

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2017

Pronounced on : 14.03.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.O.P.No.22622 of 2016

in

Crl.A.Sr.No.25424 of 2016

N.R.Babulal ... Petitioner/Appellant/Complainant

Vs.

N.S.Lavakumar ... Respondent/Accused

Prayer: Petition filed under Section 378(4) of the Criminal Procedure Code, praying to grant leave to file the above appeal against the Accused/Respondent from the orders of the Judicial Magistrate-III, Salem dated 04.05.2016 in C.C.No.165 of 2013.

For Appellant : Mr.S.Kalyanaraman

For Respondent : No appearance

ORDER

The Petitioner/Appellant/Complainant has preferred the instant Criminal Original Petition praying for 'Grant of Special Leave' to prefer an Appeal before this Court as against the Order/ Judgment of acquittal passed by the Learned Judicial Magistrate-III, Salem in C.C.No.165 of 2013 dated 04.05.2016.

2.The Respondent/Accused had received the notice sent through Court on 09.11.2016. However, there is no representation on his behalf either in person or through Learned Counsel. Therefore, this Court deals with the present Criminal Original Petition on merits.

3.Earlier, the trial Court, while passing the impugned Judgment of acquittal dated 04.05.2016 in C.C.No.165 of 2013 at paragraph 22, had, inter alia, observed that '.... it is clear that in the petitions dated 29.03.2013 and 08.05.2012 enquiry was not yet completed and the said petitions have not reached

the stage of finality and pending before the concerned authorities who have lawful authority over the complainant with respect to the subject-matter of the accusation. Once the accusation is found to be false after proper enquiry by the said authorities, then it can be held as that it was not made in good faith. Since the above said authorities have not yet passed any order on the basis of the complaints or petition in Ex.P2, this complaint filed by the complainant is a premature one' and finally dismissed the complaint and acquitted the Respondent/Accused under Section 256(1) Cr.P.C.

4.The Learned Counsel for the Petitioner/Appellant/Complainant urges before this Court that the trial Court had committed an error in acquitting the Respondent/Accused in respect of the charge under Section 500 I.P.C. In this regard, it is a stand of the Petitioner/Appellant that when the Petitioner/Appellant through his complaint had established the charge against the Respondent/ Accused beyond reasonable doubt, the impugned Order/Judgment of acquittal passed by the trial Court in C.C.No.165 of 2013 dated 04.05.2016 is clearly unsustainable in the eye of Law.

5.The Learned Counsel for the Petitioner/Appellant submits that Ex.P2 is copy of the Petition dated 29.03.2013 and 08.05.2012 (received by the Petitioner/Appellant under Right to Information Act from Deputy Commission of Police) was in 'public domain' and amounts to publication. However, this vital aspect of the matter was not appreciated by the trial Court in a proper perspective.

6.The Learned Counsel for the Petitioner/Appellant brings it to the notice of this Court that the finding of the trial Court that the 'very complaint is pre matured' as the enquiry to the petitions given by the Respondent/Accused had not attained finality, is not tenable on facts.

7.Advancing his arguments, the Learned Counsel for the Petitioner/Appellant contends that the Respondent/Accused in Ex.P2 had asserted that the information furnished by him in the petition was true, then, he ought to have disclosed the basis on which he made that assumption and to show those statements to be true ought to have produced evidence in support thereof.

8.The Learned Counsel for the Petitioner/Appellant takes a strenuous plea that the Respondent/Accused in Ex.P2 had asserted facts and that the Petitioner/Appellant need not wait for the completion of enquiry and in as much as the Respondent/Accused had made certain assertions of facts in Ex.P2, the same cannot be an excuse for him to escape from the clutches of Law.

9.Lastly, it is the submission of the Learned Counsel for the Petitioner/Appellant that the Respondent/Accused had failed to discharge the onus of establishing that the statements made by him are in good faith and Exceptions 8 to Section 499 I.P.C. stands attracted to the present case.

10.At this stage, this Court, on perusal of the contents of the complaint in C.C.No.165 of 2013 on the file of the trial Court, pertinently points out that the Petitioner/Appellant had averred that he is carrying on business in silver and is very popular in silver business and a very good reputation in his business article and further that, he is commanding respect in and around the locality where he is having his business. Further, the Petitioner/Appellant had averred in his complaint that the Respondent/Accused had committed fraud upon and criminally misappropriated his pure silver weighing about 24,800 grams worth about Rs.15 lakhs and hence, the Complainant filed a complaint before the Inspector of Police against the Respondent/Accused and two of his relatives viz., Vinothkumar and NS.Jayachandran.

11.It is the version of the Petitioner/Appellant that to find out the truth or falsity of his complaint, the Inspector of Police called the Respondent/Accused and his relatives for enquiry and later, the Inspector of Police, Shevapet registered the complaint in Selam Shevapet P.S. Crime No.557 of 2012 under Section 420 I.P.C. on 25.04.2012 and the Respondent and his relatives had moved for an anticipatory bail in Crl.O.P.No.11105 of 2012 and on 04.05.2012 this Court granted an anticipatory bail and the Accused surrendered before the Court and executed upon with necessary sureties.

12.Besides the above, the Petitioner/Appellant, in his complaint, had also mentioned that on 17.05.2013 the Inspector of Police, Shevapet, Salem required him to come to the Police Station for examining him in regard to the petition sent to the Chief Minister & Director General of Police and Special Officer, CM's Grievance Cell, Chennai by the Respondent/Accused against the Commissioner and some of the police officers. Accordingly, the Petitioner/Appellant went to the Shevapet Police Station and met the Inspector of Police viz., Safiullah along with Gopinath and Eswarar.

13.Continuing further, the plea of the Petitioner/Appellant is that the Inspector of Police informed him and his friends that the Respondent/Accused sent petitions to Chief Minister & Higher Police Officers making allegations against him and other police officers and the Complainant and read out the petitions. By reading out the contents of the petition, the Inspector of Police, brought the allegations and accusations levelled against

the Petitioner/Appellant (Complainant) to the public and made known to him and his friends.

14. Apart from that, the case of the Petitioner/Appellant is that the Inspector of Police showed him the petition sent by the Respondent/Accused to the Commissioner of Income Tax, Salem; Commissioner of Police, Salem City and other police officers and read out the contents of the petition. In fact, the entire matters mentioned in the petition dated 08.05.2012 are false and per se defamatory.

15. The Learned Counsel for the Petitioner/Appellant submits that the imputations mentioned in the petition sent by the Respondent/Accused to the Chief Minister, Special Officer, CM's Grievance Cell and Director General of Police, Chennai by itself had harmed the reputation of the Complainant and in reality, the said imputations are defamatory and made known to others.

16. The Learned Counsel for the Petitioner/Appellant takes a stand that because of the imputations levelled by the Respondent/Accused in the petitions, the Petitioner/Appellant/Complainant's moral character was lowered and further that, a harm to the reputation of a person is undoubtedly a civil wrong, giving rise to claim for 'Damages' and also, a criminal offence.

17. Therefore, it is represented on behalf of the Petitioner/Appellant that the Petitioner had filed the complaint in C.C.No.165 of 2013 on the file of the Learned Judicial Magistrate- III, Salem, whereby and whereunder, a prayer was made for taking cognizance of the offence and for issuance of process to the Respondent/Accused in respect of an offence under Section 500 I.P.C.

18. It is to be borne in mind that the gist of the offence of 'Defamation' lies in the dissemination of the harmful imputation. Admittedly, Section 499 I.P.C. has four explanations and ten exceptions. Really speaking, the explanations enlarge the scope of the Section 499 I.P.C. whereas the exceptions take outside the ambit of application of the Section.

19. It is to be noted that right to reputation is an aspect of right to life of a citizen under Article 21 of the Constitution of India. No wonder, 'Reputation' is the jewel of a person in his crown and added further, it is the sweet of precious life of a 'Homo Sapien'. The term 'Reputation' is based on the attributes which others believe one to possess. Whereas the word 'Character' depends on the attributes possessed by an individual.

20. Dealing with the aspect of Eighth Explanation to Section 499 I.P.C., it is to be pointed out that it is just enough if an Accused establishes that on reasonable grounds he believed an accusation to be true and in that plea, he bona fide made a complaint to the authorities concerned. Also, an Accused must substantiate his plea of 'Good faith' to be entitled to the protection of Exception to Section 499 I.P.C., but the degree of proof to be furnished by an Accused is like that of civil proceedings and not proved beyond reasonable doubt. It is to be remembered that 'good faith' would require a logical infallibility.

21. It is to be now well settled that no question of fair comment can arise in respect of a statement held to be libellous and positively false. Also that, no one can cause about fire brands and death and then escape from being responsible by saying that he was in sport as per decision *Bandey Surendra Nath Sinna V. Bageshwari Pd.* reported in AIR 1961 Patna 164, 166 at page 167.

22. At this stage, this Court relevantly points out the decision *Bira Gareri V. Dulhin Somaria and others* reported AIR 1962 Patna 229 at page 230 wherein it is observed and held as under:

In India giving information to the police of a cognisable offence with the object of setting the law in motion for the police to investigate and institute the case to be tried in a Court of Law is a necessary step to be taken in the conduct of a legal proceeding and statements made in such an information must be absolutely privileged. The mere fact that a final report was submitted in the case, would not make any difference. Judicial proceedings might start or might not. The question as to whether the statement made in an information given to the police of a cognisable offence is absolutely privileged or not would not depend upon the future event of the starting of the judicial proceedings. Even after starting of such proceedings, it may be found that the case was false and that the information was given out of malice. It may well be that if the information is found to be false and to have been actuated by malice, the information is criminally liable for defamation under the Indian law as embodied in S. 499 of the Penal Code or even civilly liable under certain circumstances to pay damages for malicious prosecution but he must be held to enjoy the absolute privilege and protected from civil

liability for defamation on such a statement."

23. In the instant case on hand, the contention of the Petitioner/Appellant is that the contents of Petition dated 08.05.2012 and 29.03.2013 are false one. In this regard, it may not be out of place for this Court to make a relevant mention that the Petitions of the Respondent/Accused dated 08.05.2012 and 29.03.2013 had not attained finality and they are pending. Only when the accusations/averments of the Respondent/Accused in the Petitions dated 08.05.2012 and 29.03.2013 are found to be fault and that too, the complaint of enquiry in the subject matter in issue, one can safely come to the conclusion that the same were not made in good faith. It is not defamation to prefer in good faith, an accusation against an individual to need of those who have lawful authority over him in regard to the subject matter of an accusation. At the same time, it cannot be brushed aside that no plea of good faith can be advanced in respect of a matter which was false within the knowledge of person making it. As such, the said person cannot be claim Exception under Section 499 I.P.C. as per decision Haji Ahmad Ussain V. State reported in 1960 All. 623, 624, 625.

24. Moreover, as on date, when no final orders were passed on the basis of the complaints or petitions of the Respondent/Accused, then, the filing of the complaint by the Petitioner/Appellant/ Complainant in C.C.No.165 of 2013 on the file of the Judicial Magistrate - III, Salem is otiose and premature one. Looking at from that angle, the view taken by the trial Court in dismissing the complaint in C.C.No.165 of 2013 dated 04.05.2016 as a 'premature one' is free from any flaw. As such, the Criminal Original Petition fails.

25. In fine, the Criminal Original Petition is dismissed.

Sd/-

सत्यमेव जयते
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Judicial Magistrate-III,
Salem.

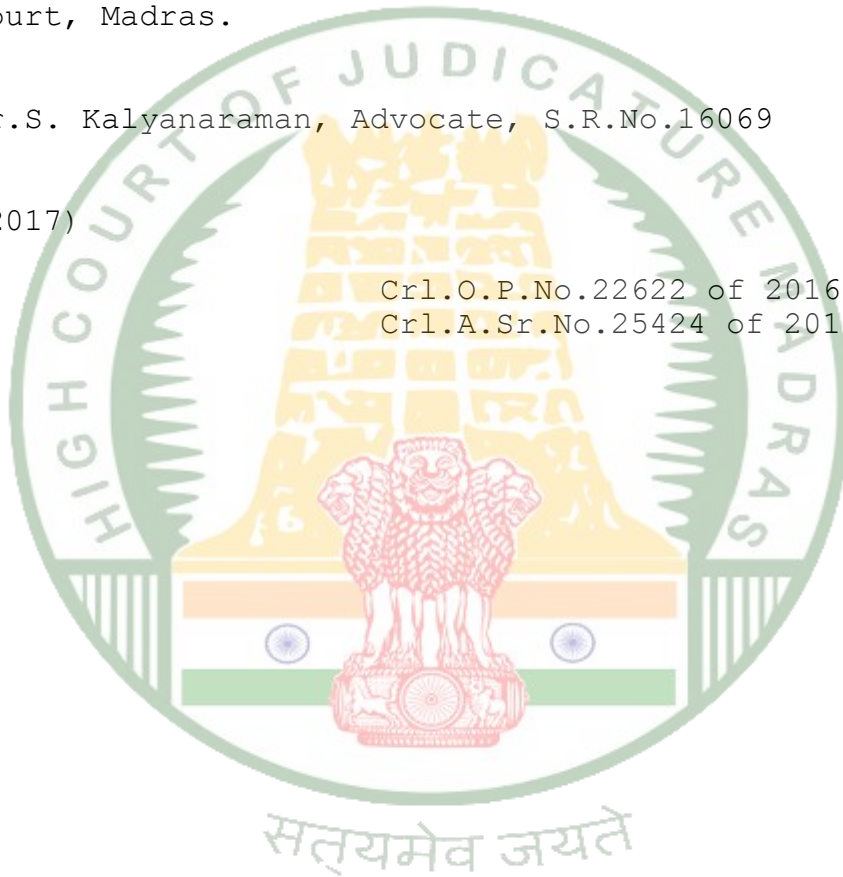
2 do thro the chief Judicial Magistrate Salem

3.The Section Officer,
Records Section,
High Court, Madras.

+1cc to Mr.S. Kalyanaraman, Advocate, S.R.No.16069

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