

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:29.11.2018

Delivered on:25.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.179 of 2016

R.Kannan ...Appellant/Plaintiff

Vs

1.Mohamed Nizar

2.Mohamed Najeem

3.C.D.Appavu

4.Rao ...Respondents/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.11.2014, made in A.S.No.26 of 2011, on the file of the II Additional District Judge, Chidambaram reversing the Judgment and Decree dated 09.06.2006, made in O.S.No.129 of 2004 on the file of the Principal District Munsif Court, Chidambaram.

For Appellant : Mr.V.Raghavan

For Respondent 1 to 3: Mr.T.Kathirvel  
No Appearance

For Respondent 4 : Not Ready in Notice

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JUDGMENT

The above Second Appeal is filed by the plaintiff in a suit claiming damages for defamation. The suit was decreed and reversed in Appeal and therefore the plaintiff is before this Court. The description of the parties are in the same ranking as in the suit.

## 2.Plaintiff's Case:

2.1.The plaintiff has come to the Court claiming damages of sum of Rs.1,00,000/- on the ground that the publication that had come up in the 4<sup>th</sup> defendant's magazine had defamed him and defendants 1 to 4 were liable to compensate for the same. It is the case of the plaintiff that he is a linesman in the Tamil Nadu Electricity Board now called TANGEDCO. It is the case of the plaintiff that he had a blemishless service for the last 16 years. He was deputed by his superiors to give a new Electricity Service Connection to defendants 1 and 2. During the Course of the above work the plaintiff came to understand that a PVC pipe had been fixed instead of the prescribed Zinc pipe for supplying Electricity from the Meter Board to the building. Since, the rules of the Electricity Board prescribed that service can be effected only through a Zinc pipe, the plaintiff informed defendants 1 and 2 to remove the PVC pipe and fix the Zinc pipe and on completion of the same to intimate the office. The plaintiff had assured the defendants 1 and 2 that on such intimation he would go over to give them a connection. Infact, the defendants tried to persuade the plaintiff to give the connection in the PVC pipe itself and when the plaintiff had refused to do so they had used an unparliamentary words against the plaintiff and his assistant.

2.2.The plaintiff would contend that the 3<sup>rd</sup> defendant who was a friend of the defendants 1 and 2 had invented a story which is absolutely baseless and the same was published in the 4<sup>th</sup> defendant's magazine, wherein, allegations were made against the plaintiff that he had demanded a bribe of Rs.600/- (Rupees Six Hundred only) from the defendants for giving the service connection. The plaintiff had issued a registered notice on 18.12.2002 to the defendants and the defendants 1 and 2 had given a reply denying the charges which the plaintiff had made and the 4<sup>th</sup> defendant had sent a reply that as a member of the fourth estate they were only exposing the arbitrary acts of the public servants and that the plaintiff could not stifle the freedom of press.

2.3.The plaintiff would submit that on account of this publication he had suffered unbearable mental agony and harm and therefore he was constrained to file the suit.

## 3.Defendant's Case:

### A)1<sup>st</sup> Defendant's response:

The 1<sup>st</sup> defendant had filed a written statement inter alia denying the allegations made by the plaintiff and submitting that, it is the duty of the 4<sup>th</sup> respondent to expose the misdeeds of people in public service and whatever was stated in the magazine was what had actually transpired and therefore the

plaintiff cannot claim any kind of damages from the defendants stating that he had been defamed as what has been stated is the actual truth. The 1<sup>st</sup> defendant would submit that he had no personal axe to grind against the plaintiff and there was no malice or ill-motive on the part of the 1<sup>st</sup> defendant and therefore the 1<sup>st</sup> defendant sought for dismissal of the suit.  
B) 4<sup>th</sup> Defendant's response:

The 4<sup>th</sup> defendant had filed a detailed written statement wherein, he had contended that the 4<sup>th</sup> defendant's magazine was a socially committed magazine and since there were several complaints against the employees of Government offices including the Tamil Nadu Electricity Board, they had decided to have an exclusive news about the grievances of the public with reference to these public servants. In the course of this project, one of the complaints that was received was that of the plaintiff. The 4<sup>th</sup> defendant has done nothing but his duty in exposing the malfunctioning of the public servants and also by ventilating the grievances of the public. The plaintiff was trying to threaten the 4<sup>th</sup> defendant by filing such a suit. Infact, the entire news report did not make any remarks against the plaintiff but has only narrated the grievances of the person who had narrated grievances of the consumer. The 4<sup>th</sup> defendant therefore sought for the dismissal of the above suit.  
C) 3<sup>rd</sup> Defendant's response:

The 3<sup>rd</sup> defendant who is the office bearer of the Consumer Guild of Tamil Nadu which is an organization meant for addressing the grievances of the consumers and had received the news about the plaintiff's demand from the 2<sup>nd</sup> defendant. The 3<sup>rd</sup> defendant had forwarded this complaint to the plaintiff's superiors and a copy was sent to the various departments. Infact, on receipt of the 3<sup>rd</sup> defendant's complaint the office of the Tamil Nadu Electricity Board, Chidambaram had immediately given Electricity Service Connection to the 2<sup>nd</sup> defendant's house. Pursuant to the complaint, the 3<sup>rd</sup> defendant came to understand that the departmental enquiry has been initiated against the plaintiff. The 3<sup>rd</sup> defendant would contend that he had nothing to do with the publication in the 4<sup>th</sup> defendant's magazine as the reporter had not met with him. The 3<sup>rd</sup> defendant would level charges of defamation against the plaintiff for having impleaded him as a party in the above suit. Ultimately, the 3<sup>rd</sup> defendant sought for the dismissal of the suit.

#### 4. Trial Court:

4.1. The Principal District Munsif, Chidambaram, before whom the parties had gone for trial had framed two issues namely:

a) Whether the plaintiff was entitled to the sum of Rs.1,00,000/- claimed as damages in the suit?

b) What other reliefs the plaintiff was entitled to?

4.2.The Trial Court observed that the publication had mentioned the name of the plaintiff and this had brought down the reputation of the plaintiff amongst the general public. The Trial Court had also observed that the publication has been given without corroborating the veracity of the complaint. The learned Principal District Munsif, Chidambaram, however, decreed the suit only against the defendants 1 to 3 and had dismissed the suit against the 4<sup>th</sup> defendant.

#### 5.Appellate Court:

5.1.The plaintiff had not preferred any appeal against the dismissal of the suit against the 4<sup>th</sup> defendant. However, defendants 1 to 3 filed A.S.No.26 of 2011 on the file of the Subordinate Court, Chidambaram, challenging the Judgment and Decree passed by the learned Principal District Munsif in O.S.No.129 of 2004. The learned Subordinate Judge reversed the Judgment and Decree of the learned Principal District Munsif and dismissed the suit in toto. The Appellate Court had held that the plaintiff had narrated one set of facts in his pleading which has been clearly given go by while adducing evidence and entirely new case has been projected.

5.2.The Appellate Court had also taken note of the fact that the departmental enquiry had gone against the plaintiff which only shows that the incident was true and therefore the same cannot be called as defamatory statement.

#### 6.Second Appeal:

6.1.Challenging the said Judgment and Decree of the learned Subordinate Judge, Chidambaram, the plaintiff has preferred the above Second Appeal. This Court by an order dated 08.03.2016 has ordered notice to the respondent returnable by 07.04.2016 and private notice was also permitted. The respondents were served and R1 to R3 were represented by Mr.T.Kathirvel and Mr.S.Saravanakumar (Advocates). However, when the matter was listed for enquiry there was no response and on 15.11.2018 when the matter was finally posted there was no representation on behalf of the respondents and the argument of the learned counsel for the appellant was heard. The matter was thereafter posted on 29.11.2018 for passing orders. Despite their name being printed the learned counsel for the respondents once again did not enter appearance in the Court and therefore this Court had reserved the matter for Judgment and Decree.

#### 7.Discussion:

Heard Mr.V.Raghavan, learned counsel for the appellant. He would argue that the publication had defamed his name amongst the general public and had caused immense mental agony to him. The Trial Court had considered all these aspects and had decreed the suit and the reversal by the Appellate Court was totally erroneous and therefore the Second Appeal ought to be allowed

and the Judgment and Decree of the Trial Court should be restored.

8. Heard the arguments and perused the papers. The plaintiff had come forward with a specific case that he had gone to the place of the defendants 1<sup>st</sup> and 2<sup>nd</sup> to effect a Electricity Service Connection but the Job could not be done since they had fixed PVC pipe for drawing Current from the Meter Board to the pillar but the rules of the Electricity Board would specify that connection can be given only through the Zinc pipes. The plaintiff has further alleged that the publication has "caused great mental agony and also harm to the plaintiff". He has also contended that on reading the news report, his friends, co-workers, relatives etc., had enquired with him about the article and he had been put to great shame. However, in the oral evidence he would not state that there was no discussion about the Zinc pipe on the day when he had gone to give the connection in his cross examination.

9. He would state that on 02.11.2002 he had given the Electricity Meter to the 2<sup>nd</sup> defendant and he had informed the 2<sup>nd</sup> defendant that he would come at 5.00 p.m to give the connection since the wiring work had to be completed before the connection was given the plaintiff and he had handed over the meter box to the 2<sup>nd</sup> defendant and left. When he returned at 5.30 p.m. he found that the Meter had been fixed and the Electrician of the defendants 1 and 2 had fixed the same.

10. He has also submitted that the meter had been rightly installed and the wiring had also been properly made. He would submit that the checking had been done by him and not by the assistant. He would further in his cross examination, admit that the wiring has been done only by a licensed contractor. Therefore, it is clear that the plaintiff has taken a totally different stand in his oral evidence.

11. From his pleading, it is also seen that on the complaint which has been launched against the plaintiff the departmental enquiry has been held and the charge sheet was framed which has been exhibited as Ex.A.19. The plaintiff's increment for salary was not given for one year. Thereafter, an appeal was made to the superior officer. Therefore, it is clear that the incident which form the basis of the complaint had actually taken place and the plaintiff is guilty of lapses. Therefore, it is not a concocted statement nor is it a false statement. Therefore the plaintiff cannot plead that he has been defamed and he cannot mulct any damages on the defendants.

The Appellate Court has rightly reversed the Judgment of the learned Principal District Munsif in O.S.No.129 of 2004.

Consequently, it does not give rise to any Substantial Question of law warranting the interference of this Court. In the result, the Second Appeal is dismissed. However there shall be no order as to costs.

Sd/-  
Assistant Registrar

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Sub Assistant Registrar

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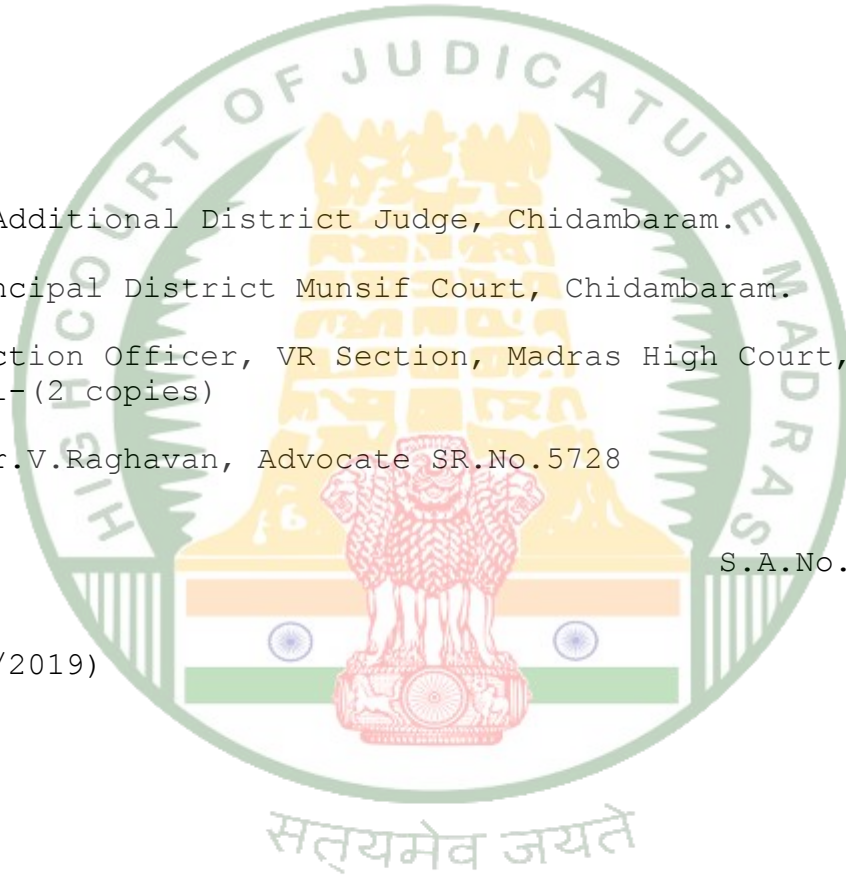
To,

- 1.The II Additional District Judge, Chidambaram.
- 2.The Principal District Munsif Court, Chidambaram.
3. The Section Officer, VR Section, Madras High Court, Chennai-(2 copies)

+1cc to Mr.V.Raghavan, Advocate SR.No.5728

S.A.No.179 of 2016

CNR(CO)  
GMY(08/03/2019)



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