

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.10.2017
CORAM:
THE HON'BLE MR.JUSTICE P.N.PRAKASH
Crl.A.706 of 2016

V.K.Pattabiraman

..Appellant/Complainant
Vs.

K.Sambamurthy

..Respondent/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment passed by the learned Additional District Judge, Vellore in Criminal Appeal No.267 of 2011 dated 25.01.2016 by reversing the judgment passed by the learned Judicial Magistrate No.1, Vellore in C.C.No.190 of 2009 dated 18.01.2011.

For Appellant : Mr.G.Prem Anand Rao
For Respondent : Mr.P.Mani

J U D G M E N T

For the sake of convenience, the appellant and the respondent will be referred to as complainant and accused.

2. The complainant is the elder brother of the accused. The complainant filed a suit in O.S.No.593 of 2007 before the Additional District Munsif at Vellore against the accused for a declaration that the Settlement Deed dated 30.07.1966 registered as document no.3059 of 1966 at SRO Vellore is null and void. The accused entered appearance in O.S.No.593 of 2007 and filed his written statement, wherein at paragraph 5, it was stated as follows:

"The plaintiff is not working at Vellore and he was roaming here and there and also doing so many ugly things and he never paid single pie to his father or his family."

3. Similarly, in paragraph 10 of the written statement filed by the accused, it was stated as follows:

"The defendants submits that there was not mentioned about the plaintiff's son except the plaintiff roaming from Velappadi or some other places with his mischievous friends and also wantonly done from unwanted things to give bad name his family." Further he never done any job till he vacated from Vellore. Now also the defendant wants to know what the plaintiff is doing at Chennai, but his wife

and children are in one place, there was also non co-operation between the wife and children and himself."

4. Aggrieved by the said averments, the complainant filed a private complaint in C.C.No.190 of 2009 before the Judicial Magistrate No.I, Vellore for an offence under Section 499 r/w 500 IPC against the accused. Before the trial Court, the complainant examined himself as P.W.1 and marked two exhibits. The accused examined himself as D.W.1 and marked five exhibits. After considering the evidence adduced by both sides, the trial Court convicted the accused for the offence under Section 500 IPC and sentenced him to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment. Challenging the conviction and sentence, the accused filed CrI.A.No.267 of 2011 before the Sessions Court, Vellore. The learned I Additional District and Sessions Judge, Vellore, by judgment dated 25.01.2016 in CrI.A.No.267 of 2011, reversed the trial Court judgment and acquitted the accused, aggrieved by which, the complainant is before this Court.

5. Heard the learned counsel for the complainant and the learned counsel for the accused.

6. At this juncture, it may be apposite to quote the following passage from the judgment of the Supreme Court in K.Prakashan v. P.K.Surenderan [(2008) 1 SCC CrI.200]:

"22. It is now trite that if two views are possible, the appellate court shall not reverse a judgment of acquittal only because another view is possible to be taken. The appellate court's jurisdiction to interfere is limited. (See M.S. Narayana Menon [(2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] and Mahadeo Laxman Sarane v. State of Maharashtra [(2007) 12 SCC 705 : (2007) 7 Scale 137] .) "

Thus, from the above it is clear that if there are two views possible, then the Court should not reverse the judgment of acquittal.

7. In this case, the offending passages in the written statement filed by the accused is not per se defamatory within the meaning of Section 499 IPC. Though the averments made may be out of context, yet, for mulcting criminal liability under Section 499 r/w 500 IPC, the averments should be per se defamatory and it should lower the moral or intellectual character of the person, in the estimation of others. In this case, the accused wanted to show to the civil Court that the complainant was not taking care of the family and only in those circumstances, the impugned Settlement Deed was registered,

under which, the complainant was not given any share. In support of the allegation that the complainant was leading a wayward life, the accused has marked Ex.Ps.D1 to D5, which are letters written by the female siblings, wherein they have taken serious exception to the conduct of the complainant. These letters have been appreciated by the I Appellate Court while reversing the conviction and sentence imposed by the trial Court. In such view of the matter, this Court is of the opinion that this is a not a fit case warranting interference by this Court.

In the result, this appeal stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Additional District Judge, Vellore.
- 2.The Judicial Magistrate No.1, Vellore.

+1 cc to M/s.P.Mani Advocate sr 71584

+1 cc to M/s.G.Prem Anand Rao Advocate sr 72049

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Cr1.A.No.706 of 2016

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