

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:30.04.2019

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Criminal Revision Case No.859 of 2012

G.Premraj

... Petitioner

/versus/

1.G.Vijayakumar

2.Ms.Devi Priya Vijayakumar

.. Respondents

Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code to allow this criminal revision petition by setting aside the order dated 19.04.2012 passed in C.M.P.No.2106 of 2012 on the file of the Judicial Magistrate-II, Salem.

For Petitioner :Mr.M.R.Sivakumar

For Respondents :No appearance
(Notice sent service awaited)

O R D E R

Heard the learned counsel appearing for the revision petitioner.

2. The case of the revision petitioner, who is the complainant before the Judicial Magistrate No.II, Salem is that to his e-mail ID, the respondents, who were none other than his own brother and brother's daughter sent defamatory messages with obscene content along with active virus which has forwarded to the mail all his contacts. Mentioning the face book account of the accused persons as well as e-mail ID and copy of the malicious content, complaint has been filed for offence under Section 67 of the Information Technology Act as well as Sections 499 and 500 of IPC.

3. The trial Court has examined three witnesses including the complainant and dismissed the complaint holding that to constitute the offence under Section 499 of the IPC, publication has to be made with an intention to defame the complainant. As far as the evidence let in by the complainant is concerned, he

has not specifically stated that the alleged indecent messages are circulated through the face book which by directly or indirectly spoiled the reputation.

4. Aggrieved by the order of dismissal, this revision petition is filed.

5. Perused the records.

6. The statement recorded by the trial Court indicates that besides the defacto complainant Premraj, one Srinivasan and Dhanapal have been examined by the trial Court. They have deposed that they both are in the face book circle of the complainant. On 13.12.2011, they received a mail, which was obscene showing the complainant in a loath some state and on seeing the video, the esteem of the complainant got diminished.

7. It is also the statement of the witnesses that many of the friends in their circle have seen the obscene video, which is defamatory in nature and they have enquired about the same. When there is a prima facie material established by the complainant by examining himself and two others as witnesses and the alleged defamatory materials have also been placed, the trial Court has dismissed the complaint on the ground that there is no prima facie material against the accused for issuing process and proceed with the complaint in accordance with law.

8. This Court is of the view that the impugned order of the Judicial Magistrate dated 19.04.2012 is against law, perverse and illegal, hence, liable to be set aside.

9. Accordingly, this Criminal Revision Case is disposed of. The order of the Judicial Magistrate-II, Salem in C.M.P.No.2106 of 2012, dated 19.04.2012 is set aside. Registry is directed to send the records back to the Judicial Magistrate No.II, Salem. On receipt of the records, the Judicial Magistrate shall consider the evidence available and give opportunity to the complainant to adduce any further evidence and thereafter, dispose of the case, on merits and in accordance with law.

Sd/-
Assistant Registrar(Inps.Cell)

//True Copy//

Sub Assistant Registrar

To

Judicial Magistrate No.II,
Salem.

Copy To:

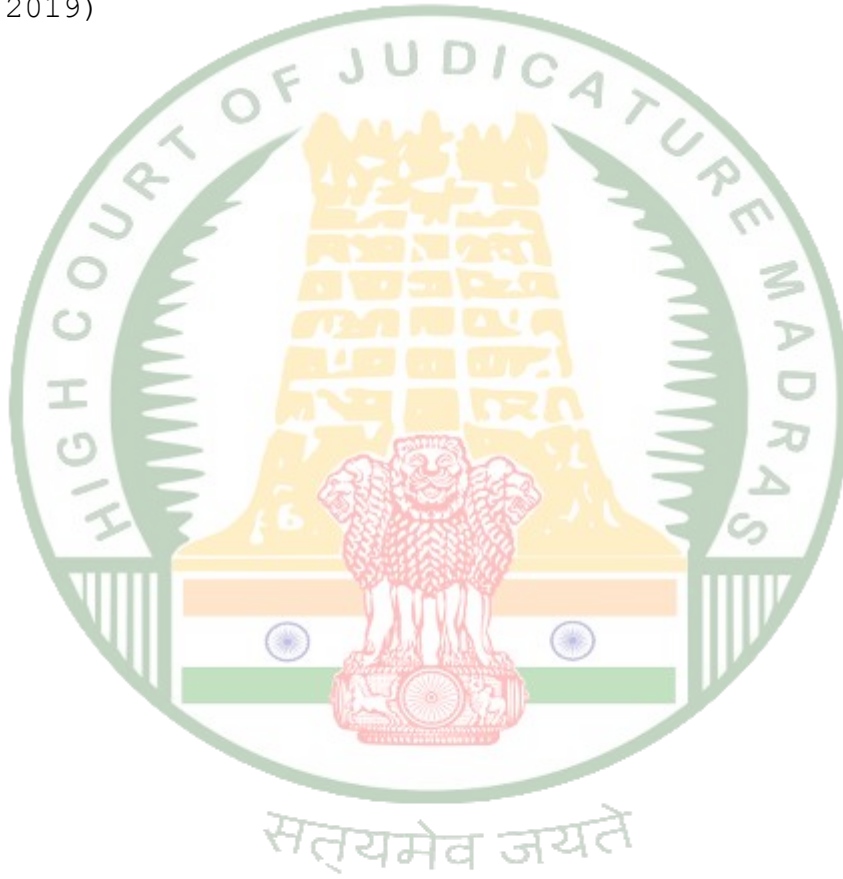
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.R.Sivakumar, Advocate, S.R.No.42905

Cr1.R.C.No.859 of 2012

GJII(CO)

RRS (01/07/2019)



WEB COPY