

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.03.2016

Pronounced on : 18-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition Nos. 2741 and 2742 of 2015
and
WMP Nos. 7069 to 7072 of 2016

B. Bharathi ... Petitioner in both the
writ petitions

Versus

1. Mr. K. Rajendiran
Editor cum Publisher
Kalugu Reporter Tamil Fortnightly Magazine
No.2/2/2, 1st Floor
Bajanai Koil 2nd Street
Choolaimedu
Chennai - 600 094

2. M/s. Kalugu Reporter (Tamil Fortnightly)
represented by its Owner cum Publisher
Mr. K. Rajendiran
No.2/2/2, 1st Floor
Bajanai Koil 2nd Street
Choolaimedu
Chennai - 600 094

... Respondents in WP No. 2741

1. Mr. E.J. Ramachandran
Editor
Sinthanai Seithigal (Tamil Weekly)
No.3, Mangalam Road Post
Uruvaiyur, Villianur
Pondicherry - 605 110

2. Messers. Sinthanai Seithigal (Tamil Weekly)
represented by its Owner and Editor
Mr. E.J. Ramachandran
No.3, Mangalam Road Post
Uruvaiyur, Villianur
Pondicherry - 605 110

.. Respondents in WP No. 2742

Regd.No.PONTAM0036/32/1/2009-TC

WP No. 2741 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the first and second respondents to pay a compensation of not less than Rupees Fifty Lakhs to the petitioner for gross violation of his rights and for subjecting him (senior citizen and a college teacher) and his family members to harassment, mental agony, suffering not explainable by words, intimidation and for denying him many rights.

WP No. 2742 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the first and second respondents to pay a compensation of not less than Rupees Fifty Lakhs to the petitioner for gross violation of his rights and for subjecting him (senior citizen and a college teacher) and his family members to harassment, mental agony, suffering not explainable by words, intimidation and for denying him many rights.

For Petitioner : Mr. B. Bharathi
Petitioner in Person
in both the Writ Petitions

For Respondents: Mr. A. Gokulakrishnan for R1 &
R2 in WP.2741/15
Mr.K.Sasindran for R1 & R2 in
WP.2742/15

COMMON ORDER

The petitioner, who is appearing as Party in person, seeks for issuance of a Mandamus as against the respondents in these two writ petitions directing them to pay compensation of not less than Rupees Fifty Lakhs to him for having committed gross violation of his rights and for subjecting him and his family members to harassment, mental agony etc.,

2. When the writ petitions were filed, a preliminary question as regards maintainability was raised by the Registry. The writ petitions were therefore posted before this Court for considering the question of maintainability. By an order dated 29.01.2015, this Court, after elaborate consideration of the submissions made by the petitioner/party-in-person, directed the Registry to number the writ petitions and listed the same for admission. However, it was made clear that the order will not foreclose the right of the respondents to agitate the question of maintainability of the writ petition.

3. For the purpose of disposal of these two writ petitions, certain facts are necessary to be mentioned. The petitioner was employed as an Assistant Professor in the Department of Chemistry at Tagore Government Arts College,

Lawspet, Puducherry and he had a teaching experience of 37 years with unblemished record of service. The petitioner also held the post of President of Tagore Arts College Teachers' Association, Pondicherry since January 2013. The grievance of the petitioner is that the respondents in both the writ petitions have published certain derogatory news report about the petitioner in their magazine, the contents of which are per se derogatory, malafide and without any truth. According to the petitioner, the news articles have been published with a view to cause harm to the reputation and goodwill earned by the petitioner. The petitioner therefore sent a notice dated 09.05.2013 to the respondents in WP No. 2741 of 2015 calling upon the respondents to submit their explanation. A reply dated 23.05.2013 by the respondents in WP No. 2741 of 2013 denying the allegations inter alia contending that the news report published by them are on the basis of statement recorded from the staff and students of the college and therefore it was contended that the news report is on the basis of authentic information received by them. A similar notice was sent on 09.05.2013 to the respondents in WP No. 2742 of 2015. Thereafter, the petitioner has come forward with these two writ petitions for the reliefs mentioned above.

4. The respondents in WP No. 2741 of 2015 have filed a counter affidavit opposing the relief sought for in the writ petition. According to the respondents, a writ petition against private individuals is an abuse of process of law. It is well settled principle that factual allegations cannot be looked into by this Court while adjudicating a writ petition filed under Article 226 of The Constitution of India. Therefore, the respondents prayed for dismissal of the writ petition.

5. I heard the petitioner-in-person as well as the learned counsel appearing for the first respondent in both the writ petitions at length. I had examined the material records produced in the typed set of papers.

6. The question that arise for consideration in these writ petition is as to whether this Court, in exercise of the powers conferred under Article 226 of The Constitution of India can issue a Mandamus directing the respondents to pay compensation to the petitioner for the mental agony and discomfort complained by him.

7. The maintainability of a writ petition under Article 226 of The Constitution of India has been dealt with by this Court as well as the Honourable Supreme Court in catena of decisions.

8. The petitioner-in-person relied on the order dated 16.08.2012 passed by the Madurai Bench of this Court in WP (MD)

No. 6834 of 2007 wherein this Court awarded compensation for the death of the petitioner's husband due to electrocution after finding negligence on the part of the respondents/Electricity Board. In the present case, the petitioner seeks compensation against the respondents for having published a derogatory publication, which the respondents deny. Therefore, this decision will not lend any support to the case of the petitioner.

9. The petitioner-in-person also relied on the order passed by the Delhi High Court in the case of Abe vs. Commisisoner of Police and others dated 05.10.2013 to contend that when the fundamental right of the petitioner is infringed, to enforce the same, this Court can issue a Mandamus in exercise of powers under Article 226 of The Constitution of India. In that case before the Delhi High Court, the contents of a first information report relating to a case of sexual abuse was disclosed to the media for which the petitioner therein sought for compensation. The Delhi High Court, in such circumstances, finding that the respondents have abused their power and committed gross negligence and breached the fundamental right of privacy of the petitioner's daughter awarded compensation. In this case, such a situation has not arisen and therefore, this decision will not lend any support to the petitioner.

10. The petitioner in person also relied on the order dated 21.03.2015 passed by this Court in WP No. 4120 of 2005 (Zee Television Limited vs. Board of Control for Cricket in India (BCCI) and two others). In that writ petition, in para No.33, it was held that when a private body exercise public function, even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the constitution by way of a Writ Petition. In this case, the respondents are not discharging any public body so as to bring them within the fold of State as contained in Article 12 of The Constitution of India. Therefore, this decision will not be applicable to the facts of this case.

11. At the outset, this Court is not expressing any opinion as regards the contents of the news items. According to the petitioner, the contents contained in the news item published by the respondents are per se derogatory and not based on truth. According to the respondents, they have published the news item after obtaining statement from the persons associated with the news items and the news items contained authentic and credible information. While so, whether this Court can conclude that the news item published by the respondents are derogatory and award compensation to the petitioner. Admittedly, there are disputed questions of fact for adjudication in these writ petitions. Those disputed questions of fact cannot be gone into and adjudicated before this Court. First of all, for awarding compensation, this Court has to come to a conclusion that the

news report published by the respondents is not based on correct material particulars. For such adjudication, it is necessary that the parties have to let in evidence and the evidence so let in has to be cross-examined. Further, in support of the oral testimony, documentary evidence has to be marked. Only upon examination of the witnesses and after recording their statements, the Court could come to a just and necessary conclusion. In such circumstances, the present writ petitions are not maintainable. The petitioner is not remediless and he can very well invoke the alternative relief available to him under law.

12. It is to be noted that this writ petition has been filed as against two private individuals. The writ petition as against the private individuals is not maintainable and the relief sought for by the petitioner cannot be adjudicated under Article 226 of The Constitution of India. Further, the claim of the petitioner for payment of compensation cannot be adjudicated by this Court. First, the petitioner has to establish that the respondents, by reason of the offending publication, has tarnished his image and reputation with an ill-motivated design. This the petitioner can prove only by letting in evidence before the competent Civil Forum. When the respondents are not discharging any public functions or they are instrumentalities of the Government, the writ petitions filed against them are not maintainable. Therefore, I hold that the writ petitions filed against the respondents herein are not maintainable. The writ petitions fail and therefore they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. It is made clear that the dismissal of these writ petitions will not foreclose the right of the petitioner to pursue his remedy before the appropriate forum.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

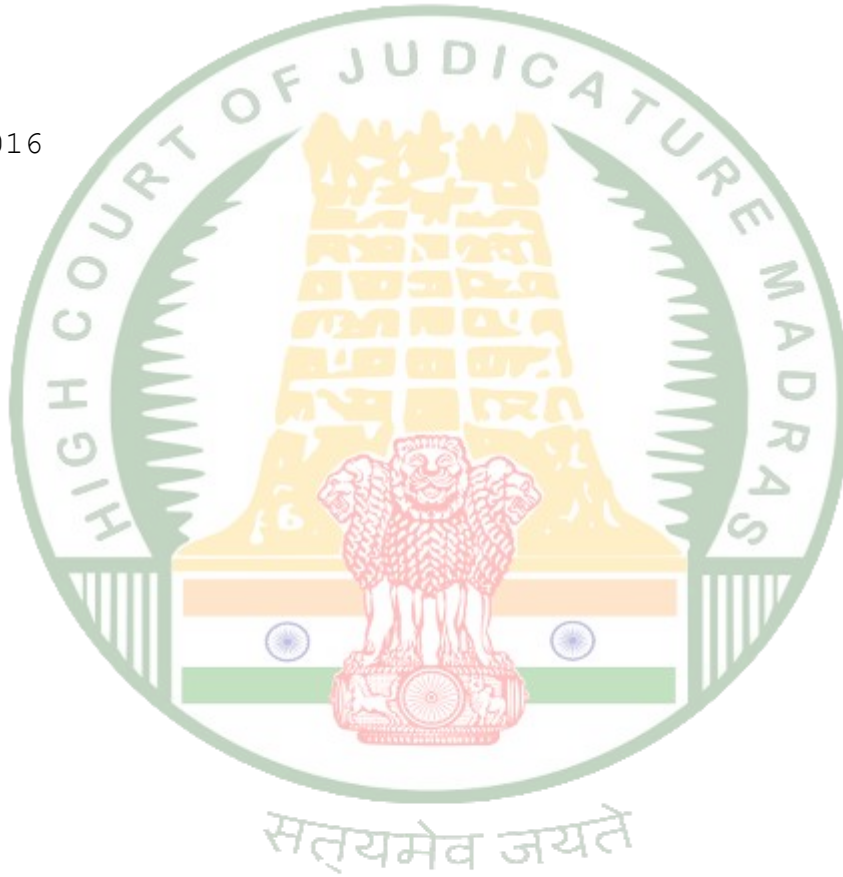
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+1 cc to Mr.A.Gokulakrishnan Advocate sr.24752
+1 cc to Mr.K.Sasindran Advocate sr.24751

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