

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2017

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.O.P.No.27437 of 2016

in

Crl.A.Sr.No.50860 of 2016

Rajmohan ...Petitioner/Appellant/Complainant

Vs

1.Seetha Vedhanayagam

2.Rani

3.Vetriselvi

4.Padmini

5.Nalini

6.Priya

... Respondents/Accused

Prayer: Petition filed under Section 378 (4) Cr.P.C., praying to Grant Leave to the Petitioner to file the above Appeal against the Judgment in C.C.No.98 of 2013 dated 03.10.2016 on the file of the Learned Judicial Magistrate No.II, Ulundurpet.

For Appellant :Mr.D.Bharatha Chakravarthy

For M/s.Sai Bharath & Ilan

For Respondent:Mr.C.Santhosh Kumar

ORDER

Heard the Learned Counsel for the Petitioner/Appellant and the Learned Counsel for the Respondents.

2.The Petitioner/Appellant/Complainant has preferred the instant Criminal Original Petition before this Court seeking 'Grant of Leave' to prefer an Appeal against the Judgment in C.C.No.98 of 2013 dated 03.10.2016 passed by the Learned Judicial Magistrate No.II, Ulundurpet.

3.The trial Court, while passing the impugned Judgment in C.C.No.98 of 2013, on 03.10.2016, at paragraph 36(6), had, among other things, observed that '... between the Complainant (Appellant) and the Accused (Respondents) in the Civil Suit relating to the ownership of property as to whom it belong, the

Judgment is not yet delivered; the Complainant only after establishing his right in the aforesaid Suit (O.S.No.170 of 2013) should have filed the Complaint'. Further, it was to be opined that the complaint was filed in a routine fashion and that too prematurely and ultimately, came to the conclusion that the Petitioner/Appellant/Complainant had not established his charge against the Respondents/Accused beyond all reasonable doubt and found the Respondents 1 to 6/A1 to A6 not guilty and acquitted them under Section 248(1) Cr.P.C.

4. Being dissatisfied with the Judgment of Acquittal passed by the trial Court in C.C.No.98 of 2013 dated 03.10.2016, the Petitioner/Appellant/Complainant has preferred the instant Crl.A.Sr.No.50860 of 2016. Before the said filing of aforesaid Criminal Appeal, the Petitioner has projected the Crl.O.P.No.27437 of 2016 praying for permission in his favour to grant him the Leave to prefer the present Criminal Appeal before this Court.

5. Questioning the Judgment of Acquittal dated 03.10.2016 in C.C.No.98 of 2013 passed by the trial Court, the Learned Counsel for the Petitioner/Appellant contends that the trial Court had committed an error in arriving at a conclusion that the action of the Respondents/Accused do fall within the Exception Nos.1, 9 and 10 of Section 499 I.P.C. In fact, the said conclusion is incorrect in Law and also against the available material evidence on record.

6. The Learned Counsel for the Petitioner/Appellant urges before this Court that the Petitioner/Appellant/Complainant had established his case by examining the witnesses and indeed, the impugned Publication in daily Dinamalar dated 20.05.2013 was widely circulated and read among the persons in locality.

7. The Learned Counsel for the Petitioner takes a plea that the impugned Publication had caused disrepute and in reality, lower the reputation of the Petitioner/Complainant and that apart, the Publication in question was knowingly made by the Respondents/ Accused and therefore, the ingredients of Section 499 I.P.C. were made out. Unfortunately, the trial Court had not convicted the Respondents/Accused, but it acquitted the Respondents/Accused by an erroneous appreciation of Law. In short, the Judgment of Acquittal of the trial Court is a perverse one and also, contrary to the relevant material evidence on record.

8. Advancing his arguments, the Learned Counsel for the Petitioner/Appellant brings it to the notice of this Court that the Respondents/Accused lay a claim in respect of the suit property and had filed Civil Suit in O.S.No.170 of 2013 on the

file of the Sub Court, Villupuram and the same is pending as on date.

9. In this connection, the Learned Counsel for the Petitioner proceeds to take a stand that in the suit originally an ex parte injunction was granted. Besides this, the trial Court had committed an error in holding that the Respondents/Accused have established truth in the matter and also, the finding of the trial Court that the subject matter in issue came within Exception No.1 was absolutely a perverse one which needs to be set aside by this Court, in the interest of Justice.

10. Expatiating his submission, the Learned Counsel for the Petitioner strenuously projects an argument that the Respondents/ Accused, after having made the Publication in question, without any iota of justification made the impugned third Publication, the purpose of which was not cautioning the general public or protecting their interest but only to vilify the character and bring disrepute to the Complainant.

11. The Learned Counsel for the Petitioner emphatically contends that the finding of the trial Court that the action of the Respondents/Accused came within the Exception Nos.9 and 10 of Section 499 is absolutely perverse and against the material evidence on record.

12. The Learned Counsel for the Petitioner draws the attention of this Court to the fact that before the impugned Publication, two Publications were already effected and the said Publications were also made for the same purpose. In fact, the third Publication alone contain the impugned averments of falsity, illegality, fraud and cheating allegations against the Complainant. Therefore, the trial Court should have found that the intention of the Respondents/ Accused in making the third Publication was only to defame the Complainant and nothing else.

13. Continuing further, it is the submission of the Learned Counsel for the Petitioner that in the instant case, the Respondent/ Accused had admitted tacitly that the Petitioner/Appellant/ Complainant has a right in the property viz., to the extent of 1/4th share. Further, unless and otherwise, the Respondents/Accused prove that they have a Judgment in their favour especially when the Petitioner/Complainant had taken a plea that he got a Settlement Deed in his favour through which he obtained a title which was marked as document in Civil Suit No.170 of 2013 pending on the file of the Learned Sub Judge, Villupuram, the stand of the Respondents /Accused cannot be accepted by any stretch of imagination.

14.The Learned Counsel for the Petitioner strenuously contends that if truth is taken as a defence, then, the Accused ought to establish that they are the owners of the property and that the Petitioner/Appellant/Complainant has without any right, title or interest alienated the property. In this regard, on behalf of the Petitioner, a stand is taken that the Respondents/Accused Pleading Explanations under Section 499 I.P.C. should prove the same and in the instant case, they had failed to establish that they are the owners of the property and having failed to produce any order of Civil Court declaring the right in their favour, the Respondents/ Accused cannot plead and prove the truth just by alleging that the matter is pending before the trial Court.

15.Conversely, it is the contention of the Learned Counsel for the Respondents that the Respondents/Accused are owning an ancestral property situated at Kandamangalam Village, Villupuram District bearing Patta No.438 comprised in Survey Nos.131/2A1, of an extent of 321 sq. mtrs., in 31/2A2 measuring an extent of 375 sq.mtrs., in 131/2A3, 404 sq. mtrs., in Survey No.131/2A4 measuring 119 sq. mtrs., and Survey No.131/2A5 - 1381 sq. mtrs., in all 2600 sq. mtrs. together with building and all the parties do have their due shares in the aforesaid property. Furthermore, the Petitioner/Complainant has 1/4th share and the Respondents 1 to 3/ A1 to A3 do have 1/4th share and the 4th Respondent/A4 having 1/4th share and Respondents 5 & 6/A5 & A6 are also having 1/4th share in the aforesaid properties.

16.At this juncture, the Learned Counsel for the Respondents contends that the Respondents/Accused after coming to know of the Deeds of the Petitioner/Complainant filed a Civil Suit in O.S.No.170 of 2013 on the file of the Learned Sub Court, Villupuram to cancel the Settlement Deed executed in favour of the Petitioner/ Complainant by his mother as regards the whole properties.

17.The Learned Counsel for the Respondents brings it to the notice of this Court that an Interlocutory Petition seeking interim injunction was filed by the Respondents/Accused restraining the Petitioner/Complainant from selling the plots and the said Petition was allowed on 27.01.2014. However, the Petitioner/Complainant started selling the plots while the interim injunction was in force and because of that, the Respondents was perforced to effect Paper Publication informing the public that the Petitioner/Complainant has no title over the properties in question and put the public on notice to the effect that they should not purchase the property from the

Petitioner/Complainant etc.

18.The Learned Counsel for the Respondents submits that the trial Court had found that the acts of the Respondents/Accused do come under the Exception Clauses 1, 9 and 10 of Section 499 I.P.C. In fact, the trial Court had acquitted the Respondents/Accused and the trial Court Judgment of Acquittal is free from legal infirmities.

19.At this stage, this Court relevantly points out that a cursory glance of the Complaint filed by the Petitioner/Complainant in C.C.No.98 of 2013 before the trial Court shows that the Petitioner/Complainant had effected a Publication on 20.05.2016 in Tamil Daily Dinamalar at page 6 under the caption 'Notice', whereby and whereunder, at para 2 in the last three lines, stating that the Petitioner/Complainant, S/o.Ramanathan in respect of the property mentioned at Mandagamedu, he claims that a right unlawfully and in an invalid manner and thereby making an endeavour to deceive the Respondents/Accused. Apart from the above, in the aforesaid Complaint dated 16.08.2013, the Petitioner/Complainant had also made an averment that in respect of the property mentioned hereunder other than the Respondents/Accused either with other persons or especially with the Petitioner/Complainant no dealings, exchange or encumbrance need be made etc.

20.In effect, the pith and substance of the contents/averments of the Complaint of the Petitioner/Complainant dated 16.08.2013 in C.C.No.98 of 2013, the Petitioner/Complainant had came out with a grievance that the said Paper Publication Notice was made by the Respondents/Accused in a planned manner with false and wrong informations with a view to bring disrepute to the good name/reputation of the Petitioner/Complainant and also affect his reputation. Furthermore, the said Paper Publication had brought down the reputation of the Petitioner/Complainant in the midst of public, his affiliated political party, in the midst of relatives, friends etc.

21.Finally, the Petitioner/Complainant had averred in the Complaint that the Respondents/Accused had committed an offence under Section 500 Cr.P.C. and prayed for taking cognizance of the case by issuing summons to them.

22.It is to be noted that First Exception to Section 499 I.P.C. (Defamation) speaks of 'Imputation of truth which public good requires to be made or published'. The Ninth Exception to Section 499 refers to 'Imputation made in good faith by person for protection of his or others interest'. Further, the Tenth Exception to Section 499 I.P.C. enjoins 'Caution intended for good of person to whom conveyed or for public good'.

23. It is to be pointed out that the First Exception to Section 499 I.P.C. enjoins 'Truth as a defence, to operate as a valid defence in a Criminal proceeding for 'Defamation'. After all, in 'Civil Wrong' (Tort), truth of a statement is a justification. Further, the Ninth Exception to Section 499 I.P.C. relates to a communication which an individual makes in 'good faith'. In reality, the interest of the individual referred to in this Section must be a reasonable and legitimate one, when communication is made in protection of the interest of the person making it. Suffice it for this Court to point out that this exception which relates to communication which an individual makes, in good faith, for the protection of his own interest or of any other person, or for the public good. Question of 'good faith' is an issue of fact and has to be determined at the time of final hearing of the main case. Moreover, the Tenth Exception to Section 499 I.P.C. protects an individual providing caution in good faith another for the good of that other, or of some individual in whom that other person is interested or for the public good.

24. In fact, to carve out defamation out of a printed material or written matter, the entire material must be considered, avoiding too much attachment importance being given to the isolated portions. As a matter of fact, in a prosecution for defamation, a Complainant ought to establish that he was defamed. Also that, the identity must be established. Even if the description and attendant circumstance point out with fair certainty, the identity of the individual meant to be defamed, it is just enough, as opined by this Court.

25. It is to be borne in mind that the ingredients of Section 499 I.P.C. brings an individual who publishes as well as who makes the defamatory imputation, to come well within the ambit of Criminal Law. The spirit of the offence of Defamation lies in the dissemination of the harmful imputation. To put it precisely, in order to constitute an offence of defamation, it should be communicated to a third party because what is intended by the imputation is to arouse hostility of others. In brief, the characteristics of Defamation are: (i) the words must be defamatory; (ii) they must refer to the affected person; (iii) they must be maliciously published.

26. It cannot be forgotten that Section 499 I.P.C. has four explanations and ten exceptions. In fact, the explanations explain the scope of Section 499 I.P.C. But the exceptions take out certain aspects out of the application of Section 499 I.P.C. An imputation without an intention to harm or without knowing or having reason to believe that it would harm the reputation of

such person would not constitute an offence of defamation, as per decision Chandrasekharan V. State, 2014 (4) KLJ 268.

27.No wonder, the right of enjoyment of a private reputation unassailed by malicious slander is very much essential to the well being of Homo Sapiens, in the considered opinion of this Court. Of course, a good reputation is one of personal security and is protected by the Constitution of India. With a right to enjoyment of life, liberty and property as per decision of the Hon'ble Supreme Court Smt.Kiran Bedi V. Committee of Inquiry reported in AIR 1989 SC 714. In Law, the term 'Imputation' means an accusation against an individual and it implies an allegation of fact and not merely an abuse.

28.As far as the present case is concerned, admittedly, O.S.No.367 of 2012 is pending on the file of the District Munsif Court, Villupuram as against the Educational Institution, Petitioner/ Complainant and his father. Further, a Civil Suit in O.S.No.170 of 2013 on the file of Sub Court, Villupuram seeking a relief of cancellation of Settlement Deed executed in favour of the Petitioner/ Appellant by his mother with regard to the entire properties is pending and there is no dispute in regard to the fact that the said Civil Suit was filed by the Respondents/Accused. More importantly, the Respondents/Accused at paragraph 6 of the Counter to Crl.O.P.No.27437 of 2016 before this Court had come out with an averment that '... All the parties hereunder have their due shares in the above property as the petitioner has 1/4th share; the respondents 1 to 3 herein have 1/4th share and myself having 1/4th share and the respondents 5&6 are also having 1/4th share in the above mentioned properties'. In fact, P.W.1 had deposed, in his cross examination, that the suit in O.S.No.170 of 2013 is pending on the file of the trial Court and that it was correct to state that the said suit was filed on 17.03.2013. Before the trial Court in C.C.No.98 of 2013, on behalf of the Petitioner/Complainant, witnesses P.W.1 to P.W.5 were examined and Exs.P1 to P15 were marked. When the Civil Suit between the Petitioner/Complainant and the Respondents/Accused are pending in O.S.No.170 of 2013 on the file of the Sub Court, Villupuram, it is too early and premature for the Petitioner/Complainant to file a Complaint in C.C.No.98 of 2013 before the trial Court, as opined by this Court. To whom the property devolves upon and among the parties who has a right are all matters to be gone into by the trial Court in O.S.No.170 of 2013 on the file of the Sub Court, Villupuram, by letting in oral and documentary evidence by the concerned parties. Before determining the right, interest and title of the respective parties in pending O.S.No.170 of 2013 on the file of the trial Court, the Petitioner/Complainant, in a hurried manner, had approached the

trial Court and filed a Complaint in C.C.No.98 of 2013, which is not only a premature but otiose one, in the considered opinion of this Court.

29.Moreover, when a plea is projected on the side of the Respondents that the impugned Publication in the Tamil Daily Dinamalar dated 20.05.2013 was only issued on behalf of the Respondents/Accused to protect their interest in the property and when the Respondents/Accused had come with a plea that the Petitioner/Appellant when the Civil Suit was pending in violation of the injunction order had sold eight plots etc., then, their action of effecting an impugned Publication in the Tamil Daily Dinamalar dated 20.05.2013 is perfectly valid, justified and in short, their action cannot be assailed in any manner. Furthermore, if an imputation is made in good faith and for the bona fide of public at large, then, the impugned Notification is a protected one. Although the pendency of a Civil Case is different than that of a Criminal Case, it is to be borne in mind that a Civil Case will be decided based on probabilities of the case. Whereas in a Criminal Case, a standard of proof is one of beyond all shadow of doubt. In this connection, this Court aptly points out that if an imputation is made in good faith for the protection of interest of the concerned persons making it or in respect of any other person or for the public good, then, the concerned Publication may not amount to 'Defamation', as opined by this Court.

30.In view of the foregoing detailed discussions and also this Court, taking note of the entire attendant facts and circumstances of the present case in an integral manner and also after going through the Judgment of the trial Court in C.C.No.98 of 2013, is of the considered view that the Judgment of Acquittal passed by the trial Court in C.C.No.98 of 2013 does not suffer from any serious material irregularities or patent illegalities in the eye of Law. Per contra, the same is free from any flaw. Consequently, the Criminal Original Petition fails.

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

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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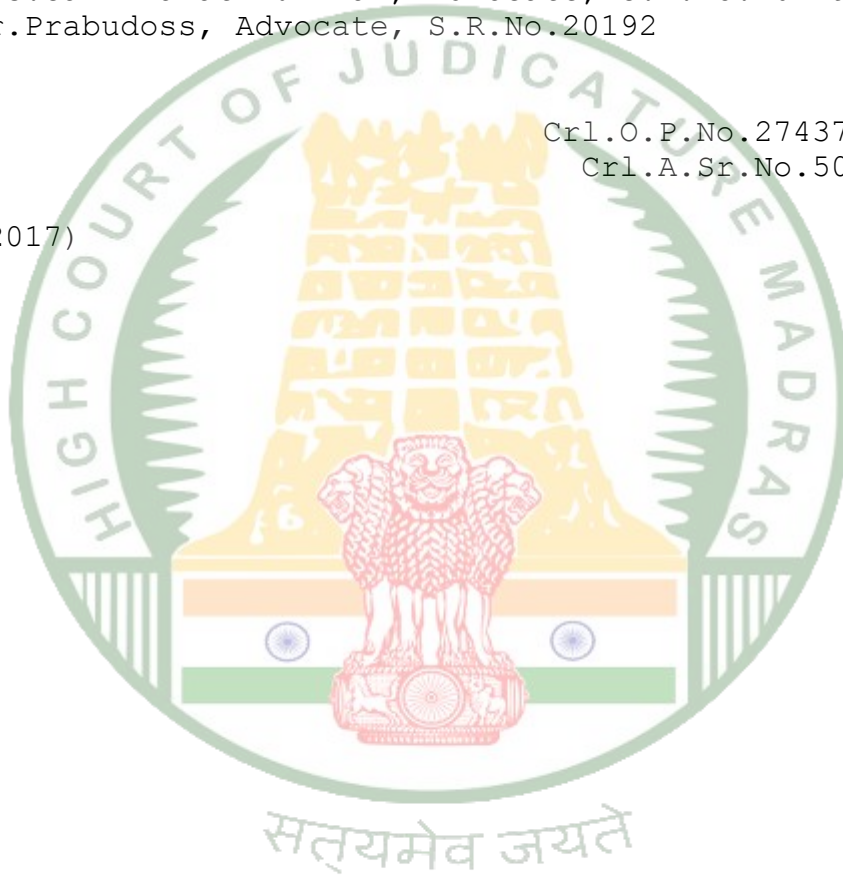
1.The Judicial Magistrate No.II,
Ulundurpet.

2.The Section Officer,
Record Section,
High Court, Madras.

+lcc to M/s.Sai Bharath & Ilan, Advocate, S.R.No.20419
+lcc to Mr.Prabudoss, Advocate, S.R.No.20192

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