

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Criminal O.P. No.3936 of 2010
and
M.P.No.1 of 2010

1.Radha Ammal
2.Govindaraj
3.Selvam
4.Poongodi

.... Petitioners/ Accused

Vs.

Soundar Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to call for records in C.C.No.128 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vaniyampadi and quash the same.

For Petitioners : Mr.V.Krishnamoorthy

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the proceedings in C.C.No.128 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vaniyampadi.

2. Heard the learned counsel appearing for the petitioner. Respondent side no representation.

3. On perusal of materials available on record it is reveal that the respondent's wife one Malarkodi sent a legal notice on 09.02.2009 to the petitioners herein, who are her mother, brothers and sisters, demanding a portion of family property. In turn, all the petitioners herein sent a reply notice to the respondent's wife on 07.03.2009 explaining the right of the parties in the reply notice. On perusal of the above said reply notice, the respondent herein and his wife sent a legal notice to the petitioners demanded Rs.25,00,000/- for alleging that in the reply notice contained defamatory averments and then filed a private complaint under Section 193 and 500 I.P.C. before the Judicial Magistrate Court. Challenging the above said private complaint filed by the respondent, the petitioners filed this Criminal Original Petition to quash the above said proceedings.

4. The contention of the petitioners is that the wife of the respondent herein sent a legal notice to the petitioners with false contentions and therefore the petitioners given a detail reply explaining the rights of the parties in the reply notice. Further, the above said averments not amounts to any offence as contented by the petitioners and therefore the learned counsel pointed out that the private complaint filed by the respondent as if the petitioners have committed offences under Sections 193 and 500 IPC is not at all maintainable. The learned counsel appearing for the petitioners further submitted that the wife of the respondent sent a legal notice, so as to deny the above said contentions the petitioners sent a detail reply only to the wife of the respondent about the rights of the parties. Further, the learned counsel pointed out that since no proceedings are pending before any Court, the complaint under Section 193 IPC not at all maintainable. The learned counsel further submitted that from the averments made in the complaint itself not attracted the provision of Section 500 IPC also and hence the complaint is not at all maintainable, since the averments in the reply notice are not defamatory as contented by the respondent and therefore prayed for quash the proceedings.

5. Admittedly, the wife of the respondent, namely one Malarkodi sent a legal notice to the petitioners on 09.02.2009 claiming 1/15 share in 23 items of immovable properties by contending that all the properties are in joint possession. The petitioners herein sent a detail reply notice on 07.03.2009 wherein it is stated that already partition was effected and properties were divided. Further the above said reply notice it is stated that the respondent herein, after marriage, cheating the owner of the properties, namely Periyanna Manthiri and obtained promissory notes and also taken away the cash from the above said Periyanna Manthiri, Further he has not deposited the amount entrusted to him for deposit in the Bank and as such the respondent has cheated the above said Periyanna Manthiri. Immediately after the above said reply notice, on 03.04.2009 the respondent herein and also his wife sent a another legal notice to the petitioners claiming Rs.25 lakhs as compensation by stating that the averments in the reply notice are defamatory in nature, failing which, the respondent will initiate criminal proceedings to punish the petitioners for alleged offences under Sections 193 and 500 IPC. Later, the respondent herein filed a private complaint under Section 200 Cr.P.C. on 15.04.2009 against the petitioners for the alleged offences under Sections 193 and 500 IPC.

6. The first contention of the petitioners is that since judicial proceedings are not pending before any Court, the question of punishment for false evidence under Section 193 IPC will not arise. Therefore, It is relevant to extract the above said provision reads as under:-

193. Punishment for false evidence. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial; 1[***] is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation -3. An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

7. A careful reading of the above said provision of Section 193 IPC reveal that the above said provision not applicable to the present case since no judicial proceedings are pending before Court as rightly pointed out by the learned counsel appearing for the petitioners.

8. The next contention of the petitioners is that the wife of the respondent sent a legal notice with false contention and to explain the real facts, the petitioners have given a suitable reply and therefore the prayer for punishment for defamation under Section 500 IPC also not at all maintainable. The above said relevant provision under Section 500 IPC reads as under:-

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

9. As rightly pointed out by the learned counsel appearing for the petitioners and a careful reading of entire reply notice sent by the petitioners shows that no such defamatory contention found place in the above said reply notice enabling power to punish the petitioners under Section 500 IPC. Therefore, the private complaint filed by the respondent to punish the petitioners under Section 500 IPC also not at all maintainable.

10. The learned counsel appearing for the petitioners submitted that absolutely no sufficient material to prove the allegation defamation and also judicial proceedings also not pending before any Court and hence the private complaint is liable to be quashed. To substantiate his contention, the learned counsel relied on an unreported decision of this Court in Crl.O.P.No.10144 of 2008 dated 14.06.2013, wherein para 5 reads as under:-

"5. Admittedly, the subject matter of defamation is a reply notice. In the said reply notice, it has been stated that the respondent has cheated a number of persons. This is a communication between the parties. Further more, as to whether the statement made in the reply notice by the petitioner is true or not will have to be proved before the Court of law, when the respondent seeks remedy for recovery of money. This is a matter to be substantiated by the parties. There is also no direct material to show that the respondent was defamed at the instance of the petitioner. A perusal of the complaint would also show that it is vague and bereft of material particulars and the details of the persons to whom the petitioner has made defamatory statement about the respondent are not available. Therefore, this Court is of the view that when there is no sufficient materials available to connect the petitioner with the alleged offence of defamation, no useful purpose would be served in allowing the proceedings to continue before the District Munsif-cum-Judicial Magistrate, Vaniyambadi. Accordingly, the proceedings in C.C.No.139 of 2008 on the file of District Munsif-cum-Judicial Magistrate, Vaniyambadi, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed."

11. On careful reading of the above said findings of this Court, I am of the opinion that in the present case also the complaint given by the respondent is liable to be quashed for the reasons as already discussed.

12. In the result, the proceedings in C.C.No.128 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Vaniyambadi, is hereby quashed and the Criminal Original Petition is allowed accordingly. Consequently, connected M.P. is closed.

Sd/-

Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

rrg

to

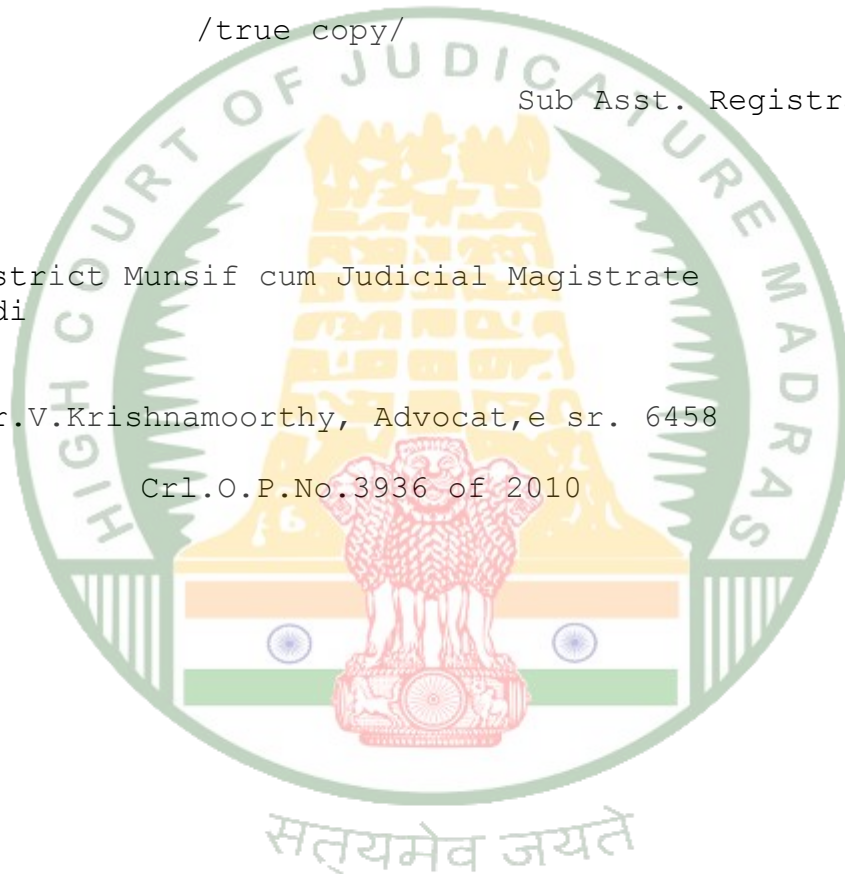
1. The District Munsif cum Judicial Magistrate
Vaniyambadi

1 cc to Mr.V.Krishnamoorthy, Advocate sr. 6458

CrI.O.P.No.3936 of 2010

TEJ (CO)

kk 4/3



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