



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 27.06.2018
DELIVERED ON : 01.08.2018
CORAM :

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THE HONOURABLE MRS. JUSTICE R. THARANI

CrI.R.C.(MD) No.354 of 2015

S.R.Jangid, I.P.S.,
S/o, D.R.Jangid,
Additional Director General Police/
Chief Vigilance Officer,
State Transport Corporation (Tirunelveli) Ltd.,
Rani Thottam,
Nagercoil. ... Petitioner
vs.

1.B.Srinivasan

2.S.Madhavan

3.R.Kannan

4.J.Stalin ... Respondents

Prayer:- Criminal Revision Petition filed under Section 401 of the Code of Criminal Procedure, 1973, to call for the records in CrI.M.P.No.680 of 2015 in un-numbered C.C.No. Of 2015 on the file of Judicial Magistrate, Nagercoil allow this revision and set aside the order dated 20.07.2015 passed in CrI.M.P.No.680 of 2015 in un-numbered C.C.No. Of 2015 on the file of the Judicial Magistrate, Nagercoil.

For Petitioner : Mr.Issac Mohanlal,
Senior Counsel for Mr.M.S.Suresh Kumar
For Respondents : Mr.N.Ramesh

ORDER

Heard Mr.Isaac Mohanlal, learned Senior counsel appearing for the petitioner and Mr.N.Ramesh, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the order dated 20.07.2015 passed in CrI.M.P.No.680 of 2015 in un-numbered C.C.No. Of 2015 on the file of the Judicial Magistrate, Nagercoil.

3.The petitioner filed a complaint against the respondents herein for the offence under Sections 499 and 500 of IPC for having published an article in the Ananda Vikatan tamil magazine. The learned Magistrate having recorded sworn statement has dismissed the private complaint without numbering the same. Against the dismissal



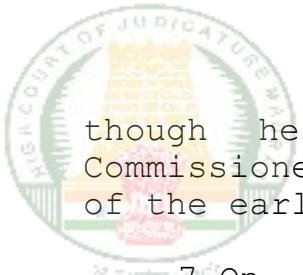
order passed by the lower Court, this revision petition is filed by the petitioner.

4. On the side of the petitioner, it is stated that on 22.01.2014 in page no.90 of the tamil magazine Anandha Vikatan, a news was published in the book under the caption "background of Inspector Pushparaj". In that article, there was some direct and indirect reference against the petitioner as if the said Inspector was working under him when the petitioner was the Sub-Urban Commissioner, Chennai and has made some mischievous statement that the petitioner was linked with the said Inspector and that the said Inspector evinced much interest in Real Estate issues. Only with an intention to bring disrepute to the fame and name of the petitioner these statements are made.

5. It is further stated that in the year 2004 also, the respondents published some imaginary news against the petitioner. It is further stated that on 24.06.2009, another defamatory news was published in Junior Vikatan which is a sister publication and the petitioner has filed a complaint under Section 500 of IPC before the learned Judicial Magistrate, Alandur, and the same was taken on file in C.M.P.No.4376 of 2009 and later was taken on file as C.C.No.1233 of 2009. The same respondents were arrayed as accused in the earlier case. The first accused, the third accused and some of their representatives met the petitioner and sincerely represented their regrets for publication of the impugned article. They promised not to publish any such defamatory article in future. Believing their words, the petitioner filed a compromise memo under Section 320(1) of Cr.P.C., and the same was recorded on 20.10.2009.

6. Irrespective of their undertaking, the accused persons started to write defamatory statements. There is no need for the magazine to write the name of the petitioner along with the name of the Inspector Pushparaj. More over that Inspector of Police never worked with the petitioner at any point of time. The lower Court has decided the matter without considering the mischievous statements of the accused since 2002 onwards. The trial Court failed to consider that the accused had undertaken not to publish any defamatory statements. The mentioning of the name of the Inspector Pushparaj along with the name of the petitioner while dealing with a news regarding the said Inspector Pushparaj on an alleged custodial shooting of a minor boy in the Police Station only indicates that the respondent are having some motive to defame the petitioner.

6(i). When so many Officers under whom the said Inspector Pushparaj might have worked were left unmentioned, yet, linking the petitioner, under whom the said Pushparaj never worked shows that the respondent and their magazine made indirect reference against the petitioner only with a motive to defame him. By linking the petitioner with the said Inspector who is involved in grave offence of shooting a minor boy and again making some allegation of real estate business by the said Inspector by giving an impression as



though he was in charge of the office of the Sub-Urban Commissionerate, and that such allegations, especially on the light of the earlier publications, are all per se defamatory.

7. On the side of the petitioner, it is stated that the petitioner has sent a legal notice to the respondents but there was no response and the petitioner was working in Nagercoil at that time and hence, the private complaint was filed before the learned Judicial Magistrate, Nagercoil. The Journal is circulated throughout State. It is stated that trial Court has come to the conclusion that the article was only about the Inspector of Police. The wording stated by the learned Judicial Magistrate are as follows:

“புகார்தாரர் அலுவலகத்தில் பணிபுரிந்த புஷ்பராஜ் என்பவரின் நடவடிக்கை குறித்து தகவல்கள் கூறப்பட்டுள்ளன.”

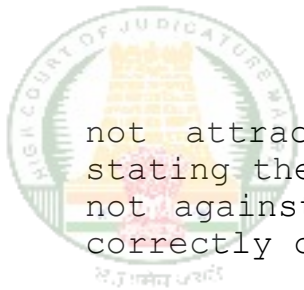
8. It is clearly proved that the trial Court has failed to consider the fact that Pushparaj never worked under the petitioner. It is further stated that “எனவே பிரச்சனைக்குரிய செய்திக் குறிப்பை முழுமையாக படித்து பொருள் கொள்ளும் பொழுது, புகார்தாரரின் புகழுக்கு களங்கம் விளைவிக்கும் வகையில் எந்தவொரு செய்தியும் அதில் இடம் பெறவில்லை இந்த நீதிமன்றம் முடிவுக்கு வருகிறது”

9. when the defamation case under Sections 499 and 500 of IPC will attract on the assumption of the others and not on the assumption of the Court. The colleague of the petitioner and others considered the mischievous statement as defamatory connected with the earlier statement published by the respondent in the sister edition of 'Junior Vikatan'.

10. Even before the witness was examined under Section 202 of Cr.P.C., the learned Magistrate, without giving an opportunity, straight away dismissed the petition. The statement that the Inspector Pushparaj had worked under the petitioner is totally wrong and that he was interested in Real Estate giving an impression as if the petitioner is intrusted in Real Estate.

11. The lower Court has failed to consider the point that defamation need not be direct. There is direct reference to the name of the petitioner. The information under the RTI Act will prove that Pushparaj never worked under the petitioner. An opportunity to prove that Pushparaj never worked under the petitioner is not given by the trial Court. Though the petitioner has sited 6 witnesses and even without recording the sworn statement, the learned Judicial Magistrate came to the conclusion that no false case and no defamation is made out.

12. On the side of the respondent, it is stated that Section 500 of IPC is not made out and the article is published in good faith. The article is not against the petitioner. The article no way, spoiled the reputation of the petitioner and words published in good faith will not attract defamation. The article has narrated that the Inspector of Police was interested in Real Estate. It is no way attract any defamation against the petitioner. This averments did



not attract the ingredients of Section 500 of Cr.P.C., merely stating the name of the petitioner is not defamatory. The article is not against the petitioner and the learned Judicial Magistrate has correctly come to the conclusion.

13.The learned counsel appearing for the petitioner relied upon the Judgment passed by the Hon'ble Supreme Court in the case of Mohd. Abdulla Khan v. Prakash K. reported in (2018) 1 Supreme Court Cases 615, which reads as follows:

"Offence of defamation - How constituted and punished - Ingredients summarised - Difference between making of imputation and publishing the same, explained - Printing or engraving any defamatory material and offering for sale or selling any such printed or engraved defamatory material, distinct offences, how punished, also given."

14.The learned counsel appearing for the respondents relied upon the Judgment passed by the Patna High Court in the case of Laloo Prasad v. State of Bihar and Another reported in 1997 (2) Crimes 498, which reads as follows:

"Petitioner could not be prima facie found to have committed offence unless it was shown that objectionable word was used by him - Proceedings were liable to be quashed against him."

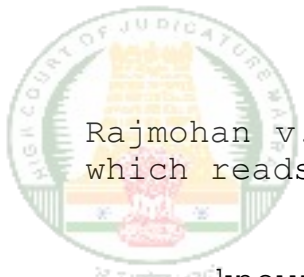
15.The learned counsel appearing for the respondents relied upon the Judgment passed by the Kerala High Court in the case of N. Ram v. Siby Mathew reported in 1997 (2) Crimes 498, which reads as follows:

"Complaint under Sections 500, 501, 502 r.w. Section 34 of IPC against petitioner for publishing defamatory article degrading dignity of Kerala Police - Words or passages found in said articles are only verbatim reproduction of materials collected and relied upon by C.B.I. During investigation - No prima facie case made out against petitioners - complaint quashed."

16.The learned counsel appearing for the respondents relied upon the Judgment passed by the Madras High Court in the case of Kalyanam v. Ramesh reported in 2003 (1) CTC 467, which reads as follows:

"Essential attributes - Article or news items published attributing certain utterances cannot prima facie constitute offence unless it is shown that imputation or objectionable words had been used at instance of accused."

17.The learned counsel appearing for the respondents relied upon the Judgment passed by the Madras High Court in the case of



Rajmohan v. Seetha Vedhanayagam reported in (2017) 2 MLJ (Cr1) 582, which reads as follows:

"Imputation without intention to harm or without knowing or having reason to believe that it would harm reputation of such person would not constitute offence of defamation"

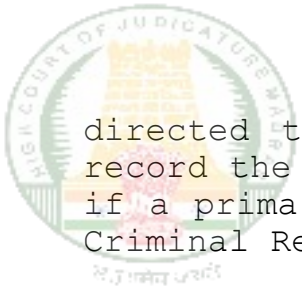
18. Records perused. The name of the petitioner was mentioned in the article in connection with one Pushparaj Inspector of police who indulged in an offence of shooting a minor boy within the Police Station itself. In the article, it is stated that the Inspector of Police worked under the petitioner while the petitioner was working as Sub-Urban Commissioner. The second point is that the Inspector of Police is in charge of the Office of Sub Urban Commissioner at that time. The third allegation is that the Inspector of Police was very much interested in Real Estate matters.

19. Regarding the first aspect, the Inspector of police never worked under the petitioner. It is stated that the petitioner is having record for the same. The article gave an impression that the Sub-Urban Commissioner Office was under the control of the Inspector of Police during that period when the petitioner was the Commissioner. The truthfulness of the second statement can be decided only by allowing the petitioner to let in evidence.

20. The third point is that the Inspector of Police was interested in Real Estate matters. Relating to this point, the allegation of the petitioner is that already some article as if the petitioner had some involvement in real estate was published in another sister magazine 'Junior Vikatan'. Whether the subject matter of the earlier article published in the sister magazine 'Junior Vakatan' is related to the involvement of the petitioner in Real Estate and whether this article is published on the same basis are to be decided on the basis of documents and on evidence.

21. A perusal of the records reveals that the same petitioner had filed a case against the very same respondents in C.C.NO.1233 of 2009 and the case entered into compromise. In that compromise, the respondents undertake not to publish any defamatory article against the petitioner. In the light of the earlier proceedings, there seems to be some linking between the earlier article and the present article. So in the light of the earlier case, the present case is to be considered. A perusal of the records reveals that the learned Judicial Magistrate has not recorded the sworn statement of the petitioner under Section 202 of Cr.P.C.

22. A perusal of the records reveals that the learned Judicial Magistrate has not given opportunity for the petitioner to examine himself or any of the witness. Hence the order passed by the learned Judicial Magistrate is hereby set aside and the matter is remanded back to the Judicial Magistrate. The learned Judicial Magistrate is



directed to record the sworn statement of the petitioner and to record the evidence of the witness and then to take the case on file if a prima facie case is made out. With the above direction, this Criminal Revision Case is disposed of.

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Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar(CS-IV)

To

The Judicial Magistrate, Nagercoil.

+1CC to Mr.N.RAMESH, Advocate, SR.No. 76294

Crl.R.C.(MD) No.354 of 2015
01.08.2018

MRN

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