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CrI.A.No.770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.770 of 2023

K.R.Selvaraj

...Appellant

vs.

S. Raju

...Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, 1973 against the judgment dated 18.04.2023 made in C.C.No.163 of 2018 on the file of the Judicial Magistrate, Tiruchengode.

For Appellant : M/s. J.Prithivi

J U D G M E N T

The present Criminal Appeal is filed against the judgment dated 18.04.2023 made in C.C.No.163 of 2018 on the file of the Judicial Magistrate, Tiruchengode.



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2. The appellant is the complainant in C.C. No.163/2018 on the file of the Judicial Magistrate, Tiruchengode. He filed the said complaint under Section 200 Cr.P.C against the respondent/accused for the offence punishable under Section 500 IPC.

3. The case of the appellant/complainant in nutshell is as follows:

- i. The appellant/complainant and the respondent/accused are neighbours and are residing in Gounder Colony, Velur Road, Tiruchengode Town, Namakkal District.
- ii. The respondent/accused, installed a statue of Goddess Samayapurathal in his house and is doing soothsaying business. He is causing nuisance to the other residents by continuously ringing electric bells and drums. When this was questioned by the neighbours, the accused threatened them with dire consequences.
- iii. Subsequently, the accused lodged a complaint dated 09.05.2016 (Ex.P1) with the police against the present complainant stating that the latter is not taking care of his mother, who is bed ridden and that he is also burning her clothes in front of his house.
- iv. On account of this complaint, the police officials came over to the house of the complainant and enquired him.



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- v. According to appellant/complainant, the allegations made in the complaint (Ex.P1) by the accused are totally false and it has been made with an intention to defame the appellant/complainant before the public.
- vi. Hence, the complainant issued a legal notice dated 28.01.2017 (Ex.P14) to the accused calling upon the latter to tender apology and to pay Rs.25,00,000/- towards damages.
- vii. The said notice was received by the accused on 31.01.2017, as is seen from the acknowledgement card (Ex.P15).
- viii. The respondent/accused sent a reply notice dated 06.02.2017 (Ex.P16), which according to the appellant/complainant contained false allegations.
- ix. Aggrieved over the same, the appellant/complainant preferred a private complaint against the respondent/accused.
- x. The learned Judicial Magistrate, on receipt of the private complaint filed under Section 200 Cr.P.C., took the same on file and recorded the evidence of complainant and his witnesses under Section 200 Cr.P.C.
- xi. Thereafter, she took cognizance of the offence under Section 500 IPC and issued summons to the respondent/accused under Section



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204 Cr.P.C. The copies of the records were furnished to the accused on his appearance under Section 207 Cr.P.C. The substance of accusation made by the complainant was put to the accused and he was questioned. The accused denied having committed any offence and thereafter the complainant examined himself and 3 other witnesses in the trial court and also marked Ex.P1 to Ex.P24.

xii. Thereafter the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the circumstances appearing against him in evidence. The accused denied of having committed any offence. However, he did not adduce any oral or documentary evidence on his side.

xiii. After analysing the oral and documentary evidence adduced on both sides, the learned trial court judge acquitted the accused under Section 255(1) Cr.P.C for the offence punishable under Section 500 IPC, vide her judgment dated 18.04.2023.

4. Aggrieved over the same, the present Criminal Appeal has been filed by the complainant.



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5. Ms.J.Prithivi, learned counsel for the appellant contended that though the complainant was taking care of his mother, the respondent, with an intention to defame his reputation, had given a false complaint before the police, on account of which the police visited his house and enquired him. It is also her contention that, by that time the mother of the complainant also died. According to her, the trial court had acquitted the accused merely on the ground that Ex.P1 compliant was not given by the accused.

6. In order to prove the offence under Section 500 IPC, the complainant has to prove the following ingredients.

- a) Accused should have caused imputation;
- b) The imputation was made consisting of words spoken or written or intended to be read or made by signs or by visible representations;
- c) The accused made or published the incriminating imputation.
- d) The imputation concerned the complainant i.e. the alleged defamation was concerned the complainant.
- e) The intention behind the making or publishing the imputation was causing harm to the reputation of such person.

In the instant case, the main contention of the complainant is that the accused had lodged a complaint with the Deputy Inspector General of



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Police alleging that the complainant is not giving proper treatment to his mother and also burning her clothes outside his house, which causes pollution. According to the complainant, this allegation of the respondent is totally false as he was taking care of his mother by giving her proper medical treatment and that the police came over to his house for enquiry on which date his mother also died. The complaint given by the accused is marked as Ex.P1 in the instant case which reads as under:

"Nkw;gb Kfthpapy; Xk; rkaGu khhpak;kDf;F Myak;
mikj;J, fle;j 28 Mz;L fhykhf Nfhtpy; Kiwahf elj;jp
mk;kDf;F Nrit nra;J tUfpNwd;. ,e;j Nfhtpy; ehb tUk;
gf;jh;fSf;F mk;kd; mUshy;, Nehaw;w tho;Tk;, Fiwtw;w
nry;tKk;, ey;y fy;tpawpTk; ngw;W tUfpwhh;fs;.

,e;epiyapy; vdJ vjph; tPl;by; FbapUf;Fk; uhkrhkp
kfd; nry;tuh[, mtUila jhahh; cly;eyk; Fd;wp gLj;j
gLf;ifahf clypy; gy ,lq;fs;py; fl;b Njhd;wp, ntbj;J uj;jKk;
rPYkhf tbe;J nfhz;L, Neha; njhw;Wf;Fk;, fpUkp
jh;f;FjYf;Fk; Mshfp mtjpg;gl;L nfhz;L ,Uf;fpwhh;. mtUila
jha; Nky; Nghh;j;jpapUf;Fk; MiliaAk;, uj;jKk; rPYk; Jilj;j
gpl; JzpfisAk; tPl;Lf;F Kd;dhy; itj;J vhp;f;fpwhh;. ,ij ,q;F
itj;J vhp;f;fhjPh;fs; vd;W nrhd;Ndd;. ePq;fs; trjp kpf;fth;fs;
ey;y kUj;Jtkidapy; Nrh;e;J Kiwahd rpfpr;ir jhUq;fs; vd;W
nrhd;Ndd; mjw;F mth; vd;id jfhj thh;j;ijfshy; jpl;b, ehd;
ahh; njhpAkh? vd; rk;ke;jp tpj;ah tpfh]; Owner, ehd;
epidj;jhy; cd;id mopj;J tpLNtd; vd; kpul;Lfpwhh;. jpdKk;



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*NghyP]; mDg;gp vdf;F njhy;iy nfhl;fpwhh;. mth;
cwtpdh;fis fhhy; tutioj;J mth;fs; Kd;dhy; itj;J vd;id
Nftykhf jpl;Lfpwhh;. jpdKk; vdf;F kd cisr;ry; jUfpwhh;
vd;id Mya gzpNah, G+i[Nah nra;a tplhky; kd cisr;ry;
jUfpwhh;. Myaj;Jf;F tUfpwth;fis ,q;F rhkp Fk;gpl tuf;\$lhJ
vd;Wk;, cd; Fy nja;t NfhtpYf;F Ngh vd;Wk; kpul;Lfpwhh;
.jdhy; ehDk;, nghJkf;fSk; kd cisr;rYf;F MshfpNwhk;.*

*.jdhy; nghJkf;fs; vd;dplk; te;J ,jw;F VjhtJ top
nra;Aq;fs;, ,th; jUfpw njhy;iyf;F VjhtJ ghpfshuk; NjLq;fs;
vd Nfhhp;f;itf;fpwhh;fs;.*

*Nkw;gb r%ofj;ij jho;ikAld; Nfl;L nfhs;fpNwd;. vd;
vjph; tPl;by; ,Uf;Fk; nry;tuh[; jUfpw njhy;iyiaf; fl;LgLj;jp
vd; capUf;Fk;, vd; Myaj;jpw;Fk; ,q;F tUfpw gf;jh;fspd;
capUf;Fk; Mgj;J tuhkYk;, Mya gzp;fSf;F mth; jil
nra;ahkYk; ,Uf;f, Mtz nra;AkhW jq;fis jho;ikAld; Nfl;Lf;
nfhs;fpNwd;."*

The respondent/accused had stated in the trial court that Ex.P1 was not given by him and that one of his devotees might have given the same. However, the complainant did not take steps to examine the police officials who investigated the complaint allegedly given by the accused. Moreover, the complainant had not stated anything in his deposition as to which of the police officers came down to his house and inquired him on the date of death of his mother. The trial court judge in paragraph in 12.4



had observed thus:

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"12.4. Further the learned complainant counsel submitted in his Written argument that the court has to invoke Section 73 of Indian Evidence Act to arrive conclusion by comparing the signature find place in the complaint Ex.P1 with the court documents of accused signature that are found place in the questioning of accused Under Section 251 and 313(1) (b) Cr.P.C. The main primary object of this case is whether the accused had lodged complaint (Ex.P1) before DIG, Salem. The burden of proof cast upon the complainant to prove the veracity of complaint and he has to prove that the complaint was lodged by the accused person. Sometimes comparing the signature with naked eye would end in mistake but the comparison of signature through forensic expert would have higher value and would have better result. In this case court in sending the signature of accused to the scientific expert for comparison, but in due course of arguments suggesting court to compare the accused signature by invoking Section 73 Indian Evidence Act, without filing any proper application could not be acceptable one.

The document Ex.P1, Ex.P2 were obtained from RTI. Thought it has its own sanctity, the accused denied about the lodgment of complaint Ex.P1. Hence, the complainant has to take steps to produce the original document, i.e. the



primary document. The author who alleged to have given the complaint before the lawful authority is itself under question, non examination of police officials to whom the complaint was lodged was not examined by the complainant on his side. It forms fatal to the complainant's case. Furthermore the accused on his reply notice itself has stated and relinquished his liability raising his denial on lodgment (Ex.P1) before DIG of police. Therefore, primary duty casts upon the complainant to prove the veracity of complainant. Since the accused had denied the execution of complaint Ex.p1, considering the complainant has not taken steps to send the alleged document before concerned scientific authority for the proof of its execution, at this instance this court is of view that the complainant has not proved that the accused had given the complaint Ex.P1."

7. In any event even assuming that Ex.P1 complaint was given by the present accused, there is no ingredient in the complaint to attract the offence punishable under Section 500 IPC. In fact, the respondent seems to have given advice to the complainant to admit his mother in a good hospital. By no stretch of imagination, this can be stated that the accused had defamed the reputation of the complainant in the eyes of public. The trial court had concluded by observing thus:



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The contents of Ex.P1 cannot be stated as defamatory, false, misconception one. Already this court has decided that the complainant has not proved that alleged complaint Ex.P1 was given by the accused by examining lawful authority to whom Ex.P1 was given. This second issues need not be considered. Further, this court also finds that Ex.P1 was alleged to have been given before lawful authority and there is no publication was made on Ex.P1. The lodgment of complaint (Ex.P1) before the police would not amount to defamation, unless and until the conclusion was arrived on the complaint.

8. All the observations made by the trial court judge are based on well laid principles of law. I, therefore, do not see any reason to interfere with the same.

9. In the result,

- i. The Criminal appeal is dismissed.
- ii. the judgment dated 18.04.2023 made in C.C.No.163 of 2018 on the file of the Judicial Magistrate, Tiruchengode, is confirmed.



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Index : yes/no
Speaking /Non speaking Order

To

The Judicial Magistrate, Tiruchengode



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R.HEMALATHA, J.

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