

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.547 of 2012

and

M.P.No.1 of 2012

1) A.N.Shanmugam

2) S.Poornima @ Anisha

... Petitioners

vs.

G.Saravanan

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of the learned Addl. District and Sessions Judge, Fast Track Court No.IV, Chennai dated 12.11.2011 made in I.A.No.193/2011 in O.S.No.14803/2010.

For Petitioners : Mr.P.K.Rajagopal

For Respondent : Mr.R.Rajesh Kumar

ORDER

The defendants in O.S.No.14803/2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai (now re-designated as Court of the 18th Additional Judge, City Civil Court, Chennai) have filed the present civil revision petition invoking the power of superintendence of this court over the subordinate courts under Article 227 of the Constitution of India and challenging the order dated 12.11.2011 made in I.A.No.193/2011 filed by the petitioners herein for the rejection of the plaint in the above said suit under Order VII Rule 11 CPC.

2. The respondent is the brother of the second petitioner's husband. The first petitioner is none other than the father of the second petitioner. Due to difference of opinion between the second petitioner and her husband and aggrieved over the alleged second marriage contracted by her husband Manoharan with another woman, the second petitioner made an attempt to commit suicide by dousing her with kerosene and setting her on fire. Fortunately or unfortunately she survived. Thereafter she gave a statement to the police narrating the circumstances leading to the above said occurrence, accusing her husband to have driven her to make an attempt to commit suicide. However, in her statement, she also

made a reference to the alleged unparliamentary words used by the respondent herein, when the first petitioner went to meet the husband of the second petitioner to request him and his family members to pay a visit to his house, wherein the second petitioner and the child, after their discharge from the hospital were, the respondent, who is none other than the brother of the husband of the second petitioner, scolded the first petitioner using unparliamentary words. However in the statement, she had prayed that action should be taken against her husband and his parents for conducting the second marriage of her husband as bigamous marriage.

3. Based on the statement, the police registered a case in Crime No.4/2009 on the file of W1 All Woman Police Station, Thousand Lights, Chennai - 6 for alleged offences punishable under Sections 498-A, 406, 494 and 506(ii) IPC and also for offences punishable under Sections 4 and 6 of the Dowry Prohibition Act.

4. Contending that the imputations made against the respondent herein, which formed the basis of the FIR, would amount to defamation, the respondent chose to file the above said

suit claiming damages to the tune of Rs.10,00,000/- against the petitioners.

5. After appearance in the said suit, the petitioners herein, filed the petition in I.A.No.193/2011 under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint, as no cause of action had been spelt out in the pleadings made therein.

6. The learned trial judge, after hearing both sides, passed the impugned order dated 12.11.2011 dismissing the petition making the following observations:

"Though it is contended that there is no cause of action in the suit, the complaint was given by the 1st petitioner with regard to the accident that took place to the gas leakage and further more complaint given before W1 All Women Police and has stated false allegation against him and his family as if scolded her in filthy language. Therefore there are issues involving law and the issues involving facts. Therefore these could be made clear only by way of trial through oral and documentary evidences. Moreover as contended by the respondent, on perusal of exhibits filed along with the plaint the FIR dated 2.7.09 the name of this respondent finds place as the 2nd accused. Even the exhibit filed along with the plaint which is the

intimation memo finds place the name of the plaintiff/respondent as 2nd accused. Though according to respondent in the plaint it is stated that the police has wrongly investigated and made him accused basing on the complaint filed by the petitioner, the plaint cannot be rejected on this ground alone. Therefore this court feels that a detailed trial with evidence is necessary to decide, whether the suit filed is with merits or not."

7. Contending that the learned trial judge has not considered the issue in proper perspective which led to the passing of the impugned order, the petitioners have approached this court under Article 227 of the Constitution of India to set aside the order of the learned trial judge and to allow I.A.No.193/2011 and thereby reject the plaint in O.S.No.14803/2010.

8. The arguments advanced by Mr.P.K.Rajagopal, learned counsel for the petitioners and by Mr.R.Rajesh Kumar, learned counsel for the respondent are heard. The copy of the impugned order and the copies of the relevant documents produced by both the parties in the form of typed set of papers are also taken into consideration.

9. The first and foremost contention of the learned counsel for the petitioners is that the allegations made in the plaint do not spell out a cause of action for the respondent to maintain the suit and that hence the plaint is liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure. Taking the court through various averments made in the plaint, the learned counsel for the petitioners argued that the entire plaint did not spell out a cause of action for seeking damages against the petitioners herein and that the learned trial judge, without properly appreciating the pleadings incorporated at the plaint and without correctly considering the scope of Order VII Rule 11(a) of the Code of Civil Procedure, passed the impugned order dismissing the petition filed by the petitioners herein.

10. On the other hand, it is the contention of the learned counsel for the respondent that though the grievance of the petitioners was against the husband of the second petitioner, the respondent was unnecessarily dragged into the picture by making an averment that he used unparliamentary words against the first petitioner when he approached the husband of the second petitioner to request him to pay a visit to the ailing second petitioner and her child.

11. As rightly pointed out by the learned counsel for the petitioners, even if it is assumed that the 2nd petitioner made imputations against the respondent/plaintiff, the plaint does not contain necessary averments as to in what way his reputation was lowered, excepting the fact that the respondent had to obtain an order of anticipatory bail to avoid arrest in the criminal case registered based on the complaint of the second petitioner. It is the further contention of the learned counsel for the petitioners that the respondent himself admitted in categorical terms that the complaint did not contain any imputation against him attracting the penal provision for which criminal case came to be registered, but still the police erroneously arraigned him as one of the accused and that the said admission itself will make it clear that the plaint does not spell out a cause of action for the relief sought for. The following excerpts from the plaint will support the case of the petitioners:-

" The plaintiff and his brother were arrested on 22.07.2009 on the basis of the false complaint given by the 2nd defendant and remanded in Central Prison, Puzhal. The plaintiff submits the defendants have given a complaint and there is no averment in the complaint against this plaintiff but the police without investigation filed a case against the plaintiff under Section 498-A, 406,

494 and 506(ii) and Section 4 and 5 of the Dowry Prohibition Act."

12. In the paragraph containing cause of action it has been stated that frivolous complaint was given by the second petitioner at the instigation of the first petitioner on 22.07.2009 against the respondent's brother and the respondent, alleging that the respondent's brother was demanding dowry from the second petitioner and due to the mental tension caused by the respondent's brother, the second petitioner set herself on fire after pouring kerosene over her body.

13. A proper consideration of the above said averments found in the plaint will make it clear that the plaint averments are not enough to spell out a cause of action for suing the petitioners for damages for the alleged commission of the tort of defamation. Furthermore, the filing of the suit, claiming damages to the tune of Rs.10,00,000/- for the respondent, his brother and his family members who were facing the criminal trial will make it clear that the suit itself has been filed as an abuse of process to escape from the criminal prosecution and also to make the second petitioner to come to terms in the matrimonial cause that is pending before the Family Court at Chennai. If every complainant, who lodges a

complaint with the Law Enforcing Agency for imputation against the persons accused are to face civil cases for defamation on the premise that the imputations, according to the accused, are false, many people fearing such actions on the part of the accused, may not come forward to lodge a complaint to the Law Enforcing Agency. When an imputation has been made in a complaint made to the Law Enforcing Agency with the belief that such Agency would take criminal action against the persons against whom such imputation are made, the same will provide a valid exception taking such act outside the scope of tort of defamation. Besides, the lodging of the complaint with the police could not be considered to be a publication of a defamatory statement. If at all any wrong is committed by lodging a false complaint with the police and thereby setting the criminal law in motion, it may amount to malicious prosecution, for which action can be taken only after the disposal of the criminal case, wherein a specific finding shall be given to that effect.

14. The learned trial judge, had not chosen to take into consideration all the above said aspects. Had he taken into consideration all the above said aspects and applied the provisions of law found in Order VII Rule 11(a) of the Code of Civil Procedure

properly to the facts of the case, he ought to have allowed the petition for rejection of the plaint. Unfortunately, the learned trial judge has done the opposite. Hence, this court does have no hesitation in coming to the conclusion that the order of the trial court, which is impugned in this revision, cannot be sustained and there is every justification for this court to interfere with the same and set aside the same in exercise of its power of superintendence under Article 227 of the Constitution of India.

In the result, the civil revision petition is allowed. The order of the learned Addl. District and Sessions Judge, Fast Track Court No.IV, Chennai dated 12.11.2011 made in I.A.No.193/2011 in O.S.No.14803/2010 is set aside. I.A.No.193/2011 shall stand allowed with the result that the plaint in O.S.No.14803/2010 shall stand rejected. However, there shall be no order as to cost in the revision. Consequently, the connected M.P.No.1 of 2012 is closed.

09.01.2015

Index : Yes
Internet : Yes
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To
The 18th Additional Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

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