

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.9906 of 2011

ORDER:

When the matter was taken up for hearing on 02.01.2018, as none appeared, it was directed to be listed under the caption 'For Dismissal'. Even today, when the matter is taken up for hearing, neither the petitioner appears nor there is any representation on his behalf. Hence, the matter is taken up for disposal on merits.

2. The criminal petition is filed for quash of the proceedings in CC.No.629 of 2011 on the file of the Metropolitan Magistrate, Hyderabad. The offence alleged is under Section 499 of Indian Penal Code, 1860.

3. Heard the learned counsel appearing for the first respondent and the learned Public Prosecutor appearing for the second respondent.

4. The grounds, on which the quash is sought for, are that the first respondent filed a private complaint before the Chief Metropolitan Magistrate, Hyderabad for the offence under Section 499, 503 read with Section 511 IPC stating that the complainant by self-claiming as great grand daughter of His Exalted Highness Sir Mir Osman Ali Khan Bahadur, the Nizam-VII of the State of Hyderabad has filed a case in OP.No.1083 of 2011 before the III Additional Chief Judge, City Civil Court, Hyderabad under the Indian Trusts Act in respect of 'Mount Pleasant' property and in that case, IA.No.1602 of 2011 was filed seeking temporary injunction orders. The petitioner, as a treasurer of

Sultan-ul-uloom-Educational Society, filed counter denying the complainant's status and her relationship with the Prince and took a specific plea that the complainant is not the great grand daughter of His Exalted Highness Sir Mir Osman Ali Khan Bahadur, the Nizam-VII of the State of Hyderabad. Aggrieved by the said denial of her status and relationship with the Prince and questioning her *locus standi* to file OP.No.1083 of 2011, the complainant filed a private complaint with an allegation that the petitioner's statement of denying her status as the great grand daughter of His Exalted Highness Sir Mir Osman Ali Khan Bahadur, the Nizam-VII of the State of Hyderabad amounted to defamation. Petitioner, in the petition, submits that his statement in his counter affidavit is bonafide one and made under good faith and with good foundation and basis. The said statement is only with a view and intention to protect the interest of respondent No.6 in the said civil litigation. Making of such statement in civil case would come under the Ninth Exception of Defamation.

4. The counsel for the first respondent, at the hearing, vehemently contends that the petitioner herein denied the status of the complainant as the great grand daughter of His Exalted Highness Sir Mir Osman Ali Khan Bahadur, the Nizam-VII of the State of Hyderabad and that would amount to a false statement and hence, defamation.

5. From the complaint, it can be understood that the complainant takes the contentions made in the counter affidavit filed by the petitioner herein, who is respondent No.6 in OP.No.1083 of 2011,

as amounting to defamation. The said contentions are also extracted in the complaint, which are as follows:

“...in fact, she is not the great grand daughter of His Exalted Highness Sir Mir Osman Ali Khan Bahadur, the Nizam-VII of the State of Hyderabad...”

“...the respondents are not aware of the date of birth of the petitioner but it is denied that her mother Fatima Fouzia was the eldest daughter of Waleshan Prince Jah Bahadur...”

6. The counsel for the first respondent brings to the notice of this Court the decision of the Supreme Court in *RAZIA BEGUM v. SAHEBZADRI ANWAR BEGUM*¹ in which the first respondent is the appellant. The matter went up to the Supreme Court in respect of impleadment of respondents 1 and 2 in the above mentioned OP. The Court by considering the merits of the case allowed the appeal, which was preferred by the appellant, who is respondent No.1 herein, questioning the impleadment of respondents 2 and 3 as defendants in the OP.

7. In the considered opinion of this Court, the said decision does not have any relevance to the aspects that have to be decided in this petition.

8. The counsel relies on the contents of the counter affidavit filed by the petitioner herein in the above OP wherein it was mentioned that the first respondent filed OS.No.43 of 1957 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, which was renumbered as OS.No.40 of 1958 and the said suit was finally withdrawn by the first

¹ AIR 1958 SC 886

respondent and was dismissed with costs by judgment dated 21.07.1958. On the basis of the said fact, the petitioner, who is respondent therein, avers that Razia Begum, who is the first respondent herein, is precluded from getting a judicial finding to the effect that she was the legally wedded wife of Prince Mouzzam Jah Bahadur after dismissal of the said suit. The counsel for the first respondent contends that the said finding is completely false averment but she, on the other hand, takes this Court through the judgment passed in OS.No.40 of 1958 dismissing the suit as withdrawn.

9. The counsel baselessly contends that the said judgment is also fabricated. It reflects her agony to somehow promote the cause of her client and to somehow bring the petitioner herein to terms with the disputes that are pending between them by keeping the case alive. The averments in the counter taken by a party cannot by any stretch of imagination and understanding be considered as made with an intention to defame the other side. The parties are at liberty to take the pleas on the basis of their belief. Hence, even if the averment in a pleading is baseless, it cannot be presumed as a defamatory statement. The effort of the counsel to take the case within the purview of Section 499 IPC cannot succeed even with the help of the decision of the Supreme Court in CRLA.No.2059 of 2017 dated 04.12.2017, as the facts of that case totally differ with the facts of this case. That is a case where a defamatory matter was printed in newspaper and sold or offered for sale.

10. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioner would only be abuse of process of law and would result in wastage of Court's time.

The criminal petition is allowed and the proceedings in CC.No.629 of 2011 on the file of the Metropolitan Magistrate, Hyderabad, against the petitioner, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

January , 2018
DSK

T. RAJANI, J

