live. Who has no fame and negative praise is equal to one who is dead while alive.”*

8.2.(iii) The Holy Quran

“Let not some men among you laugh at others : it may be that the (latter) are better than the (former) : nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames, ill-seeming is a name connoting wickedness, (to be used of one) after he has believed : and those who do not desist are (indeed) doing wrong.”

8.2.(iv) The Holy Bible

*“A soft answer turns away wrath,
but a harsh word stirs up anger.
The tongue of the wise dispenses knowledge,
but the mouths of fools pour out folly.
The eyes of the LORD are in every place,
keeping watch on the evil and the good.
A gentle tongue is a tree of life,
but perverseness in it breaks the spirit.”*



8.2.(v) William Shakespeare

“Good name in man and woman, my dear lord,

WEB COPY *Is the immediate jewel of their souls*

Who steals my purse steals trash; ‘tis something, nothing;

‘Twas mine, ‘tis his, and has been slave to thousands;

But he that filches from me my good name

Robs me of that which not enriches him,

And makes me poor indeed.”

8.2.(vi) Socrates

“Regard your good name as the richest jewel you can possibly be possessed of — for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again.

8.2.(vii) Richard II,

“The purest treasure mortal times afford

Is spotless reputation; that away,

Men are but gilded loam or painted clay.

A jewel in a ten-times-barr'd-up chest

Is a bold spirit in a loyal breast.

Mine honour is my life, both grow in one;

Take honour from me, and my life is done.”



8.2.(viii) Aristotle

“Be studious to preserve your reputation; if that be once lost, you are like a cancelled writing, of no value, and at best you do but survive your own funeral”.

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8.2.(ix) William Hazlitt

“The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out.”

8.2.(x) Canada judgment

Hill v. Church of Scientology of Toronto [Hill v. Church of Scientology of Toronto, (1995) 2 SCR 1130 (Can SC)]

“(ii) The reputation of the individual

107. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.”

(xi) A man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg.

(xii) When a dent is created in the reputation, humanism is paralysed.



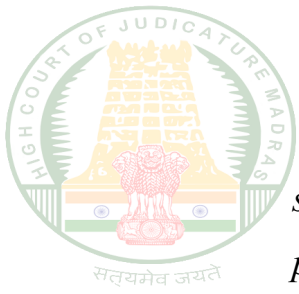
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9. In the said circumstances, before publishing a news, the Reporters and other persons must have to consciously look into the authenticity of the allegation. But the proposed accused did not do the same. Collection of true news, verification of the said news from all the sources, the ascertainment of the truth in the news and publication of the true news are the functions of the Press. If without such satisfaction any report is published, this Court is of the considered opinion that the allegation made by press *prima facie* constitute the offence.

K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670

19. Another decision relied upon is K.M. Mathew v. State of Kerala [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] . Here the accused was the Chief Editor and in the complaint against him there was no averment except the motive attributed to him. That too was of general nature. This Court held that the appellant who was the Chief Editor of the daily newspaper in question was responsible for the general policy of that daily and as the complaint did not contain any positive averments as to the knowledge of the Chief Editor about the objectionable character of the matter, the Chief Editor could not be proceeded against. Like the first two decisions relied upon by the appellants, this decision also is of no assistance to them.

20. The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for

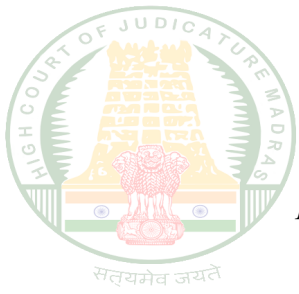


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selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

The said principle is also reiterated in the case of ***Mohd. Abdulla Khan v. Prakash K., (2018) 1 SCC 615***

22.K.M. Mathew case [K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670 : 2002 SCC (Cri) 1480] has nothing to do with the question of vicarious liability. The argument in K.M. Mathew case [K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670 : 2002 SCC (Cri) 1480] was that in view of Section 7 of the Press and Registration of Books Act, 1867 only the Editor of a newspaper could be prosecuted for defamation. Such a submission was rejected holding that Section 7 does not create any immunity in favour of persons other than the Editor of a newspaper. It only creates a rebuttable presumption that the person whose name is shown as the Editor of the newspaper is responsible for the choice and



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publication of the material in the newspaper. *K.M. Mathew case [K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670 : 2002 SCC (Cri) 1480]* made it clear that if a complaint contains allegations (which if proved would constitute defamation), person other than the one who is declared to be the editor of the newspapers can be prosecuted if they are alleged to be responsible for the publication of such defamatory material.

The Hon'ble Supreme Court elaborately carved out the ingredients of the relevant offence in similar case in ***Mohd. Abdulla Khan v. Prakash K., (2018) 1 SCC 615***

11... Printing or engraving any defamatory material is altogether a different offence under Section 501 IPC. Offering for sale or selling any such printed or engraved defamatory material is yet another distinct offence under Section 502 IPC.

12. If the content of any news item carried in a newspaper is defamatory as defined under Section 499 IPC, the mere printing of such material “knowing or having good reason to believe that such matter is defamatory” itself constitutes a distinct offence under Section 501 IPC. The sale or offering for sale of such printed “substance containing defamatory matter” “knowing that it contains such matter” is a distinct offence under Section 502 IPC.

13. Whether an accused (such as the respondent) against whom a complaint is registered under various sections of the IPC (Sections 500, 501 and 502 IPC) could be convicted for any of



those offences depends upon the evidence regarding the existence of the facts relevant to constitute those offences.

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14. In the context of the facts of the present case, first of all, it must be established that the matter printed and offered for sale is defamatory within the meaning of the expression under Section 499 IPC. If so proved, the next step would be to examine the question whether the accused committed the acts which constitute the offence of which he is charged with the requisite intention or knowledge, etc. to make his acts culpable.

15. Answer to the question depends upon the facts. If the respondent is the person who either made or published the defamatory imputation, he would be liable for punishment under Section 500 IPC. If he is the person who “printed” the matter within the meaning of the expression, under Section 501 IPC. Similarly, to constitute an offence under Section 502 IPC, it must be established that the respondent is not only the owner of the newspaper but also sold or offered the newspaper for sale.

16. We must make it clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods, the newspaper. Those activities, if carried on by people, who are employed either directly or indirectly by the owner of the newspaper, perhaps render all of them i.e. the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502 IPC, (as the case may be) if the other elements indicated in those sections are satisfied.



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Applying the above principle of the Hon'ble Supreme Court, this Court finds that the respondent Nos.1 and 2 published the matter as if the petitioner committed sexual torture and illegal sexual activities by describing it as his காமலீலைகள். The same constitutes the offence under Sections 294(b), 295(a), 298, 502, 503 and 504 of IPC. The learned trial Judge finding that Reporter and Proprietor are no way responsible for the same is against the law laid down by the Hon'ble Supreme Court and they are liable to be prosecuted. Hence, this Court is inclined to set aside the order passed by the learned trial Judge, in Cr.M.P.No.657 of 2022, dated 12.08.2022 and issue directions to the jurisdictional police namely the third and fourth respondents to register appropriate case against the concerned Reporter and Proprietor of Naveena Netrikan, Weekly Journal, investigate the matter, complete the enquiry and file the final report before the concerned Court. The said exercise shall be completed within a period of 6 months from the date of receipt of a copy of this order.

10.This Court feels that it is the duty of the Court to give the following suggestions in the triangular interest of the individual reputation, press freedom and the society:

- (i)It is suggested that the press council may frame proper guidelines to publish the material relating to the personal life of the individual after proper verification.
- (ii)Proper verification means collection of the material with concrete information



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collected from true source.

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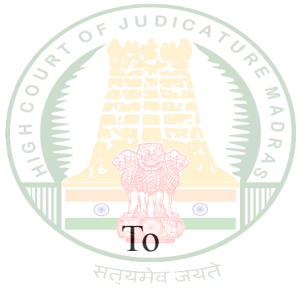
(iii) Publisher is also a human being. He must publish the same after taking due deliberation, deliberations and steps that he would take if it is his own case.

(iv) This country is a largest democracy in the world. This Country consists multicultural religious people. Each one has his own reputation. Each religion has religious heads. They are continuously taking care of their own people by teaching the religious prayer and providing amenities to the followers. In the said circumstances, the fourth pillar of this democratic country namely Press is expected to take more caution before making allegations against the religious leaders. Since the same not only is likely to ruffle the feathers of the administration of the petitioner institution and also create false image in their public life. Therefore, it is suggested that the Press before making allegation against the religious people, more particularly sexual allegation collect the materials and ascertain the truthfulness in the material and thereafter publish the same diligently.

11. With the above directions, this Criminal Revision Case stands allowed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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- To
1. The Judicial Magistrate No.II,
Kodaikanal.
 2. The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
 3. The Sub-Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

mm/sbn

Pre-delivery Order made in
Crl.R.C(MD). No.830 of 2022

12.03.2024