

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.A.No.477 of 2005

Hemalata Prasad

... Appellant/Complainant

Vs.

1.Veda Prakash Johar

2.Manoj Das Gupta

3.Avinash Patel @ Albert

4.Dr.Dilip Kumar Datta

5.Krishna Belliapa

6.Satyanarayanamurthy

... Respondents/Accused

Prayer: Appeal filed under Section 378 of Cr.P.C., seeking to set aside the order of acquittal dated 23.11.2004 made in S.T.R.No.864 of 2001 on the file of Judicial Magistrate - I at Pondicherry.

For Appellant : Mr.K.Elangovan

For Respondents : Mr.C.A.Diwakar

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 23.11.2004 made in S.T.R.No.864 of 2001 by the learned Judicial Magistrate - I at Pondicherry.

2.The appellant is the complainant and the respondents are the accused 2 to 7 in the case in S.T.R.No.864 of 2001.

3.The brief case of the complainant is as follows: The complainant is the member of Sri Aurobindo Ashram and was leading her life on the lines of the teachings of the Mother and Sri Aurobindo. She was graduated from Sri Aurobindo International Center of Education in October, 1996 and after probation for one year, she was admitted as a member of Sri Aurobindo Ashram from 01.01.1998 and was assigned work in the Mother's Embroidery Department.

4. On 09.01.2001, one Krishna Chandra, a non ashramite in the presence of the second accused, assaulted the appellant's sister Jayashree/ a member of the Ashram in the kitchen. No action was taken against the said Krishna Chandra inspite of several requests. Since she was insisting A1 to A5 to take action against the said Krishna Chandra and since she informed them that she would complaint to the Police, she was arbitrarily expelled and prevented from participating in the activities of the Ashram and was forcibly evicted from the Ashram with effect from 01.04.2001.

5. On 19.03.2001 she sent a letter to A5 objecting to her eviction and A5 gave a reply on 22.03.2001 to that effect that A5 made scandalous, disparaging remarks affecting the modesty of the complainant and defamatory statement accusing her 'illicit sexual conduct' with A6.

6. Thereafter, the appellant filed a suit in O.S.No.215 of 2001 before the learned I Additional District Munsif, Pondicherry, challenging the validity of expulsion and an I.A.No.812 of 2001 for interim injunction. On 28.03.2001 the counsel on behalf of A1 to A5, while praying time to file counter in I.A., represented in the open Court that she was expelled for 'illicit sexual conduct' and 'since she became pregnant leading to expulsion' and thereby causing defamation, mental agony and shock to her. The defamatory statement in the reply dated 22.03.2001 were circulated by A1 to A6 from 23.03.2001 in the Ashram premises with intention of bringing down her reputation and causing harm to her character. The statements were made collectively by A1 to A6 and in connivance with A7 and A8 to lower the moral character and reputation of the complainant with a malafide motive of preventing her from continuing her membership in the Ashram.

7. On 23.03.2001 at about 7.45 a.m. when she visited the dining room of the Ashram to get her breakfast, A7 and A8 passed lewd remarks, outraging her modesty, attempted to touch her and tried to hold her and they passed derogatory and defamatory statements against her as revealed in the reply dated 22.03.2001. She lodged a complaint to the Grand Bazaar Police Station on 23.03.2001 at about 3.30 p.m. against A7 and A8. On 24.03.2001 on enquiry by the Police, A7 and A8 repeated the contents of the reply dated 22.03.2001 to the Police.

8. The imputation, insinuations and allegations of defamation and derogatory remarks were made collectively by the accused knowing it to be false and it would bring ill repute to

the complainant within the Ashram. The appellant issued lawyer's notice to A1 to A6 calling upon them and A5 and A6 to give a written apology. A1 to A6 received the notice, but A6 only gave a reply. Hence, the appellant filed private complaint under Section 200 of Cr.P.C. against the accused to enquire the matter and convict the accused persons for the offences punishable under Section 500 of IPC.

9. When the accused were questioned under Section 313 of Cr.P.C. with regard to the incriminating circumstance available against them in the evidence, the accused denied the same. Hence, trial was proceeded as against the accused.

10. The appellant/ complainant examined herself as P.W.1 and also examined three other witnesses as P.W.2 to P.W.4 and marked 15 documents as exhibits Ex.P1 to Ex.P15. On the side of the accused one witness was examined and 9 documents were marked as Ex.D1 to Ex.D9.

11. The Trial Court framed points for consideration and answered the points against the appellant, acquitted the accused and dismissed the complaint. Challenging the said order of acquittal, the appellant has filed this appeal before this Court.

12. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

13. The learned counsel appearing for the appellant would submit that the appellant is an inmate of the Ashram. She was admitted in the Ashram after thorough enquiry. There were series of dispute inbetween the Management of the Ashram and the appellant in respect

of the alleged misconduct against the appellant. She sent a detailed reply dated 19.03.2001 and the same was marked as Ex.P1. He would further submit that only with malafide intention, she was sent out of the Ashram. On 09.01.2001, one Krishna Chandra assaulted the elder sister of the appellant in the dining room. The same was reported to the Management of the Ashram for taking action against the said Krishna Chandra, however, no action was taken even after repeated request. Thereafter, the appellant was subjected to harassment and she was forcibly evicted from the Ashram.

14. The learned counsel appearing for the appellant would further submit that the appellant wrote a letter dated 19.03.2001/ Ex.P1 to the Trustee and a letter dated 20.03.2001/ Ex.P2 to A2. On 23.03.2001, she received a reply/ Ex.P4 from A5. In the said reply A5 had made defamatory statement of illicit sexual contact with A6 without any substance and the

same was proved before the Trial Court by marking documents and particularly P.W.2 inmate of the Ashram clearly deposed that A7 and A8 circulated the letters to the inmates of the Ashram in the dining room. Thereafter, P.W.2 informed the appellant. Immediately after the information, the appellant lodged Police complaint before the nearby Police Station. However, though initially Police conducted enquiry by examining the accused and other Ashram mates, however, police did not pursue the complaint made by the appellant. Thereafter, the appellant filed the present private complaint. However, the appellant examined P.W.2 in order to prove that A7 and A8 circulated the defamatory letter Ex.P4 to the inmates of the Ashram at the instigation of A1 to A6. Accordingly, he prayed for conviction of the accused.

15. Per contra, the learned counsel appearing for the respondents/ accused would submit that the admission of the appellant as well as her sister in the Ashram from the year 1998 is not disputed. However, the dispute arose only in the year 2001. There was complaint against the appellant and the said complaint was enquired by the Management of the Ashram since the Ashram was known for their discipline. In order to maintain discipline in the Ashram, after receipt of the complaint against the appellant, Enquiry Officer was appointed and detailed enquiry was conducted in which the appellant also participated in the enquiry. There was serious litigation. Enquiry Officer was appointed by this Court in CRP (PD) No.787 of 2002. Thereafter, Enquiry Officer conducted enquiry and filed report and found the appellant guilty.

16. The learned counsel appearing for the respondents/ accused would further submit that thereafter there was series of correspondence in between the appellant and the Management of Sri Aurobindo Ashram. Since the Enquiry Officer filed proven report against the appellant and thereafter the appellant sent Ex.P1 to Ex.P3 letters to A5 pursuant by way of reply Ex.P4 letter was sent to the appellant and the letter itself clearly indicate that purely confidential. It is only for the appellant alone. However, the appellant did not know how the said confidential letter was circulated by A7 and A8 and who handed over Ex.P4 letter to A7 and A8. However, the allegation with regard to the circulation of letter A7 and A8 is nothing but imaginary. He would further submit that in order to wreck vengeance as against the Ashram, a false case was foisted against the respondents.

17. The learned counsel appearing for the respondents/ accused would further submit that admittedly, the appellant had previous enmity with the respondents with regard to the expulsion from the Ashram. Though that order of expulsion was agitated before the Civil Court in O.S.No.215 of 2001 and that

proceedings were marked by the appellant herself as exhibits Ex.P10 to Ex.P15, they are not relevant to this case. The exhibit relevant to this case is only Ex.P4. Whether Ex.P4 letter is defamation or not is the issue before this Court. The Trial Court after elaborate discussions held that the appellant has not proved the case beyond reasonable doubt. Accordingly acquitted the accused and dismissed the complaint, which need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

18. In the light of the above submissions, now it has to be analyzed whether the appellant has established that there was defamatory statement and whether the appellant was defamed by the respondents through Ex.P4 letter.

19. On perusal of the evidence as well as Ex.P1 to Ex.P8, the undisputed facts are as follows: The appellant and her sister were enrolled as members of Sri Aurobindo Ashram in 1998. Their enrolment is not disputed. Thereafter there was sexual allegation against the appellant and one Krishna. Since the allegation is insult to the Organization and against Mother principles for which Management of Ashram decided to conduct enquiry. Accordingly, show cause notice was issued against the appellant. Thereafter, this Court appointed Enquiry Officer. After enquiry, based on the enquiry report the appellant was expelled from the Ashram. That expulsion order was challenged in I.A.No.812 of 2001 in O.S.No.215 of 2001. Initially injunction was granted in I.A., and that injunction was challenged before this Court in CRP No.787 of 2002. While being so, the appellant nor replied to their notice. Ex.P4 reply notice was sent by A4. On perusal of Ex.P4 letter it appears that letter is strictly personal and confidential and the said letter was sent through registered post with acknowledgement due.

20. Except A5 and appellant no one had knowledge about the said letter. However, the said Ex.P4 letter was allegedly circulated in the dining hall which was seen by P.W.2 and thereafter, intimated to P.W.1/ appellant. On perusal of the evidence of P.W.3, it is clear that on 23.03.2001 some letter was circulated by A7 and A8 and the same was circulated in the dining hall at 7.30 a.m. at breakfast time. Thereafter P.W.3 asked the complainant about the letter next day in the Ashram and she told that there is no truth in it and she want to make complaint to the Police. However on perusal of cross examination it revealed that P.W.3 also have some dispute with the Ashram and there was a suit in O.S.No.57 of 1999 filed by P.W.3 against Ashram and she also filed defamation case against the Trustees and P.W.3 admit that complaint was dismissed against her.

21. On perusal of the evidence of P.W.2 and P.W.4 their evidence is general in nature with regard to the suits pending and they did not reveal anything about the alleged defamation Ex.P4.

22. Whether the evidence of P.W.3 is sufficient to convict the accused in the private complaint. For better appreciation, Sections 499 and 500 of IPC are extracted hereunder:

"499. Defamation – 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 cases hereinafter expected, to defame that person.

Explanation 1—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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 of 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.

500. Punishment for defamation – Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

23. Perusal of the above provision, makes it clear that 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 cases hereinafter expected, to defame that person. 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 of 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.

24. In the present case, P.W.2, P.W.4 generally indicate with regard to Ex.P4 letter whether the same was circulated by A7 or A8 or other accused only P.W.3 alone alleged in her evidence that A7 and A8 circulated Ex.P4 letter in the dining hall and P.W.1 appellant comes to know about the circulation of letter only through P.W.2. Except P.W.1 and P.W.3 no other independent witnesses were examined with regard to circulation of Ex.P4 letter in the Ashram building. Admittedly, P.W.3 have several issues with Ashram and P.W.3 is also similarly placed person like P.W.1 and both were facing some disciplinary action by the Ashram.

25. In view of the above, mere P.W.3 evidence is not sufficient to implicate the accused in the above said offence. Further in her complaint P.W.1 did not make allegation against A1 and A4 with regard

to the alleged defamation. Only A5 sent Ex.P4 letter to the appellant by way of reply to Ex.P1, Ex.P3 and the said reply notice is purely confidential. Even the allegation with regard to the sexual relationship with another person was enquired and held against the appellant and the appellant was expelled from the Ashram and that was conveyed to appellant by way of reply/ Ex.P4.

26. In view of the above, I do not find any irregularity in the judgment of the Trial Court. The appellant miserably failed to establish the case beyond reasonable doubt. Accordingly, I am not inclined to interfere with the judgment of the Trial Court.

27. Further, the judgment of acquittal cannot be interfered with in a mechanical manner unless the judgment is perverse or against the legal principles. In fact, the Hon'ble Apex Court in the decision reported in 2012 SCW 5627 (Murugesan and others vs. State through Inspector of Police) has held that in the case of an appeal against acquittal, the presumption of innocence

available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Hon'ble Apex Court reported in (2004) 13 Supreme Court Cases 374 (Hydru vs. State of Kerala), it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

28. In view of all the above, I do not find any legal infirmity in the judgment of the Trial Court warranting interference by this Court. The criminal appeal is accordingly dismissed. The judgment dated 23.11.2004 made in S.T.R.No.864 of 2001 by the learned Judicial Magistrate - I at Pondicherry, is hereby confirmed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate - I at Pondicherry.

2.The Public Prosecutor, High Court of Madras, Chennai 600 104.

+1cc to M/s.pass Associates, Advocate SR.No.9203

+1cc to Mr.C.A.Diwar, Advocate SR.No.8744

Crl.A.No.477 of 2005

SJ(CO)
GMY(11/03/2019)

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