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Crl.R.C.No.1775 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1775 of 2023

Mr.K.C.Palanisamy

.. Petitioner/Complainant

Vs.

Mr.Edappadi K.Palanisamy

..Respondent/Accused

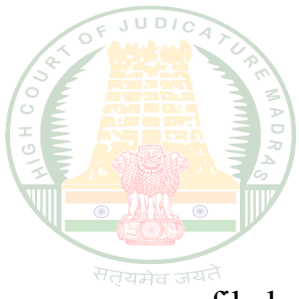
PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records and set aside the order passed by the 7th Metropolitan Magistrate, George Town, Chennai on 03.08.2023 made in Crl.M.P.No.5919 of 2023 and any other or further orders.

For Petitioner : Mr.B.Kumar, Senior Counsel
for M/s.Waraon and Sairams

For Respondent : Mr.R.John Sathyan, Senior Counsel
for Mr.E.Balamurugan

ORDER

This Criminal Revision Case is filed being aggrieved by the order of the Judicial Magistrate who dismissed the complaint of the petitioner



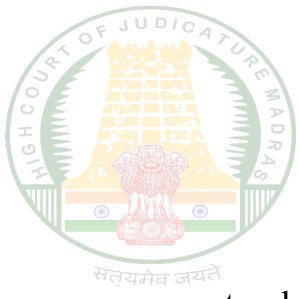
CrI.R.C.No.1775 of 2023

WEB COPY

filed under Section 200 for the offence of defamation defined under Section 499 and punishable under Section 500 of IPC against the respondent herein.

2. The sum and substance of the complaint laid before the Metropolitan Magistrate is that in an arbitration proceedings initiated under Section 9 of the Arbitration and Conciliation Act, 1996 by the respondent herein against the petitioner herein, an averment is made about the petitioner that he was expelled by the party leader late Dr.J.Jayalalithaa because he was misusing and abusing the association with the party for his personal gains. Later, he was re-admitted into the party (AIADMK) with hope that he would mend his way towards the work for betterment of the party.

3. In the later part of the affidavit, it is stated that the petitioner was re-inducted in the party on 01.03.2018 by the party coordinator and joint coordinator but soon expelled from the party on 16.03.2018 for misusing his position and making statements that were contrary to the



Crl.R.C.No.1775 of 2023

WEB COPY

stand of the party.

4. There is also an allegation against the petitioner that he is administrating a domain in the name and style of WWW.AIADMK.ORG and through that receiving money from public illegally for the membership in the party and also carrying out his personal agenda in the name of AIADMK.

5. Taking exception to these statements in the affidavit filed by the respondent, the complaint was filed stating that these imputations are *per se* defamatory without any basis. To tarnish the reputation and image of the petitioner, imputations are made by the respondent with intent to be read and harm his repute. They are not based on factual foundation or supported by any credible evidence. It is *ex-facie* defamatory with intention to malign the reputation of the complainant in the eye of general public.

6. The learned Magistrate after recording the sworn statement of the petitioner/complainant had gone into the imputation culled out



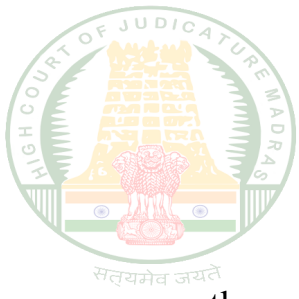
Crl.R.C.No.1775 of 2023

WEB COPY

from the affidavit filed by the respondent herein in the proceeding pending before the High Court under the Arbitration and Conciliation Act, 1996 and had arrived at a conclusion that the averments in the said affidavit may be false but not defamatory. Therefore, under Section 203 of Cr.P.C., dismissed the complaint.

7. The learned Senior Counsel appearing for the petitioner submitted that the averments against the petitioner as if he was expelled by the party leader late Dr.J.Jayalalithaa. It is not a mere false statement as observed by the trial Court, but a statement knowingly made with intention to defame the petitioner. It is not a statement just claiming that the petitioner was expelled from the party by Dr.J.Jayalalithaa but carry a defamatory reasoning for his expulsion. This imputation exposes the malicious intention of the maker of the averment.

8. Pointing out that the averments in paragraph 3 of the affidavit, it was submitted that the respondent had not only falsely stated that the petitioner was expelled by the party leader late Dr.J.Jayalalithaa, but also added that it was for misusing and abusing the association with



Crl.R.C.No.1775 of 2023

WEB COPY

the party for his personal gain. This imputation is not a mere factual error but a calculated, intended imputation of the maker that it will be read and demean the petitioner in the eye of the readers.

9. This Court in the course of the hearing asked the learned counsel appearing for the respondent whether there is any record to show that the petitioner herein was expelled from the party by the late Dr.J.Jayalalithaa for the reason stated in the paragraph 3 of the respondent's affidavit. The learned Senior Counsel appearing for the respondent took time to report.

10. Today, when the matter taken up for hearing, the learned counsel said that there is no record but probably that could have been removed when the party headquarters was ransacked on 11.03.2022. This reasoning and explanation *per se* could not be countenanced at this stage, when the Court is called upon to find out whether any *prima facie* material available to proceed against the respondent herein for offence under Sections 499 r/w 500 IPC.



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11. The learned counsel for the respondent further submitted that the statements of averment found in the affidavit filed in the course of the judicial proceedings cannot be considered as a publication. Furthermore, the learned counsel for the respondent has filed a detailed written statement along with typed set of papers, wherein he had referred the judgments of Hon'ble Supreme Court and the High Court where on facts, Court has decided when and how a Court should proceed on a complaint filed under Sections 499 and 500 IPC.

12. Also, the respondent rely upon few judgments referring Section 42A of the Arbitration and Conciliation Act, 1996, and claim that averments or pleadings in an arbitration proceedings are confidential in nature and the question of publication can never arise.

13. This is a case where a member of a political party after change of leadership had fallen out from the grace of the present leader has led to Arbitration proceedings by the respondent herein who is in control of the party. In the said proceedings, to substantiate his case

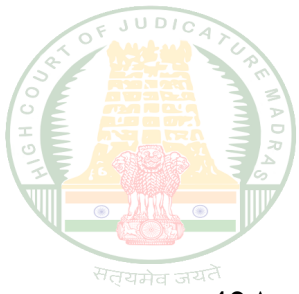


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against the petitioner herein, certain past events been referred and those events are *prima facie* appears to be factually false. In addition, the reasoning given for the expulsion of the petitioner on the face of it is intent to influence the readers estimation about the petitioner.

14. Reading Section 42 A of the Arbitration and Conciliation Act, 1996 would clearly indicate that the confidentiality to be preserved not for all irresponsible statement of defamatory statement made in the pleading by either party, but only the proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of the award.

15. The respondent herein is the petitioner before the High Court in a petition filed under Section 9 of Arbitration and Conciliation Act, 1996. In his affidavit he has made certain averments which according to the petitioner herein is *per se* defamatory and he has approached the Court for remedial action. If the arguments of the learned Senior Counsel appearing for the respondent is to be accepted and all and any averments made in an arbitration proceedings has to be protected under Section

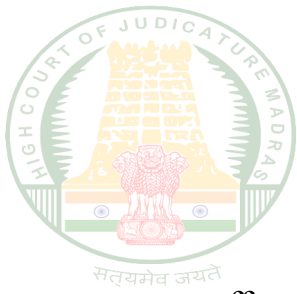


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42A, then persons with dubious intent will file a petition under Section 9 and make every sort of defamatory statements against his adversary and make it public through media and try to hide himself under the garb of Section 42 A of Arbitration and Conciliation Act, 1996, Court cannot be a silent spectator for such dubious design.

16. Section 42 A of Arbitration Act, is a provision to maintain confidentiality of information. Therefore, by no stretch of imagination the averments alleged in paragraph 3 or 5 of the affidavit filed before the High Court in an arbitration proceedings can be considered as an information about the proceedings.

17. It is to be noted that the purpose of filing affidavit in a proceedings pending before the Court is with intention to read and the pendency of the proceedings and reason for filing the application under Section 9 of the Arbitration and Conciliation Act, 1996 are widely reported in the media, since persons involved are known politicians. Therefore the statements in the context and the persons who make it and the person against who it is made are very relevant in a complaint for

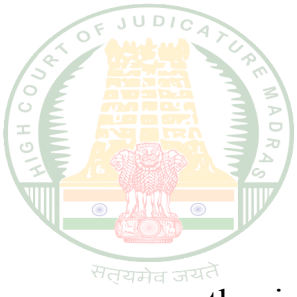


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offence of defamation.

18. Having made an imputation which is *prima facie* harm the reputation of the petitioner herein, the respondent cannot take umbrage under Section 42 A of the Arbitration Act.

19. After considering the rival submissions, this Court is of the view that the reasoning given by the learned Metropolitan Magistrate that the statement found in the affidavit can at the most be a false statement but not defamatory, a pre-concluded decision without conducting trial is incorrect, when the allegation of expulsion from the party by late Dr.J.Jayalalithaa itself is not supported by record. The reasoning attributed for the expulsion gains significance to consider whether the reason invented by the respondent herein to substantiate his false statement of petitioner's expulsion made innocuously by or made with malicious intention. This Court finds *prima facie* material that the statement made about the character of the petitioner as the reason for expulsion from the party is done with the malicious intention to defame his reputation and bring down his esteem from the eye of the readers of



Crl.R.C.No.1775 of 2023

WEB COPY

the imputation. Hence the order of the trial Court is set aside. The complaint stand restored on the file of the VII Metropolitan Magistrate, George Town, Chennai. The trial Court shall proceed with the complaint further as per law.

20. As a result, the Criminal Revision Case is allowed.

28.11.2023

Internet : Yes/No

Index: Yes/No

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To

The VII Metropolitan Magistrate, George Town, Chennai



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Crl.R.C.No.1775 of 2023

Dr.G.JAYACHANDRAN, J.

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Crl.R.C.No.1775 of 2023

28.11.2023