

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2018

DELIVERED ON : 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal Nos.651 & 652 of 2005

I.Syed Ali Abbas Appellant/Complainant
in Crl.A.No.651 of 2005

M.Abdul Quadir Appellant/Complainant
in Crl.A.No.652 of 2005

Vs

1.S.M.M.Md. Ali
2.A.Kaja Mohideen
3.Hayath Basha
4.N.Anwar Ali
5.M.Ishtiaque Hussain
6.D.Ayub Khan Dawood
7.R.N.Iqbal Ahamed
8.A.Munavar Jan
9.Mohamed Abdul Hameed
10.M.D.Ashraf Sait
11.H.Ansar Basha
12.Ajaz Ahamed
13.S.Ansar Basha
14.M.Mohamed Hashim
15.A.Rafi

.... Respondents in both the Crl.A.s/
Accused 2 to 4, 7 to 9, 11 to 18&20

Common Prayer: Criminal Appeals filed under Section 378 of the Criminal Procedure Code, to set aside the judgment of the learned Judicial Magistrate, Alandhur, Chennai dated 12.07.2005 in C.C.Nos.143 and 144 of 2001.

(In both the Crl.A.s)
For Appellants : Mr.J.Sudhakaran

For Respondents : Mr.N.A.Nissar Ahmed
for RR.2,4to7 & 15&16 in both the C.As

: Mr.S.Sounthar
for RR.1, 3, 8, 10, 11, 12, 13
in both the C.A.s
: Mr.S.Sounthar, for R10
in C.A.651/05

JUDGMENT

These Criminal Appeals were filed by the Appellants namely Syed Ali Abbas and M.Abdul Quadir against the separate final orders passed in C.C.Nos.143 and 144 of 2001 by the learned Judicial Magistrate, Alandur, Chennai dated 12.07.2005 dismissing their Private Complaints filed under sections 499 and 500 of IPC.

2.Brief case of the appellant in Crl.A.no.651 of 2005:

The appellant had filed a complaint against the respondents under section 499 of IPC read with section 200 of Cr.P.C. before the Learned Judicial Magistrate, Alandur, Chengalpet in C.C.No.144 of 2001. The appellant submits that he is highly qualified and has obtained M.A., M.Phil. degrees. The appellant has been working as a Lecturer in English Department in Qaide Milleth Colelge, Medavakkam Chennai. The appellant is known for honesty with full devotion to duty and commands high respect amongst students, staffs, and public. That being so, the respondents/accused under mentioned have printed and forwarded Exhibit-P2 to the authorities and the copies of which have been circulated among the members of the teaching staffs, students and public. The said Exhibit-P2 contained defamatory allegations on the appellant defaming his reputation amongst the staffs, students, and public.

3.The 1st respondent/2nd accused S.M.M.Mohamed Ali son of Mohammed, The second respondent/3rd accused Khaja Mohideen son of Abdul, the third respondent/4th accused Hayatgh Basha, the fourth respondent/7th accused, N.Anwar Ali son of Mohammed Abraham, the fifth respondent/8th accused M.Ishtiaque Hussain son of Mohammed Abdullah, the sixth respondent/9th accused D.Ayub Khan Dawood, son of Dawood Khan, the seventh respondent/11th accused R.NB.Iqbal Ahamed, son of Abdul Chakoor, the eight respondent/12th accused, Munavar Jan Son of Abdul Suban, the ninth respondent/13th accused is Mohamed Abdul Hameed, father name is unknown, the tenth respondent/14th accused is M.D.Ashraf Sait, son of Maqmoor the eleventh respondent/15th accused H.Ansar Basha sopn of Abdul Salamm, the 12th respondent/16th accused Ajaz Ahamed, son of Adbullah, the 13th respondent/17th accused S.Ansar

Basha, son of Chaloor Sahib, the 14th respondent/18th accused, is Mohamed Hashim, son of Mohamed Qasim, the 15th respondent/20th accused A.Rafi son of Zakaria, all the respondents were working as Lectures in different grades at The Quide Milleth College, Vellachery Main Road, Madavakkam, Chennai.

4. Brief case of the appellant in Crl.A.No.652 of 2005:

The Appellant has filed a complaint against the above said respondents in Crl.A.No.651 of 2005 under section 499 of I.P.C. read with section 200 of Cr.P.C. before the Learned Judicial Magistrate, Alandur, Chengalput in C.C.No.144 of 2001. The appellant submits that he is highly qualified and has obtained M.Sc, M.Phil. degrees and working as a Lecturer in Mathematics Department in Qaide Milleth College, Medavakkam Chennai. The appellant is known for honesty with full devotion to duty and commands high respect amongst students, staffs, and public. That being so, the respondents /accused have printed and forwarded Exhibit P2 to the authorities and the copies of which have been circulated among the members of the teaching staffs, students and public. The said Exhibit-P2 contained defamatory allegations on the appellant defaming his reputation amongst the staffs, students and public.

5. The Complaint filed by the appellants in both cases before the learned Trial Court were taken on file and the learned trial Judge issued summons to the respondents/accused as stated above. On the side of the appellants, PWs-1 to 3 were examined and marked 9 Exhibits. DWs.1 to 4 were examined on the side of the Respondents/Accused. The defense witnesses also admitted the existence of Exhibit-P2 and the circulation or publication of Exhibit-P2. The defence witnesses namely DW1 and DW2 had filed the complaint on 16.2.2001 under section 499 of IPC against the respondents herein in C.C.No.146 of 2001 and C.C.No.145 of 2001 and subsequently they have withdrawn the said complaint on 16.9.2002 since the respondents herein have tendered unconditional apology having realized the unlawful action. The DW1 had deposed before the Trial Court in respect of the said case as PW1. The DW4 had also admitted the existence of Exhibit-P2 and circulation of the same amongst students, staffs and public.

6. The learned trial Judge after full-trial, dismissed the Complaints filed by both appellants through his order dated 12.7.2005 and acquitted the respondents/accused.

Rival Submissions:

7.The learned Counsel for the appellant contends that the learned Magistrate erroneously held that appellant has not established the circulation of Exhibit P2 and therefore the benefit of doubt go to the respondents.

8.The learned counsel for the appellants submits that the Trial Court has acquitted the accused on wrong reasoning, wrong interpretation and in gross violation of Mandatory provision of section 158 of Evidence Act, as all the three defence witness namely DW1, DW2 and DW4 themselves have admitted the circulation of Exhibit-P2. In the light of the same, the Trial Court ought to have passed an order of conviction against the respondents since admitted facts need not be proved.

9.The learned counsel for the appellants submits that the Trial Court has completely failed to consider that DW4 himself has admitted the publication of Exhibit-P2 but the Court has erroneously held that publication has not been established by the Appellant side.

10.The learned counsel for the appellants submits that the Trial Court erred in holding that PW3 was not sure of Exhibit-P2, without considering the fact that PW3 in his re-examination has clearly stated that the contents of Exhibit-P2 and the copy of the Exhibit-P2 are one and the same. The case of the Appellant is that copy of Exhibit-P2 has been circulated which contained defamatory allegations on the Appellants and therefore the PW3 had occasion to read contents of Exhibit-P3. When PW3 had confirmed that the allegations contained in Exhibit-P2 and in the other copy containing the defamatory allegations on the Appellants which PW3 read are the same, the observation made by the Trial Court that PW3 was not sure of Exhibit-P2 would make the respondents escape from the clutches of law.

11.The learned counsel for the appellants submits that the Trial Court has miserably failed to understand that the subject matter before the Learned Judge is that copy of the Exhibit-P2 has been submitted by the respondents in good faith to the authorities and in continuation of the same, the respondents have circulated the copies of Exhibit-P2, to the staffs, students of the College and public, Therefore the Learned Judge has misread the case of the Appellant.

12.The learned counsel for the appellant submits that the Trial Court erred in holding that Appellants failed to let in evidence through witnesses to establish that Exhibit-P2 has been circulated, by completely ignoring the fact that PW3 has given evidence, confirming publication of Exhibit-P2.

13.The learned counsel for the appellants submits that the Trial Court is wrong in observing that the Appellants themselves has admitted the copy of Exhibit-P2 submitted by the Respondents to the Higher Authorities in good faith, as the same was misread and misinterpreted in isolation by the Learned Judge, without properly applying his mind to the statement made by the Appellant that he has deposed saying copy of Exhibit-P2 submitted to Higher Authorities was circulated to the staffs, students etc. Therefore the same was not properly understood by the Learned Judge in the context of the case.

14.The learned counsel for the appellants submits that the Trial Court while relying on Exhibit-P5, marked through DW1 who deposed as PW1 in C.C.No.145 of 2001 as against the same accused/respondent in respect of the same offence, has failed to consider the admission made by the DW1 in respect of the publication of Exhibit-P2.

15.The learned counsel for the appellants submits that the Trial Court failed to consider Exhibit-P6, wherein DW1 had deposed that all the respondents herein, have tendered unconditional apology in C.C.No.146 of 2001 by which DW1 , withdrew the complaint filed in respect of the same offence, as against the respondents. Therefore it would be clear that all the respondents herein have made clear admission of offence committed by them initiated by the Appellant under section 499 of IPC.

16.The learned counsel for the appellants submits that the Trial Court failed to consider Exhibit-P6 wherein DW2 had deposed that, all the respondents herein have tendered unconditional apology in C.C.No.145 of 2001 by which DW1, withdrew the complaint as against the respondents herein. Therefore it would be clear that all the respondents herein have made clear admission of offence, committed by them initiated by the appellant under section 499 of IPC.

17.The learned counsel for the appellants cited the decision of this Court reported in 2012 (6) CTC page 648.

18.The learned counsel for the respondents supported the findings of the Trial Court and cited the decisions of the Hon'ble Apex Court and this Court reported in AIR 1999 SC 1028, 1995 CRLJ 2508 and 2009 (2) LW CrI. page 909.

19.I heard Mr.J.Sudhakaran, learned counsel for appellants, Mr.N.A.Nissar Ahmed, learned counsel for the respondents 2, 4 to 7 and 15 and Mr.S.Sounthar, learned counsel for the respondents 1, 3, 8, 10, 11, 12 and 13 and perused the entire materials available on record.

20.The point for consideration is whether the order dated 12.07.2005 rejecting the complaint and acquitting the respondents/accused is justified or whether it is liable to be modified.

21.The appellants main grievance appears to be the contents of the letter Exhibit-P2 circulated by the Respondents to the lecturers, students and other office bearers of the college and thereby caused defamation. The learned Magistrate, having found that the imputations were substantially true, proceeded to discuss the question whether the publication was for the public good and not excessive. The respondents/accused relied on exceptions embodied in Section 499 of IPC and apparently the learned Magistrate thought that was the exception governing the case.

22.The learned Counsels representing the respondents would contend that the present question in controversy would fall under Exception-8 of Section 499 of IPC and not Exception-9 as contended by the learned Counsel for the appellant. The learned Counsel also would submit that this is a matter concerned with public question and in good faith, an opinion was expressed and with Courtesy the opinion expressed had been just reproduced in the circulated letter by the respondents and the requisite mens rea, intention or knowledge to satisfy the ingredients of defamation are definitely lacking and even otherwise it being a matter of public question, in good faith the respondents/accused had reproduced the letter Exhibit-P2. The contents of letter Exhibit-P2 shows "that the appellants conducted English coaching classes and thereby collected rupees one lakh fraudulently" and the same was circulated to all the education authorities, students and administrators of the College.

23.The learned Counsel would point out that the respondents also had sought the apology in other cases which is bona fide and absolutely the respondents were not having any requisite intention either to defame the appellant/complainant or to cause disrepute to him in any way whatsoever.

24.The learned Counsels for the respondents also had taken this Court through the findings recorded by the learned Magistrate and would contend that this is an Appeal as against an order of acquittal and the reasons recorded by the learned Magistrate are clear, categorical and convincing and hence this Court should be slow in interfering with such findings of the learned Magistrate while recording an order of acquittal.

25.The factual controversy between the parties appears to be very limited. The only question which may have to be dealt with by this Court is that whether in the facts and circumstances can it be said that circulated letter Ex.P-2 would constitute defamation and whether the respondents /Accused were liable to be punished under Sections 500 and 501 of IPC in both the cases.

26.The circulated letter Ex.P-2 in question was circulated by the respondents to the students, lecturers and college staffs to defame the appellants alleging that they illegally earned one lakh by conducting coaching classes. Apart from the evidence of PW-1, the evidences of PWs-2 and 3 were also available on record who simply deposed that they saw the letter and many discussing about the defamatory letter published and they immediately took the letter and handed over to the Secretary.

27.As can be seen from the findings recorded by the learned Magistrate, the defence appears to be that the action is protected by Explanation-4. Section 499 of IPC dealing with Defamation, and Explanation-4, specify:

"Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter excepted, to defame that person."

Explanation 4 : No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or

lowers the character of that person in respect of his caste or his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

28. The Counsel representing the appellant placed reliance on Exception-9 of Section 499 of IPC and contending that the same is not attracted and on the contrary the learned counsel representing respondents placing reliance on Exception-3 of Section 499 of IPC. Exception-1 of Section 499 dealing with imputation of truth which public good requires to be made or published, reads :

"It is not defamation to impute anything which is true considering any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

Explanation-3 dealing with Conduct of any person touching any public question reads :

"It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further."

Illustration : It is not defamation on A to express in good faith on any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting informing or joining any society which invites the public support in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested."

Exception-9 dealing with Imputation made in good faith by person for protection of his or other's interests, reads :

"It is not defamation to make an imputation on the character of another provided that the imputation can be made in good faith for the protection of the interest of the person making it, or of, any other person, or for the public good."

Illustrations :

(a) A, a shopkeeper, says to B, who manages his

business - "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation of Z in good faith, for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception."

29. This Court on careful perusal of the records found that there is no serious factual controversy as far as the Ex.P2 letter is concerned.

30. In the decisions referred by both parties, while dealing with good faith and bona fide and proof in relation thereto in defamation cases, it was held as follows:

"In order to establish good faith and bona fide it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the accused made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith".

31. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in public good. The question whether or not it was for public good is a question of fact like any other relevant facts in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions, or in the limited case, specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith.

32. On a careful reading of the commencing portion of Section 499 of IPC it is clear that to satisfy the ingredients, the requisite mens rea also would be essential. It is pertinent to note that the letter is not the brain-child of the respondents alone. In the facts and circumstances and also in the light of ratio laid down by the Hon'ble Apex Court, this Court is of the opinion that the learned Magistrate was well justified in arriving at a particular conclusion after recording reasons

especially in view of the fact that two views are possible, one in favour of the accused and another to the contra, it is needless to say that benefit always to go in favour of the accused and not in favour of the prosecution and in the light of the limitations in interfering with an order of acquittal recorded by the Court below and the interference in relation thereto by the appellate Court, especially in the peculiar facts and circumstances of the case, this Court is satisfied that this case would fall under Exception-8 of Section 499 of IPC involving a public question and the findings recorded by the learned Magistrate cannot be found fault and accordingly they are hereby confirmed and the benefit as usual is given to respondents and accordingly the acquittal is hereby confirmed.

33.Both the Criminal Appeals filed by the appellants shall stand dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Alandhur, Kancheepuram District.
2. Do through The Chief Judicial Magistrate,
Kancheepuram.

+2 cc to M/s.N.A.Nissan Ahmed, Advocate Sr.No.86179,86180

+2 cc to M/s.S.Sudhakaran, Advocate Sr.No.86846,86847

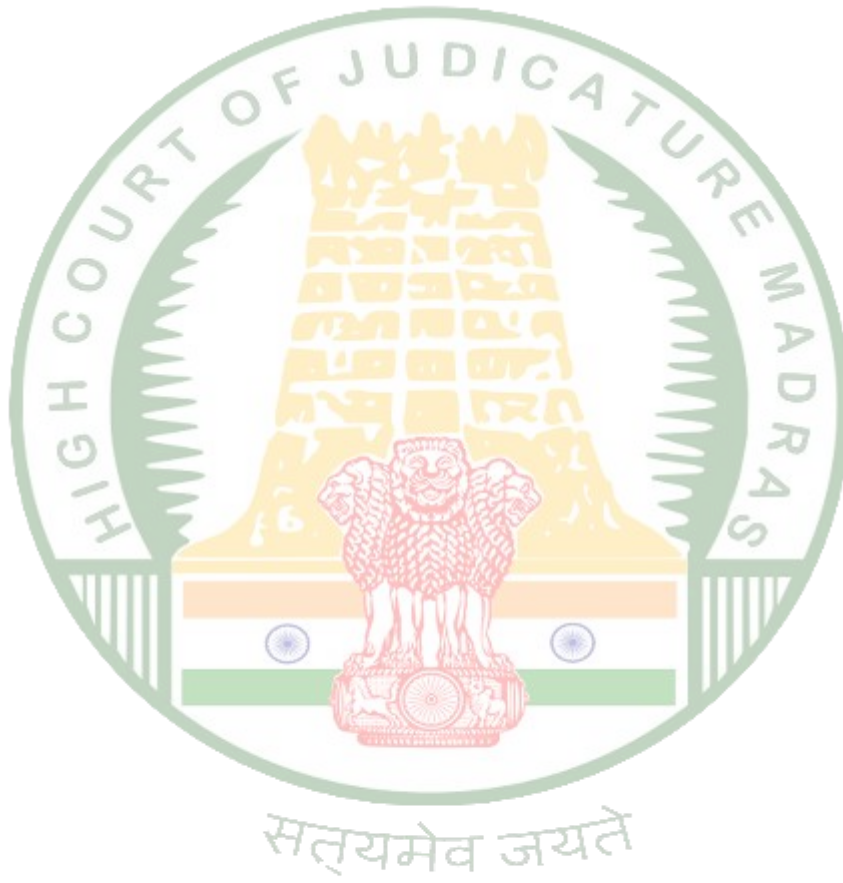
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judgment made in
Criminal Appeal Nos.651 & 652 of 2005

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