

## N. Sathya Vs V. Sekar

**Court:** Madras High Court

**Date of Decision:** Oct. 28, 2009

**Acts Referred:** Arbitration and Conciliation Act, 1996 " Section 9

Criminal Procedure Code, 1973 (CrPC) " Section 200

Negotiable Instruments Act, 1881 (NI) " Section 138

Penal Code, 1860 (IPC) " Section 403, 416, 417, 418, 420

**Citation:** (2010) 1 LW(Cri) 866

**Hon'ble Judges:** Aruna Jagadeesan, J

**Bench:** Single Bench

**Advocate:** S. Sadasharam, for the Appellant; M. Ravikumar, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

These Criminal Original Petitions are filed to call for the records in MP. No. 5113/2005 on the file of the learned

VII Metropolitan Magistrate, G.T. Chennai and to quash the same.

2. The brief facts, which are essential for the disposal of these Criminal Original Petitions, are as follows:

The Petitioner D. Nagendiran in Cr.OP. No. 25598/2005 and the Petitioner N. Sathya in Cr.OP. No. 24604/2005 are the husband and wife. D.

Nagendiran and the Respondent were the partners of a Firm by name M/s. ACE India Exports and his wife Sathya and the Respondent's wife

Rajeswari were the partners of a Firm by name M/s. Micro Fab, a sister concern of M/s.ACE India Exports, which was dealing in manufacturing

and marketing automotive spare parts both in India and foreign countries. Due to certain indifferences, the Petitioners decided to dissolve the said

partnership firms and accordingly issued a notice and with effect from 23.3.2004, the respective firms were dissolved. After dissolution of the

firms, the Petitioners took out applications u/s 9 of the Arbitration and Conciliation Act 1996 (herein after referred to as the Act) for appointment

of an Advocate Commissioner in OA. Nos. 1296 and 1398/2004 respectively to take inventory of the materials and machineries in the premises of

respective companies. Applications were also filed in OA. Nos. 273 and 274/2004 respectively for an order of interim injunction restraining the

Respondent and his wife from dealing with the affairs of the Companies. This Court had granted an order of interim injunction by order dated

26.3.2004 and also an Advocate Commissioner was appointed to seal the business premises of the respective companies.

3. In the said applications, the Petitioners have made certain allegations against the Respondent. In the mean while, the Respondent has filed an

application to vacate the order of interim injunction, however the order of interim injunction was not vacated, but the Respondent was given

permission to export the finished products of the Firm M/s.ACE India Exports by order dated 8.4.2004, as against which the Petitioners have filed

an appeal in OSA. No. 76/2004 and the same seems to be pending.

4. It appears that the Respondent has filed a suit in OS. No. 1889/2004 on the file of the I Assistant Judge, City Civil Court, Madras and obtained

an order of interim injunction on 22.4.2004. According to the Petitioners, the Respondent has suppressed the facts before the I Assistant Judge,

City Civil Court, Madras and when the attention of the said court was drawn to the order passed by this Court, the application is said to have been

rejected and the revision filed by the Respondent before this Court in CRP. No. 99172004 was also dismissed confirming the order passed by the

I Assistant Judge, City Civil Court, Madras.

5. It is submitted by the Petitioners in both the petitions that in order to wreck vengeance as his attempts to frustrate the business activities of the

Petitioners proved futile, the Respondent filed a private complaint against the Petitioners in both the petitions making false and frivolous allegations

for offences punishable under Sections 403, 416, 417, 418 and 420 of IPC. The learned XI Metropolitan Magistrate, Saidapet, Chennai is said to

have dismissed the said complaint, finding no prima facie case made out against the Petitioners.

6. In the meanwhile, the Petitioner Nagendiran had filed a suit in OS. No. 2473/2005 for permanent injunction against the Respondent and the

same is pending on the file of the VI Assistant City Civil Court, Madras.

7. While the factual matrix is as such, the Petitioner Nagendiran had received summons on 31.8.2005 in CC. No. 5113/2005 directing him to

appear before the VII Metropolitan Magistrate, G.T. Chennai for an offence punishable u/s 138 of the Negotiable Instruments Act. Immediately,

the Petitioner verified the records in the concerned court with his counsel and had come to know that process had been issued to both the

Petitioners on 11.8.2005 in MP. No. 5113/2005 for an offence u/s 499 of IPC punishable u/s 500 of IPC. They had come to know that the

Respondent has preferred a complaint against the Petitioners making certain allegations and the said complaint has been taken on file and process

had been issued by the learned VII Metropolitan Magistrate, G.T. Chennai. Aggrieved over the same, the Petitioners have filed these Criminal

Original Petitions to quash the said proceedings.

8. Mr. S. Sadasharam, the learned Counsel for the Petitioners would submit that there is no prima facie case for an offence u/s 499 of IPC and the

allegations contained in the complaint are referable to the allegations made by the Petitioners in the proceedings filed before the High Court at

Madras u/s 9 of the Act and those allegations made in the affidavit squarely come under the Exception 8 to Section 499 of IPC. He would submit

that the learned Magistrate failed to find that the allegations made in the complaint and in the sworn statement do not prima facie make out a case

for an offence u/s 499 of IPC and the vital ingredients contemplated u/s 499 of IPC including publication have not been made out and therefore,

the proceedings are liable to be quashed.

9. The learned Counsel for the Petitioners would further argue that the averments and the allegations made in the affidavit filed in support of the

petitions before this Court u/s 9 of the Act are to be read as a whole and those allegations were made in good faith to protect the interest of the

Petitioners before the court of a law which had lawful authority to grant the relief and the same were not intended to harm the reputations of the

Respondent, but only to emphasise the issue raised in the petition. In support of his submissions, reliance was placed on the decision of the

Honourable Supreme Court rendered in the case of Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, , wherein the Honourable

Supreme Court in a similar situation has held that Exception 8 to Section 499 of IPC clearly indicated that it is not defamation to prefer in good

faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation.

10. In the case of Dr. P. Sharma v. P.S. Popli and Anr. 2002 1 Cri 783, the Delhi High Court has shared the similar view holding that accusation

made in good faith to those who have lawful authority over person so accused is protected by Exception 8 to Section 499 of IPC.

11. The learned Counsel for the Petitioners made a reference to the decision of this Court rendered in the case of Krishnasamy v. K. Arunan and

Anr. 2007 1 MLJ Cri 934 wherein it is held that if an imputation is made in good faith by a person for protection of his or others" interest, then it

will not be construed as an offence of defamation.

12. On the other hand, Mr. M. Ravikumar, the learned Counsel for the Respondent contended that a person casting aspersions on another can

claim to have acted in good faith only if before doing so, he has made a genuine and in depth enquiry as to the facts and referred to the decision of

the Honourable Supreme Court rendered in the case of S.K. Sundaram 2001 2 SCC 171 :2001 1 LW (Crl.) 117 in support of his submission

wherein suo-motu contempt petition was taken against the said Petitioner.

13. Law with regard to quashing of the criminal proceedings is well settled by the Honourable Supreme Court in the decision rendered in the case

of State of Haryana and others Vs. Ch. Bhajan Lal and others, and in several subsequent decision reiterating the view that the criminal proceedings

can be quashed only where allegation made in the complaint taken on their face value and accepted in entirety do not prima facie constitute any

offence as alleged against the accused.

14. The question for consideration in this case is as to whether the Exception 8 to Section 499 of IPC clearly applies to the facts of the case on

hand and consequently in such a case, calling upon the Petitioners to face trial would be a travesty of justice.

15. Section 500 of IPC provides for punishment for the offence of defamation which is defined in Section 499 of IPC. It reads thus:

499. Defamation: 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 considering the above said arguments of the learned Counsel on either side, hereinafter excepted to defame that

person.

Explanation: 1-4

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First Exception to Tenth Exception

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16. The Offence of defamation consists of three essential ingredients, namely, (i) making or publishing any imputation concerning any person, (ii)

such imputation must have been made by words either spoken or by visible representations, and (iii) such imputation must be made with the

intention, to cause harm or with the knowledge or having reasons to believe that it will harm reputation of the person concerned. Therefore, the

intention or knowledge to cause harm are the essential ingredients to constitute the offence u/s 499 IPC. Exception 8 provides that it is "not"

defamation to prefer, in good faith an accusation against any person to any of those who has lawful authority over that person, with respect to the

subject matter of accusation. The illustration to this Exception makes it absolutely clear.

Illustration: If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good

faith complains of the conduct of Z, a child, to Z's father is within this exception.

Thus accusation made in good faith to those who have lawful authority over the person so accused is protected by the exception.

17. Reference in this regard can be made to the law laid down by the Supreme Court in Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and

Another, , wherein it was held:

The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence u/s 500 or

not Section 499 of the IPC defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section

499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority

over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report

made by the accused persons against the complainant, a departmental inquiry had been initiated that the complainant was found to be guilty. Under

such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the

Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section

499 of IPC. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out.:

18. To obtain the protection given by this Exception 8 to Section 499 of IPC, (1) the accusation must be made to a person in authority over the

party accused and (2) the accusation must be preferred in good faith. So, it is clear that if without express malice, a person makes a defamation

charge, which he bona fide believes to be true, against one whose conduct has caused him injury, to one whose duty is to enquire into and redress

such injury, the occasion is privileged, because the person making the charge has an interest in its subject matter and the person to whom the

communication is made has, on hearing it, a duty to discharge in respect of it.

19. In order to come within the Exception 8 to Section 499 of IPC, the Petitioners are not bound to prove that the allegations made by them are

true. It is sufficient if they prove that on reasonable grounds he believed the allegations to be true and in that belief they bona fide made the

accusation to the lawful authority.

20. In the present case, on going through the allegations made by the Petitioners which has been extracted in the complaint petition, it is clearly

seen that the Petitioners have made those allegations for the purpose of getting some relief as their intention in filing the petition was to protect their

own interest. In fact, the Respondent has also filed a petition to vacate the interim injunction granted by this Court making certain allegations against

the 1st Petitioner.

21. It is apparent that the imputation was preferred in good faith by the Petitioners to get the reliefs of interim injunction and appointment of

Advocate Commissioner in this Court. In the said view of the matter, the imputation cannot be said to have been made with the intention or

knowledge to cause harm to the reputation of the Respondent. The accusation have been made before this Court which undoubtedly had authority

over the subject matter in dispute. Therefore, the Petitioners are entitled to the protection of Exception 8 to Section 499 of IPC.

22. In the present case, the learned Magistrate has recorded the sworn statement on 20.7.2005 and the process has been issued on 11.8.2005.

There is nothing to indicate that the learned Magistrate has conducted an enquiry into the matter to find out as to whether there is any reasonable

ground for issuing process. That apart, the process has not been issued in a calendar case namely private complaint u/s 200 Code of Criminal

Procedure, but in MP. No. 5113/2005 which is not in accordance with the provision of Section 200 of Code of Criminal Procedure.

23. At this juncture, it is relevant to refer to the observations made by this Court in the case of Kalyanam Vs. Ramesh, whereby it has cautioned

the Magisterial Court that the judicial process should not be used as an instrument of oppression or needless harassment. It observed as follows:

17. It is salutary to note that the judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and

duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the

law casts liability or creates offence against the person, then only process would be issued. At that stage, the court would circumspect and

judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process, otherwise it

would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. Vindication of majesty of justice and

maintenance of law and order in the Society are the prime objects of criminal justice but it should not be allowed to use those means to wreak

personal vengeance.

24. On behalf of the Petitioners, reliance has been placed on the decision of the Honourable Supreme Court rendered in the case of Pepsi Foods

Ltd. and Another Vs. Special Judicial Magistrate and Others, . In the said said decision, the Honourable Supreme Court has observed thus:

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the

complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the

Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to

examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient

for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of

preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even

himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then

examine if any offence is prima facie committed by all or any of the accused.

25. One of the basic legal requirements of Section 499 of IPC is that the imputation should be either made directly to the knowledge of third

parties or the same should be published to the knowledge of third parties. In this case, even as per the allegations made in the complaint, it is not as

if the imputation said to have been made by the Petitioners was published either directly or indirectly. Thus, in my considered view, the act of the

Petitioners does not satisfy the requirement of Section 499 of IPC so as to attract the offence punishable u/s 500 of IPC.

26. In the result, these Criminal Original Petitions are allowed and the impugned proceedings in MP. No. 5113/2005 on the file of the learned VII

Metropolitan Magistrate, G.T. Chennai are quashed. Consequently, the connected M Ps are closed.