

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Cr1.R.C.No.644 of 2010

S.Varadhan

... Petitioner

Vs.

P.Arjunan

... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the conviction and fine imposed on the petitioner in S.T.C.No.331 of 2006 on the file of the Judicial Magistrate, Harur, Dharmapuri District by judgment dated 28.07.2009 confirmed by the Principal District and Sessions Judge, Dharmapuri in C.A.No.18/2009 by judgment dated 21.12.2009.

For Petitioner : Mr.B.Vasudevan

For Respondent : No Appearance
(Notice served)

ORDER

This revision challenges the judgment of learned Principal District and Sessions Judge, Dharmapuri, passed in C.A.No.18/2009 on 21.12.2009 confirming the judgment of learned Judicial Magistrate, Harur, Dharmapuri in S.T.C.No.331 of 2006, on 28.07.2009.

2. Petitioner, who is the Editor, Printer and Publisher of Kalaikathi News Paper and another faced trial for offences u/s.500, 501 and 502 IPC in S.T.C.No.331 of 2006 on the file of learned Judicial Magistrate, Harur, Dharmapuri District. The prosecution case was that the complainant was a retired Head Master. After his retirement, he had joined the Desiya Moorpokku Dravida Kalagam towards rendering public service. The complainant contested for the post of M.L.A., Harur. While so, on 01.05.2006, the petitioner, towards defaming the complainant, has published news stating that the complainant has expressed his willingness to withdraw from the election if the opposite

party was ready to pay him enough. Aggrieved thereby, the complainant caused a legal notice dated 03.05.2006 to the first accused stating that the news article was defamatory and sought an apology in the next edition. Neither reply nor apology was tendered. Hence, the complainant has preferred a complaint under Section 200 Cr.P.C. The case was tried in S.T.C.No.331 of 2006 on the file of learned Judicial Magistrate, Harur. The trial Court under judgment dated 28.07.2009, acquitted the second accused and convicted the petitioner for offences u/s. 499 and 500 IPC and imposed fine of Rs.2,000/- i/d 1 month S.I. On appeal in C.A.No.18 of 2009 by the learned Principal District and Sessions Judge, Dharmapuri under judgment dated 21.12.2009, the sentence imposed on him was confirmed. There against, the petitioner has filed the present revision.

3. Heard learned counsel for petitioner. Though respondent/complainant has been served, there is no appearance on his behalf.

4. Learned counsel for petitioner drew the attention of this Court to the evidence of complainant/P.W.1 to the effect that there was no prior dispute between the accused persons, this petitioner/A1 was a stranger to him and importantly that this petitioner had no intention to defame him. Learned counsel relied upon decision of this Court in S.D.Premchand v. M.C.Balu [1986 L.W.(Crl.) 179].

5. In S.D.Premchand v. M.C.Balu [1986 L.W.(Crl.) 179], this Court has observed thus:

"In the case of a printer, it is essential that he should have the mens rea defined in the section, namely, knowledge or good reason to believe that the matter printed is defamatory of some person. Merely because the respondent has printed the matter in Exhibit P-1, he may not be primarily responsible in connection with the defamation. The evidence adduced in the case does not show that the respondent has the required mens rea. In the absence of evidence proving the mens rea on the part of the respondent, the respondent cannot be convicted for the offence charged. The order of acquittal, has, therefore, to be upheld on that ground, though not for the reason given by the trial Magistrate. For theses reasons this appeal against the order of acquittal fails and is dismissed."

As an editor, the responsibility for a publication would be more than one who merely is a printer. However, when the complainant

accepts that the petitioner had no intention to defame him, the charges levelled against him cannot be sustained.

In the result, this Criminal Revision shall stand allowed. The judgment of learned Principal District and Sessions Judge, Dharmapuri, passed in C.A.No.18/2009 on 21.12.2009 confirming the judgment of the learned Judicial Magistrate, Harur, Dharmapuri in S.T.C.No.331 of 2006 shall stand set aside. Petitioner shall stand acquitted from all charges. Fine amount, if any, paid by the petitioner shall be refunded.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Principal District and Sessions Judge, Dharmapuri.
2. Do Through The Chief Judicial Magistrate, Dharmapuri.
3. The Judicial Magistrate, Harur, Dharmapuri District.

+lcc to Mr.B.Vasudevan, Advocate, S.R.No.712

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LRS (CO)
CA(19/02/2016)

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