

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.21114 of 2014

and M.P.No.1 of 2014

Mrs.Mohanadevi .. Petitioner

vs.

Dr.C.V.Ranjani ... Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.661/13, pending on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.R.Prasadh

For Respondent : Mr.M.S.Mohammed Rafi

O R D E R

The petitioner is the accused in C.C.No.661/2013 on the file of the VII Metropolitan Magistrate, George Town, Chennai. The respondent filed the above private complaint against the petitioner stating that the petitioner has defamed her by making allegations as if she is having illegal movements with her brother-in-law, in the petition filed by the petitioner herein in Transfer CMP.No.830 of 2011 to transfer H.M.O.P.No.2436/2011 on the file of the 2nd Additional Family Court at Chennai. Therefore, the respondent filed private complaint against the petitioner for the commission of offence under Section 500 IPC and that was taken cognizance by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.661/2013.

2. The learned counsel for the petitioner submitted that the petitioner's husband G.Mohan Kumar has filed H.M.O.P.No.97/2011 against the petitioner herein for divorce on the ground of cruelty. The petitioner filed H.M.O.P.No.891/2010 on the file of the Family Court, Coimbatore under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against her husband and the petitioner, thereafter, filed Transfer C.M.P.No.830/2011 to transfer the case pending on the file of the 2nd Additional Family Court, Chennai to Coimbatore and in that petition, the petitioner deliberately stated that the respondent has illegal movements with

her brother-in-law and that was made to defame the respondent and on that basis, the respondent filed C.C.No.661/2013 for the offence under Section 500 IPC against the petitioner herein.

3. The learned counsel for the petitioner submitted that any allegation made in judicial proceedings will not amount to defamation and relied upon the judgement rendered by this Court in CrI.RC.No.784/2009 dated 28.06.2011 [Geetha v. A.K.Dhamodharan]. The learned counsel for the petitioner further submitted that the facts of the case in CrI.R.C.No.784/2009 are similar to the facts of the present case and the learned Judge in the said case held that the averments mentioned in the pleadings filed before the judicial forum will not come under the purview of Section 499 IPC, where the proceedings are pending and subjudice and therefore, no complaint can be entertained under Section 500 IPC and hence, the present complaint filed by the respondent is liable to be quashed.

4. On the other hand, the learned counsel for the respondent relied upon the judgements in Dr.J.Sudarshan v. R.Sankaran [1992 CRI.L.J. 2427], M.N.Damani v. S.K.Sinha and Others [AIR 2001 SC 2037] and Sewakram Sobhani v. R.K.Karanjia, Chief Editor, Weekly Blitz and Others [(1981) 3 SCC 208] and contended that the petitioner cannot claim privilege or immunity in respect of defamatory allegation made in the pleadings. In the judgement in Dr.J.Sudarshan v. R.Sankaran [1992 CRI.L.J. 2427], the entire case laws have been discussed and the petition is allowed.

5. I have gone through the judgement reported in 1992 CRI.L.J.2427. The learned Judge in that case considered the Full Bench judgement of this Court in Tiruvengada Mudali v. Tripurasundari Ammal [AIR 1926 Mad 906], wherein it has been held that no absolute privilege attaches to averments in a criminal complaint made in Court but that the privilege is qualified in the sense, that the defamatory statement must have been made in good faith. The learned Judge in the above cited judgement also relied upon the judgements of the Hon'ble Supreme Court of India in M.C.Verughese v. T.J.Ponnan [AIR 1970 SC 1876] and State of Bihar v. Kripalu Shankar [1987 (3) SCC 34] and held that if any defamatory article or statement is made in a judicial proceeding, that can be a cause of action for filing a private complaint for the offence under Section 500 IPC.

6. In M.N.Damani v. S.K.Sinha and Others [AIR 2001 SC 2037], the Hon'ble Supreme Court held that private complaint against the respondents therein alleging that they made imputations against the complainant in the application filed under Section 436 CrPC can be a basis for prosecuting the respondents for the offence under Section 500 IPC and whether imputations were made in good faith or not, have to be decided during trial and the Hon'ble Supreme Court also relied upon the judgements in Sewakram Sobhani v. R.K.Karanjia [(1981) 3 SCC 208] and Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi [(1996) 6

SCC 263] and held that private complaint is maintainable in respect of defamatory allegations made in judicial proceedings.

7. It is seen from the above judgements that when defamatory allegations are made in judicial proceedings, that can be a cause of action for filing a private complaint against the person concerned. The learned Judge in Crl.R.C.No.784/2009 (cited supra), relied upon the Fifth Exception to Section 499 IPC and also relied upon the judgement of the Hon'ble Supreme Court in State of Bihar v. Kripalu Shankar [(1987) 3 SCC 34] and held that pending matters are immune from comments made by the parties. With great respect, I am unable to agree with the observations made by the learned Judge.

8. In State of Bihar v. Kripalu Shankar [(1987) 3 SCC 34], the facts of that case are entirely different and in that case, the Hon'ble Supreme Court held that there could be no contempt or defamation even if the notings in the office internal files are derogatory of Court's order, since they are privileged under Sections 123 and 162 of the Evidence Act. Further Fifth Exception to Section 499 IPC cannot be invoked as it has nothing to do with the facts of the case. Fifth Exception to Section 499 IPC deals with merits of the case decided in Court or conduct of witnesses and others concerned. It is stated that is not defamation to express in good faith any opinion whatever respecting the merits of the case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character in that conduct, and no further. It only deals with opinion expressed in good faith regarding the merits of the case or conduct of any person as a party, witness or agent. Therefore, with great respect, in my opinion the Fifth Exception to Section 499 IPC cannot be applied to the facts of such case.

9. As per Ninth Exception to Section 499 IPC, it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

10. As stated supra, whether the imputation was made in good faith or not has to be decided only during trial and at this state, it cannot be considered. As per the judgements in Dr.J.Sudarshan v. R.Sankaran [1992 CRI.L.J. 2427], M.N.Damani v. S.K.Sinha and Others [AIR 2001 SC 2037] and Sewakram Sobhani v. R.K.Karanjia, Chief Editor, Weekly Blitz and Others [(1981) 3 SCC 208], this Criminal Original Petition is not maintainable.

11. In the result, this Criminal Original Petition is dismissed.
Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar
Dated:26.2.15

True Copy

Sub Assistant Registrar

To

1.The VII Metropolitan Magistrate,
George Town, Chennai.

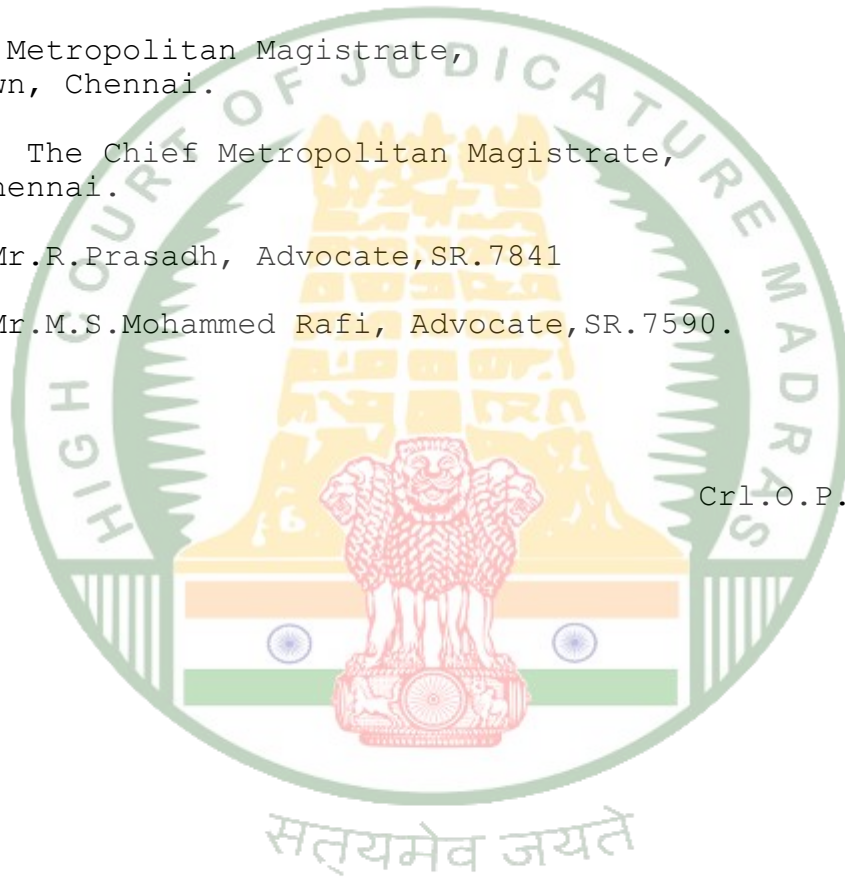
2.do thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1 cc to Mr.R.Prasadh, Advocate,SR.7841

+1 cc to Mr.M.S.Mohammed Rafi, Advocate,SR.7590.

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