

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9480 OF 2012

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.284 of 2012 on the file of Judicial First Class Magistrate for Excise, Guntur registered for the offence punishable under Section 500 of Indian Penal Code (for short "I.P.C.").

Respondent No.2 – defacto complainant filed complaint before the Judicial First Class Magistrate for Excise, Guntur for the offence punishable under Section 500 of I.P.C. alleging that the petitioner filed O.S.No.1 of 2012 on the file of Senior Civil Judge's Court, Parchur for recovery of amount on the strength of promissory note executed by the complainant and filed I.A.No.5 of 2012 under Order XXXVIII Rule 5 of Code of Civil Procedure (for short "C.P.C.") seeking conditional order of attachment.

The Senior Civil Judge, Parchur by order dated 03.01.2012 ordered conditional attachment directing the complainant to furnish 3rd party security to the suit claim within 48 hours from the time of receipt of the notice, and in the event of failure to furnish security the Field Assistant is directed to attach the property. But in the absence of respondent No.2, the Field Assistant allegedly attached the property without issuing notice, at the instance of the petitioner and on account of such acts, the petitioner suffered substantial loss to his prestige, esteem, lowered his status and at the time of attachment a beat of tom tom was made in the village announcing that the property of the respondent No.2 – defacto complainant is going to be attached and the

petitioner came to know the said fact through his relatives and making such attachment and beat of tom tom in the village even without issuing notice of 48 hours permitting him to furnish security for suit amount as directed by the trial Court amount to defection and on account of such acts of Field Assistant and the petitioner, the complainant sustained huge loss and more particularly loss of his status in the eye of society and requested the Court to punish him.

Sri Nimmagadda Venkateswarlu, learned counsel for the petitioner, contended that the statement made during the pendency of the proceedings would not attract the offence punishable under Section 500 of I.P.C. and in the absence of any allegation that in view of the said statement the property was attached, the question of attracting the offence punishable under Section 500 of I.P.C. as defined under Section 499 of I.P.C does not arise and apart from that the Field Assistant, who attached the property, is responsible if the prestige of the defacto complainant is lowered because of such attachment, but not the petitioner. Therefore, he prayed to quash the proceedings.

Undisputedly, the petitioner filed suit in O.S.No.1 of 2012 on the file of Senior Civil Judge's Court, Parchur, in which I.A.No.5 of 2012 was filed under Order XXXVIII Rule 5 of C.P.C. seeking an order of attachment before judgment. The Senior Civil Judge, Parchur ordered conditional attachment before judgment directing the respondent No.2 to furnish security within 48 hours, but without serving any notice, the Field Assistant attached the property of the defacto complainant.

The contention of the petitioner before this Court is that the act done by the Field Assistant is only during judicial proceedings and such act attached with absolute privilege. Moreover, the petitioner herein is no way connected with the acts done by the Field Assistant. Therefore, it would not constitute an offence punishable under Section 500 of I.P.C.

Learned counsel for the petitioner drawn the attention of this Court to a judgment rendered in “**Gopi B.Mallya v. Smt.Pushpa**¹” wherein the Court discussed about the qualified privilege attached to judicial proceedings. But, the statement made during judicial proceedings would not constitute an offence punishable under Section 500 of I.P.C, such statements are attached with absolute privilege.

There are exceptions for construing a particular statement is defamatory. It is always subject to privileges laid down under common law. 'Privilege' means that a person stands in such relation to the facts of the case that he is justified in saying or writing what would be slanderous or libelous in any one else. The general principle underlying the defence of privilege is the common convenience and welfare of society or the general interest of society. Privilege is of two kinds: the first is absolute and the second is qualified.

When a statement is absolutely privileged, no action lies for it even though it is false and defamatory and made with express malice. On certain occasions the interest of society require that a man should speak out his mind fully and frankly, without thought of fear of consequences, e.g., in Parliamentary proceedings or in

¹ ILR 1998 KAR 474

the course of judicial, military, naval proceedings. To such occasions, when a statement is given, such statement is absolutely privileged, a statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice. They are 1) communications made (a) in the course of legal, social or moral duty, (b) for self-protection, (c) for protection of common interest, (d) for public good; and 2) reports of Parliamentary and judicial proceedings, and proceedings at public meetings. Here, statement made in the judicial proceedings, the action for libel or slander is not maintainable. According to settled law laid down by various High Courts in India following the common law principles, when a statement is made in judicial proceedings like affidavits and pleadings, no action lies for a statement made by him in the affidavit in the course of judicial proceedings, even though it be alleged to have been made falsely and maliciously, and without any reasonable or probable cause.

In a decision reported in “**Govind Ramachandra Vs. Gangadhar Mahadeveo**”², Bombay High Court held in para 3 that it is quite clear, and it is also conceded, that by virtue of these provisions all proceedings before the Tribunal or the Bar Council are judicial proceedings. It is, however, urged that in the present case the High Court did not forward the complaint to the Bar Council on the ground that suitable action had been taken by itself, and as no judicial proceedings had been started against the plaintiff, the petition cannot be deemed to be absolutely privileged under the law. We are unable to accept this argument. It is no

² 1944 (46) BOMLR, page 417

doubt true that if the High Court so chose it may not forward the complaint to the Bar Council. But if the High Court is satisfied that there are prima facie grounds for proceeding against an advocate, it sends the same complaint to the Bar Council on which the proceedings start. The complaint or the application to the High Court must, therefore, in our opinion, be regarded as an essential step for taking judicial proceedings. The law is summarized in Halsbury's Laws of England, Hailsham Edition, Vol. XX, p. 465', para. 564; that the privilege attaches not merely to proceedings at the trial, but to proceedings which are essential steps in judicial proceedings, including statements in pleadings and communications passing between a solicitor and his client on the subject on which the client has retained the solicitor and which are relevant to the matter.

Therefore, the steps in a judicial proceedings making complaint to police and all other proceedings in calendar case attaches the absolute privilege and thereby the action for libelous statement not maintainable.

In another Judgment reported in “**Adivaramma Vs. Ramachandra Reddy**”³, wherein his Lordship Justice 'Wallis' held that “When the statement made in the counter affidavit which is defamatory in appeal filed against the order passed by the Court, no civil action will lie, basing on the judgment of Privy Council in “**Ganesh Dutt Singh v. Mugneeram Chowdary** [(1872) 11, B.L.R page 321, 328]”, and finally concluded that the suit is not maintainable and dismissed the suit.

Similarly in another judgment reported in “**Rao Saheb**

³ 1910 (21) MLJ, page 85

Sedimbi Hanumantha Raw Vs. Nidumolu Seetaramayya⁴ His

Lordship Justice 'Burn' of High Court of Madras held in para No.5 as follows:-

“The authorities establish beyond all question this: that neither party,, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously without any justification or excuse, and from personal ill will and anger; against the person defamed.”

As there is lot of controversy in the decisions rendered by Madras High Court and other Courts, the Full bench of Madras High Court in a decision reported in **“Narayana Ayyar Vs. G. Veerappa Pillai⁵”**, wherein the Division Bench of Madras High Court reviewed the entire law with regard to doctrine of absolute privilege and qualified privilege in a civil action for libelous statement which is defamatory. On thorough review of the law laid down in various Judgments in para No.37 held as follows:

“But the question which is referred to us for decision is whether any statement or averment made in the course of judicial proceedings, whether false or true, could be made the subject-matter of a criminal prosecution by the person aggrieved, when the said statement or averment or evidence is also capable of being brought within the scope of Section 193, Penal Code, without a complaint being given by the Court before which the statement or averment was made or evidence given. This point has been elaborately dealt with by my learned brother Govinda Menon J., and I think, in view of the authorities discussed by him, the only safe conclusion to arrive at is to give an answer to the question in the affirmative. The answer has to be in the affirmative notwithstanding the fact that this is likely to give enough room for abuse of the process of law by parties to litigation such abuse tending not merely to harass opposing parties and their witnesses but also to defeat and delay the ends of justice. My learned brother, Balakrishna Aiyar J. however thinks that there is sufficient protection afforded to witnesses and parties by the provisions contained in Section 132, Evidence Act, and other provisions of the criminal law, and that if witnesses seek to avail of these there need be no difficulty in securing immunity from harassment by criminal prosecution.

⁴ 1942 (1) MLJ page 247

⁵ AIR 1951 page 34

In view of the law declared by various Courts, the statement made as a step taken to initiate judicial proceedings and statements made during judicial proceedings would fall within the meaning of absolutely privileged statements. In view of immunity attached to such statements no prosecution for the offence punishable under Section 500 of IPC is maintainable, thereby the prosecution is groundless and liable to be quashed in view of the law declared in the “**State of Haryana v. Bhajan Lal**”⁶, wherein, the Apex Court laid down certain guidelines as to when the Court can exercise inherent power under Section 482 of Cr.PC to quash the proceedings, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

⁶ 1992 Supp. (1) SCC 335

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The Apex Court in “**State of Haryana v. Bhajan Lal**” (referred supra) laid down seven guidelines. Guideline No.1 is relevant, according to it, where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

Here, the act questioned by the respondent No.2 is the act done by the Field Assistant in pursuance of the judicial order passed by the Senior Civil Judge in discharge of his duties as ordered by the Court.

In view of the law declared by various Courts, the act done in pursuance of judicial proceedings would not amount to defamation as defined under Section 499 of I.P.C in view of absolute privilege attached to such act. Even otherwise, the attachment was effected by Field Assistant, who is a Court officer and not by the petitioner herein. If the respondent No.2 is aggrieved by any act of Field Assistant i.e. beat of tom tom and attachment of property, at best he is liable for such act, but not the petitioner. In the absence of any allegation against the petitioner, he cannot be made responsible for such acts. That apart, the beat of tom tom to affect the order of the Court i.e. attachment before judgment and

attachment of property is a procedural act done by Field Assistant, adhering to such procedure would not constitute the offence punishable under Section 500 of I.P.C.

Thus, there is absolutely nothing against the petitioner to constitute offence under Section 500 of I.P.C. As a part of judicial proceedings the Field Assistant did such acts. Therefore, I find no ground to proceed against the petitioner. Consequently, the proceedings are liable to be quashed.

In the result, the criminal petition is allowed and the proceedings against the petitioner in C.C.No.284 of 2012 on the file of Judicial First Class Magistrate for Excise, Guntur are hereby quashed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.



JUSTICE M. SATYANARAYANA MURTHY

14.02.2017
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