

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 05.12.2016

Judgment pronounced on : 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.48 of 2011

Ashok Kumar

.. Plaintiff

Versus

1.Prithviraj

2.Lakshminarayan

..Defendants

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of O.S. Rules r/w Order VII, Rule 1 of CPC, praying for a judgment and decree:

- a) for a sum of Rs.35,00,000/- with further interest at the rate of 12% p.a. from the date of the plaint till the date of realisation;
- b) For costs of this suit.

For Plaintiffs : Mrs.J.Selvaraja

For Defendants : Set Ex-parte

JUDGMENT

The suit has been filed for claiming of damages a sum of Rs.35,00,000/- with further interest at the rate of 12% p.a. from the date of the plaint till the date of realisation.

2. The brief facts of the plaintiff's case are as follows:

i) The plaintiff is a leading business man, active politician, journalist and social worker working for the upliftment of his community. He is heading many social organizations espousing the cause of the poor and downtrodden people and he is also an income tax assessee.

ii) During the month of May 2009, the first defendant called the plaintiff over phone and told him go over to the Flower Bazaar Police Station. The plaintiff came to the Police Station and he came to know that one Akash Khan lodged a complaint against both the defendants for abducting and wrongfully confining besides extorting. There it came to light that the said Akash Khan took loan from the 1st defendant and repaid more than Rs.3.5 crores for the last 10 years. However, the defendants discarded the same and therefore a compromise was arrived in the Police Station, where the Akash Khan again agreed to pay a sum of Rs.30 lakhs at the rate of Rs.1 lakh per month for the next 30 months, which was reduced

in writing in a Non Judicial Paper.

iii) In a week later, the 1st defendant complained to the plaintiff that the compromise amount is too low and a minimum of Rs.90 lakhs has to be secured from the Akash Khan and also insisted the plaintiff to use his influence to get the sale deed in respect of immovable property from the said Akash Khan. However, the plaintiff turned down the request of the 1st defendant and dis-continued all the connection with him.

iv) Agitated over the same, the defendants started propagating that the plaintiff has took a sum of Rs.10 lakhs from Akash Khan and took sides. Such statement was made and also spread among the relatives and friends of the plaintiff. Not stopping with that, the 1st defendant has lodged a false complaint against plaintiff on 08.09.2009 in Pondy Bazaar Police Station, Chennai, with false allegations. Similarly, he gave another complaint on 01.10.2009 in Flower Bazaar Police Station. The above complaints proved to be false, after due enquiry. Again, the 1st defendant forwarded the complaint to the Commissioner of Police, harming the reputation of the plaintiff. The attitude and conduct of the defendants lowered the image of the plaintiff in the eye of his relatives and friends. The defendants are facing various Criminal Cases. The attitude of the defendants caused mental agony. Hence, the plaintiff filed the suit for damages.

3. The defendants remained ex-parte. The plaintiff examined himself as PW1 and marked Exs.P1 to P4.

4. The learned counsel appearing for the plaintiff has submitted that the plaintiff is an income tax assessee. Ex.P1 is the income tax returns for the assessment year 2008-09. Ex.P2 is the legal notice sent on 04.10.2009 to the defendant. The legal notice sent by the plaintiff is refused by the defendants, which is marked as Exs.P3 & P4. The conduct of the defendants in remaining ex-parte clearly proves the case of the plaintiff. Hence, he prayed for the judgment and decree.

5. Admittedly, the defendants were set ex-parte, they have not contested the suit. Be that as it may, in the suit for damages, it is for the plaintiff to establish how his image was lowered in the eye of public and what was the nature of the damages actually suffered due to such alleged defamatory statement made by the defendants. It is to be noted that eventhough the plaintiff has alleged that there were 3 complaints filed against the plaintiff by the 1st defendant with false allegations, none of the alleged complaint had been proved before this Court. No piece of paper whatsoever is filed to substantiate his pleadings. It is further to be noted that to establish the alleged defamatory statements in front of the relatives

and friends, none of them has been examined. Even from the pleadings of the plaintiff, it could be seen that the plaintiff in fact was in the habit of going to the Police Station and make the compromise in money claim between the parties. The pleadings in the plaint clearly disclose the fact that in fact, he has obtained some documents from Akash Khan for a sum of Rs.30 lakhs. Such conduct itself is against the law since no one can be forced to write such document, particularly, in the Police Station. The plaintiff himself pleaded in his plaint about such things. Therefore, merely because the plaintiff and defendants had such transaction, the same cannot be construed as lowering the reputation of the plaintiff. In any event, no piece of paper whatsoever is available on record to show that the plaintiff's reputation was lowered in the eye of public. Further, to prove the alleged false complaints made by the defendants, no documents whatsoever were filed to claim the damages for making such defamatory allegations. In the absence of proof of malice and wrongful act on the part of the defendants, plaintiff cannot succeed in claiming damages. Further ill will against plaintiff which resulted in a wrongful act with intention, has not been substantiated by the plaintiff. Even assuming that any complaint whatsoever is filed by the defendants in a transaction relating to compromise in the Police Station, this Court is of the view that such complaint itself by no stretch of imagination, would amount to defamation.

6. It is settled proposition of law that without proof of such damages, no action lie to claim damages. The plaintiff is required to prove not only the general damages, but also the special damages due to such alleged imputations. Therefore, this Court is of the view that in the absence of any evidence to show that the reputation of the plaintiff was lowered in the eye of the public particularly, through friends, merely on the basis of the Ex.P1 that he was an income tax assessee at the relevant time, the alleges damages cannot be presumed. Evidence and documents adduced on the side of plaintiff are not sufficient to hold that the plaintiff has suffered damages due to the alleged imputations made by the defendants. None of the so-called friends and relatives or any public is examined by the plaintiff to show that such act really happened. In the absence of any evidence to prove damages to the tune of Rs.35 lakhs, plaint has to fail.

7. Accordingly, this Court holds that the plaintiff has not proved his case for awarding any damages. Hence, the suit is liable to be dismissed. Accordingly, the suit is dismissed. No Costs.

14.12.2016

pvs

N.Sathish Kumar, J.,
pvs

Pre-delivery judgment in
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