

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.12.2018	Delivered on 18.12.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.14382 of 2018

and

Crl.MP.Nos.7754 and 7320 of 2018

Shivaji Rao Gaikwad @ Rajinikanth ..Petitioner/Accused

..Vs..

S.MukunchandBothra,
Represented by his
Power of Attorney
M.GaganBothra,
No.43/44, Verrappan Street,
Sowcarpet,
Chennai-600 079.

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for entire records pertaining to taking of cognizance of the private complaint lodged by the respondent in C.C.No.1041 of 2018, on the file of VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.S.Muknnchand Bothra

Rep.by its P.O.A. M.Gagan Bothra
(party-in-person)

ORDER

This Criminal Original Petition has been filed seeking to quash the Criminal Proceedings initiated by the respondent against the petitioner under Section 499 r/w 500 IPC, pending in C.C.No.1041 of 2018, on the file of the VII Metropolitan Magistrate Court, George Town, Chennai.

2.The brief facts that are necessary for the purpose of deciding this criminal original petition are :

2.1. The respondent filed a Civil Suit in C.S.No.400 of 2015, before this Court for mandatory injunction directing the petitioner herein to take action against one Kasthuri Raja, for using the petitioner's name, without the petitioner's consent

and for other alternative/consequential reliefs. In the said suit, the petitioner filed an application in A.No.4747 of 2015, seeking to reject the plaint. In the affidavit filed in support of the application, the petitioner had made the following allegations against the respondent: "the suit has been intended to malign and defame me and extort money". This affidavit filed by the petitioner was widely published in many newspapers and was also circulated in the media and television channels and thereby the respondent's reputation was completely damaged in the society, business circle, and also in the friends circle. Therefore, the respondent proceeded to file a criminal complaint for defamation against the petitioner. The Court below has taken cognizance of the complaint and issued summons to the petitioner, and the same is now put to challenge before this Court in this quash petition.

3. Mr.D.Ravichander, learned counsel for the petitioner made the following submissions:

- The averment made in the pleadings cannot be termed to be a defamatory statement unless the same is struck off by the Civil Court.
- The rejection of plaint petition itself came up for hearing before this Court, and this Court by an order dated 24.07.2018, allowed the petition and rejected the suit filed by the respondent. Therefore, there is nothing further to proceed in the criminal complaint since this Court had accepted the case put forth by the petitioner in the affidavit filed in support of the rejection of plaint petition. The finding of this Court, while allowing the petition will have a lot of bearing upon the criminal complaint filed by the respondent.
- The averments made by the petitioner in the affidavit was totally relevant and warranted in the facts of the case, and the same was affirmed by this Court by allowing the petition filed by the petitioner seeking to reject the plaint.
- The learned counsel for the petitioner in order to substantiate his arguments relied upon the judgment of this Court in Alli Raji Joseph Mathew 2. Dr.P.Anandha Geetha 3. Anu Velentina Krishnan @ Tina 4.P.Amarnath . Vs. P. Arun Kumar, reported in [2013 (1) CTC 661].

4. Per contra, Mr.M.Gagan Bothra, the Power of Attorney Agent of the respondent made the following submissions:

- The allegation made in the affidavit is per se defamatory and by publishing the same in newspapers and circulating the same in media and television channels, the reputation

of the respondent was completely damaged.

- Whether the publication was made in the newspapers, media etc., is with or without the knowledge of the petitioner can be found out only during the course of the trial, and the same cannot be determined in the quash proceedings.

- As against the order allowing the rejection of plaint petition and dismissing the suit, the respondent has filed an appeal, and therefore the cause of action survives in the criminal complaint filed by the respondent.

- The following judgments were relied upon by the Power of Attorney agent, representing the respondent in order to substantiate the above arguments.

1. Mr.Mohanadevi .Vs. Dr.C.V.Ranjan in Crl.O.P.No.21114 of 2014 dt.12.02.2015, by this Court.

2. Jeffrey J.Diermeier and Another .Vs. State of West Bengal and Another reported in [2010 6 SCC 243].

3. M.N.Damani .Vs. S.K.Sinha And Others in Crl.A.No.596 of 2001, dt.02.05.2001, by Hon'ble Supreme Court.

4. Sewakram Sobhani .Vs. R.K.Karanjia, Chief Editor, Weekly Blitz and Others, reported in [1981 3 SCC 208].

5. Bikramjit Ahluwalia & Ors. .Vs. Simran ahluwalia & Anr dt.01.05.2015, by Delhi High Court.

5.This Court has carefully considered the submissions made on either side. The settled position of law is that there is no legal bar in filing a private complaint against a person alleging that he has made certain imputations in the pleadings before a Civil Court, which are per se defamatory. It is not necessary to wait for the final outcome of the Civil Suit and the criminal complaint can be parallely laid, seeking for punishment of the accused person, for making the defamatory statements.

6.However, it is important to carefully see whether the allegations made by the accused person in the civil proceedings, are relevant to the issues and are absolutely necessary to be pleaded in order to substantiate the case of the accused in the civil proceedings. Sometimes the character and conduct of the person may also become necessary and important to be pleaded to substantiate the case. Ultimately what is required to be seen is whether the allegation made is totally unconnected or unwarranted to decide the issues involved in the suit. After all in a civil proceeding, averments made in the pleadings/affidavit becomes very essential, since no amount of evidence can be let in without necessary averments in the pleadings/affidavit.

7.It will be relevant to rely upon the judgment cited by the learned counsel for the petitioner as well as the power of attorney agent, representing the respondent in this regard:

8.This Court in Alli Raji Joseph Mathew 2. Dr.P.Anandha Geetha 3. Anu Velentina Krishnan @ Tina 4.P.Amarnath .Vs. P. Arun Kumar, reported in [2013 (1) CTC 661], has held as follows:

"12. At the outset, I want to state that as has been held by this Court consistently, there is no legal bar for filing a private complaint alleging that a party to a civil proceeding has made certain imputations in the pleadings before the civil court, which are per se defamatory. I am also clear that the pendency of the said civil suit is not an impediment for the aggrieved to file a private complaint. Without waiting for the final outcome of the suit, he can very well approach the criminal court by way of a private complaint seeking to punish the accused for defamatory statements made in the pleadings, provided the averments in the pleadings are totally unconnected to or unwarranted for the issues involved in the civil suit and they are per se defamatory. In any civil proceeding, it is absolutely necessary for the party concerned to make averments relevant to the issues. If such relevant averments are not made, the civil court may not permit the party to make a plea on that subject orally and also to lead evidence. It is common knowledge that in civil suits, there cannot be any evidence let in without there being relevant pleading. In this case, the petitioners have made averments touching upon the personal conduct and the relationship between the deceased and the respondent. According to the learned Senior Counsel for the petitioners, these averments are very much relevant for the civil court to decide as to whether the unregistered Will of the year 2005, which the respondent is projecting, would have been really executed by the deceased or not. The circumstances like the relationship between the deceased and the party in whose favour now the Will is projected and the love and affection between the parties are all relevant to this core issue as to whether the Will would have been executed by the deceased. Suppose, it is proved that the deceased was not in good terms

with the respondent and they were fighting with each other frequently, it may be a circumstance to prove that the Will would not have been executed by the deceased in favour of the individual concerned. In the case on hand, the averments, which are stated to be defamatory, relate to the personal character of the respondent as well as his relationship with the deceased. These are all, in fact, relevant for the civil court to decide the issue as to whether the Will of the year, 2005 was really executed by the deceased or not. If these averments have not been made in the pleadings before the civil court, as I have already stated, the petitioners may not be permitted by the civil court to plead on that subject orally and lead evidence and as a result, they may not be in a position to disprove the Will. Therefore, it cannot be stated that these averments are totally unnecessary.

13. In this regard, it is useful to refer to Order VI Rule 16 of the Code of Civil Procedure which reads as follows:

14. As per the said rule, if it is the case of the respondent that these averments are either unnecessary or scandalous, frivolous or vexatious or which may tend to prejudice the mind of the court, he could have very well made an application under this provision before the civil court seeking to strike out the above averments in the plaint. If any such petition is filed, certainly, the civil court would give a finding as to whether these averments have got any relevance to the issues involved in the suit and whether these averments are scandalous, frivolous and vexatious or they are in the nature of causing prejudice in the mind of the court. If only such a finding is given by the civil court, then, the respondent would be entitled to approach the criminal court that the statements are defamatory because they are scandalous. In my considered opinion, when the averments are very relevant to the issues involved in the suit and the suit is pending, the respondent is precluded to file a private

complaint.

15. This may also be viewed from a different angle. Let us assume that the present prosecution is allowed to continue further and if the criminal court holds that these statements are scandalous and accordingly punishes the accused and later on, the civil court gives a finding that they are not scandalous, frivolous, vexatious and holds that they are necessary to the issues involved in the suit, then, the said finding of the civil court will be contrary to the findings of the criminal court. Such a situation leading two courts of law to render two conflicting judgments cannot be permitted. Therefore, in my considered opinion, it is for the petitioners either to approach the respective civil court under Order VI Rule 16 or to wait till the final outcome of the civil suit and then to work out his remedies in the manner known to law".

9. This Court in Crl.O.P.No.21114 of 2014 dated 12.02.2015, has held as follows:

"5. I have gone through the judgment reported in 1992 Cri.L.J.2427. The learned Judge in that case considered the Full Bench judgment of this Court in Tiruvengada Mudali . V. Tripurasundari Ammal [AIR 1926 Mad 906], wherein it has been held that no absolute privilege attaches to averments in a criminal complaint made in Court but that the privilege is qualified in the sense, that the defamatory statement must have been made in good faith. The learned Judge in the above cited judgment also relied upon the judgements of the Hon'ble Supreme Court of India in M.C.Verugheese v. T.J.Ponnan [AIR 1970 SC 1876] and State of Bihar v. Kripalu Shankar [1987 (3) SCC 34] and held that if any defamatory article or statement is made in a judicial proceeding, that can be a cause of action for filing a private complaint for the offence under Section 500 IPC.

6. In M.N.Damani v. S.K.Sinha and Others [AIR 2001 SC 2037], the Hon'ble Supreme Court held that private complaint against the

respondents therein alleging that they made imputations against the complainant in the application filed under Section 436 CrPC can be a basis for prosecuting the respondents for the offence under Section 500 IPC and whether imputations were made in good faith or not, have to be decided during trial and the Hon'ble Supreme Court also relied upon the judgements in Sewakram Sobhani v. R.K.Karanjia [(1981) 3 SCC 208] and Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi [(1996) 6 SCC 263] and held that private complaint is maintainable in respect of defamatory allegations made in judicial proceedings.

7. It is seen from the above judgements that when defamatory allegations are made in judicial proceedings, that can be a cause of action for filing a private complaint against the person concerned."

10.The above judgments clearly spell out the position of law with regard to maintaining a criminal complaint for the offence of defamation, based on the allegations/imputations made in the pleadings filed before a Civil Court.

11.In the present case, the petitioner had made the above said averment against the respondent, since the petitioner wanted to project the previous conduct/character of the respondent which he thought was essential and relevant for the purpose of deciding the petition filed for rejection of plaint. A reading of the entire affidavit filed in A.No.443 of 2015, would show that the petitioner wanted to establish the fact that the entire suit was intended to malign and defame the petitioner, who had no dealings whatsoever with the respondent at any time. In a money dealing with the respondent one Kasthuri Raja seems to have used the name of the petitioner for borrowing money from the respondent and that was the only cause of action for filing the suit by the respondent against the petitioner.

12.It will also be very relevant to extract the findings of this Court, while allowing the petition filed by the petitioner for rejection of plaint while dismissing the suit, the same is extracted hereunder:

"8. When the pleadings of plaint and the documents are carefully perused, the plaintiff has proceeded under the premise that there is an obligation of the 1stdefendant to take action against the 2nd defendant. The allegation in the plaint discloses as if the

2nd defendant borrowed some money and assured repayment of that amount by his son's father-in-law being the 1st defendant, famous actor. Therefore, he advanced the amount. It is to be noted that the plaint itself clearly indicates that merely on such assurance he has advanced the money, he has already got pro-note and also cheque, which resulted in filing of 138 Negotiable Instruments Act proceedings

9. Be that as it may. It is the main contention of the plaintiff that when the 1st defendant himself filed suit against M/s Varsha Productions for not to misuse his name, the plaintiff filed an application to implead himself in the above suit in C.S.No.598 of 2014. The 1st defendant objected to implead the plaintiff in that suit, wherein he has stated that he has noway connected with the transaction between second defendant and plaintiff and also stated that he never gave consent to second defendant to use his name. It is the further contention of the plaintiff that if the 1st defendant filed the counter earlier, he would have taken proceedings under Section 420 I.P.C.against the 2nd defendant. Merely because the 2nd defendant had allegedly misrepresented some thing to tarnish the name of the first defendant, it cannot be construed that the 1st defendant has to take action against the 2nd defendant. Even assuming if there is such misrepresnetation, fraudulent representation on the part of the 2nd defendant, it is the choice of the 1st defendant either to take action or not to take action. The Court cannot compel the party to take action against somebody who appears to have misuses the name of party. If such suits are entertained in routine manner, there will not be an end for frivolous litigation in the court of law. The plaintiff's pleadings itself shows that he is the film financier, who has consciously entered into a loan transaction with the 2nd defendant. That being so, his contention that the 1st defendant should take action against the second defendant is, nothing but mischievous and such action is brought only to get publicity.

10. It is common knowledge that if any litigation filed against any person who is in the limelight and public personality, it will get huge attraction in the media and it will be a hot news for media for few days. The plaintiff filed such a suit in order to get publicity and not in any other purpose.

15. The entire pleadings of the plaint prima facie shows that the litigation was inspired by vexations motive and altogether groundless. If such plaints are not thrown out at the initial stage, it will give licence to people one like the plaintiff to approach the Court often even to get cheap publicity. Accordingly, this Court reject the plaint with cost of Rs.25,000/- (Rupees twenty five thousand only) payable to the first defendant".

13. The above findings makes it very clear that the averment made by the petitioner in the affidavit filed in support of the rejection of the plaint petition, had a major bearing while deciding the petition. It is also clear that the averment was not unconnected/ or unwarranted for deciding the issue involved in the petition. This Court has gone to the extent of finding that the entire suit was a speculative one.

14. In view of the above, this Court is of the considered view that the averment made in the affidavit by the petitioner is not per se defamatory, and the same was made as a necessary averment in order to project the conduct/character of the respondent. The same has been sanctified by the final orders passed by this Court, which has been referred supra. Therefore, the continuation of the criminal complaint against the petitioner will amount to an abuse of process of Court, and the same requires the interference of this Court under Section 482 of Cr.P.C.

In the result, the proceedings in C.C.No.1041 of 2018, on the file of the VII Metropolitan Magistrate Court, George Town, Chennai, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

KP

To

1.VII Metropolitan Magistrate,
George Town, Chennai.

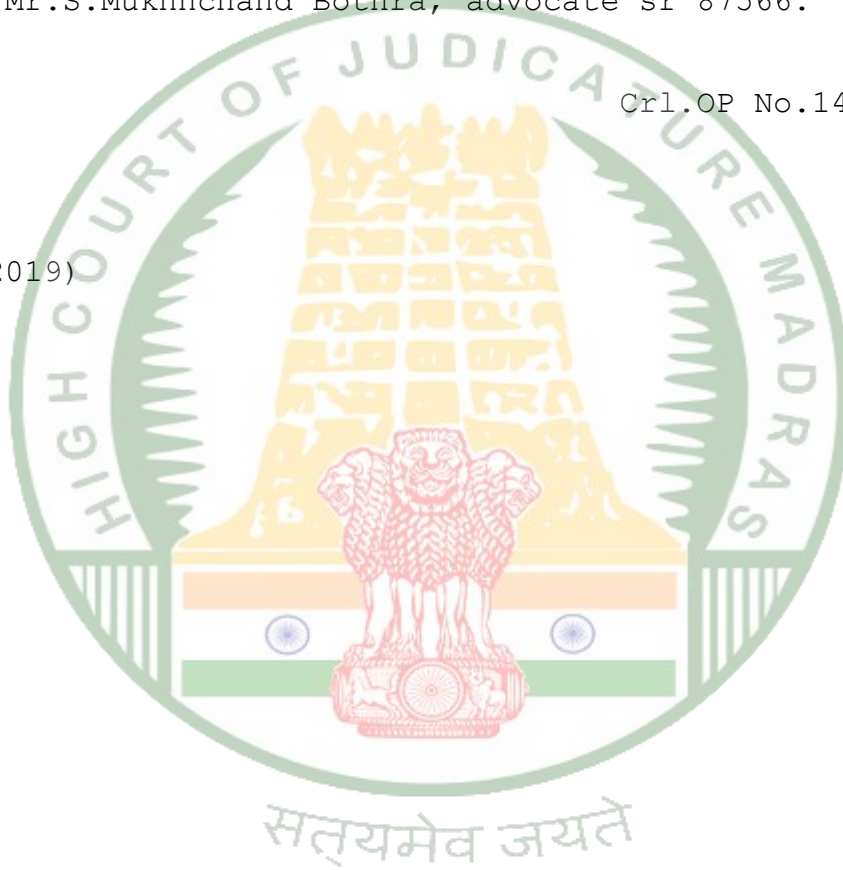
2. The Section officer/Record Keeper
Criminal Section, High Court, Madras 104.

+1 CC to Mr.D.Ravichander, Advocate sr 87858.

+2 Ccs to Mr.S.Muknnchand Bothra, advocate sr 87566.

Crl.OP No.14382 of 2018

RJI (CO)
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