

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.A.No.996 of 2006

Judgment reserved on :05.03.2015

Judgment pronounced on : 09.03.2015

N.Hirian .. Appellant/Complainant
v.

B.Sivakumar ... Respondent/Accused

Prayer:Criminal Appeal filed under Section 378 Cr.P.C. against the judgment of acquittal dated 29.09.2006 in S.T.C.No.145 of 2005 on the file of the learned Judicial Magistrate, Kothagiri, Nilgiris District.

For Appellant : Mr.R.Srinivas

For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

This Criminal Appeal arises out of the judgment of acquittal dated 29.09.2006 in S.T.C.No.145 of 2005 on the file of the learned Judicial Magistrate, Kothagiri, Nilgiris District.

2.The respondent herein has sent Ex.P1 complaint dated 03.10.2001 to the District Collector, Udthagamandalam and also the General Secretary, AIADMK by making allegations against the complainant. Even though received enquiry notice, the respondent has not appeared. P.W.2/Tahsildar has conducted enquiry and given a report Ex.P2. Thereafter, the appellant/complainant has come forward with a private complaint under Sections 500 I.P.C. and 200 Cr.P.C. stating that the complainant is a serving Village Administrative Officer, Konavokkarai village and is a man of sufficient means and he is in possession of landed property, he is from reputed family, he is also one of the leading functionaries to celebrate the week long Hethamman festival at Bethala. Because of the complaint given by the respondent, complainant's reputation has been damaged and hence, he constrained to file such complaint.

3.The learned Magistrate has taken cognizance of an offence, after following the procedure and recording sworn statement. Since the accused pleaded not guilty, the trial Court examined P.W.1 and P.W.2 and marked Exs.P1 and P2 on the side of the complainant. The trial Court placed the incriminating evidence before the respondent/accused under Section 313(1)(b) of Cr.P.C., in which, he has stated averment in the complaint is true and proper enquiry has not been conducted and examined D.W.1 on his side. The trial Court after considering the oral and documentary evidence, acquitted the respondent/accused stating that enquiry has not been conducted on the basis of the complaint given by the respondent and no final order has been passed and P.W.2 himself admitted that he is not a competent authority to pass order. In such circumstances, the trial Court held that the appellant herein has not proved that the respondent is guilty under Section 499 IPC, against which, the present appeal has been preferred by the appellant/complainant.

4.Learned counsel for the appellant/complainant submits that the appellant/complainant is from reputed family and he is in possession of landed property and in view of the defamatory allegations made by the respondent, complainant's reputation was damaged. But the trial Court without considering the above aspects erroneously dismissed the complaint filed by the appellant. Therefore, he prayed for allowing this appeal.

5.Learned counsel for the respondent/accused submits that the complaint itself is pre-matured one. The District Collector alone is competent person to pass final order and P.W.2/Tahsildar is not a competent person to pass such order and hence, no reliance can be placed on Ex.P2/report given by P.W.2. No independent witness was examined to prove the averments in Ex.P1 complaint are false.

6.Considered the rival submissions made on both sides and perused the materials available on record.

7.It is appropriate to incorporate Eighth Exception under Section 499 IPC, which reads as follows:

"Eighth Exception._Assusation preferred in good faith to authorised person. 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 respect to the subject-matter of accusation. "

8.Admittedly, the District Collector is the superior authority of the appellant, who is the public servant. As per the evidence of P.W.2/Tahsildar, it is clear that he is not a competent authority to pass final order on the complaint Ex.P1. P.W.2 made an enquiry on Ex.P1 complaint and examined witnesses. But he has not furnished any particulars to whom he made an enquiry. On the side of the

respondent/accused, retired District Revenue Officer was examined as D.W.1, who deposed that the District Collector and Revenue Divisional Officer alone are competent authorities to pass final order on the appellant. Further he deposed that he made an enquiry, but without records, he is unable to depose the same.

9. In the criminal jurisprudence, complainant must prove the guilt of the accused beyond all reasonable doubt. It is not the duty of the respondent/accused to put forth his defence and he can keep silent, but whereas he has sent Ex.P1 complaint to two addresses and he admitted the issuance of complaint.

10. Since the District Collector, who is the competent authority, has not passed any order on the basis of Ex.P1 complaint, the trial Court has rightly held that the complaint filed by the appellant is pre-matured one. As per the eighth exception under Section 499 IPC, in good faith if complaint has been given to the superior authority, it will not amount to defame the person.

11. Considering the aforesaid circumstances of the case, I am of the view, there is no evidence to show that complaint has been published and no independent witness was examined to show that they were examined by P.W.2 and they know the contents of the complaint. In such circumstances, the respondent is entitled to invoke eighth exception under Section 499 IPC, which deals with in good faith if complaint has been given to the superior authority, it will not amount to defame the person. It is well settled dictum of the Apex Court that appellate Court cannot set aside the judgment of acquittal, unless the judgment of acquittal is perverse. The trial Court rightly acquitted the respondent/accused and hence, this appeal deserves to be dismissed and it is hereby dismissed.

12. In fine, the Criminal Appeal is dismissed by confirming the judgment of acquittal dated 29.09.2006 in S.T.C.No.145 of 2005 on the file of the learned Judicial Magistrate, Kothagiri, Nilgiris District.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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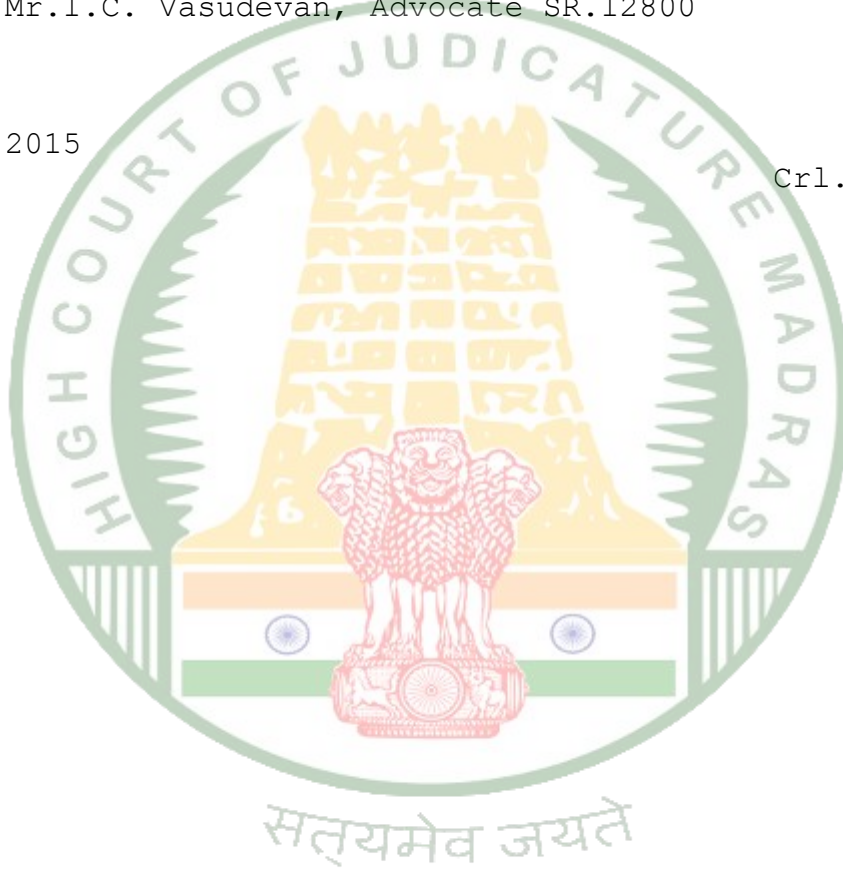
1.The Judicial Magistrate,
Kothagiri, Nilgiris District.

2.The Record Keeper
Criminal Section, High Court, Madras.

+ 1 cc to Mr.I.C. Vasudevan, Advocate SR.12800

MSM(CO)
EU 19.03.2015

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