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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **19.09.2019**

PRONOUNCED ON : **03.10.2019**

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C. (MD) No.458 of 2019
and Crl.M.P(MD)No.6344 of 2019

1.Bagavathi
2.Nachimuthu
3.R.Palanisamy

... Revision Petitioners/Respondents/Accused

Vs.

R.Krishnasamy ...Respondent/Appellant/Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, against the judgment passed by the learned Additional Sessions Judge/Fast Track Mahila Court, Karur in C.A.No.106 of 2018 dated 18.03.2019 reversing the judgment passed by the learned Judicial Magistrate No.II, Karur in S.T.C.No.178 of 2010 dated 13.12.2017 convicting the petitioners under Section 500 of I.P.C by imposing a fine of 1000/- each in default of payment of which to undergo each one month simple imprisonment for the offense under Section 500 Cr.P.C.

For Petitioners : Mr.V.Balaji

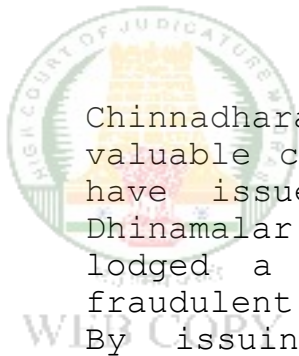
For Respondent : Mr.K.Balasubramani

O R D E R

The present revision has been filed against the judgment of the Additional Sessions Judge, Fast Track Mahila Court, Karur in C.A. No.106 of 2018 dated 18.03.2019 in setting aside the order of acquittal by the Judicial Magistrate No.2, Karur, in S.T.C.No.178 of 2010 dated 13.12.2017 and convicting the petitioners/accused under Section 500 IPC and imposing a fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of one month.

2. The facts of the case are briefly stated hereunder:

The complainant claims that he is a person of high reputation and has social standing and enjoys good name in the society. The complainant along with Saminathan, Kulandaisamy, Muthusamy and Marappan purchased a property on 12.04.2010 which was registered in



Chinnadharapuram Sub-Registrar's Office in Document No.670/2010 for valuable consideration. According to the complainant, the accused have issued a public notice on 26.04.2010 at page No.15 in Dhinamalar newspaper through their Advocate alleging that they lodged a complaint with District Crime Branch, Karur that a fraudulent sale deed has been created by the complainant and others. By issuing such public notice, the accused have attributed fraudulent imputations against the complainant and others for purchasing the property and thereby tarnished the image and reputation of the complainant.

3. According to the complainant, that sale was lawful purchase for valuable consideration and without any title over the property in question, the accused have issued public notice due to which the complainant, who was involved in real estate business had suffered great loss of reputation and goodwill. Therefore, he approached the trial court and filed a private complaint under Section 200 CrI.P.C. The trial court, after adverting to the complaint and evidence, has proceeded to issue summons to the accused for offence under Section 500 IPC for defaming the name of the complainant through the public at large.

4. On behalf of the complainant, 3 witnesses were examined and 5 documents were marked. On behalf of the accused, 1 witness was examined and one document was marked. On behalf of the complainant, sale deed, publication in daily newspaper and a letter to the District Crime Branch, Karur seeking information as to whether any complaint was made by the accused in regard to the so-called fraudulent transaction and letter replied by the Crime Branch on 28.04.2010 stating that there was no complaint lodged against the complainant and legal notice issued on behalf of the complainant, were marked.

5. Before the trial court, the complainant was examined along with other witnesses. According to the evidence of the complainant, in view of the allegations as contained in the public notice issued in the daily newspaper several persons came and enquired about the property in question and due to the said enquiry being made, the petitioners have suffered loss of reputation and business. The other two witnesses, who were examined on behalf of the complainant had also deposed that after seeing the public notice in the newspaper several persons enquired as to what was the nature of the transaction and what was his reaction to the notice.

6. On behalf of the accused, it was deposed in the proceedings that the property in question originally belonged to the ancestors of the accused. There was a civil litigation pending on the file of the civil court and ultimately, the matter went up to this Court in Second Appeal and ultimately the ancestors of the accused have succeeded in the civil litigation confirming that the property



inheritance of the property and since they found that the property has been encumbered in the year 2010 by some third party entering into sale transaction with the complainant, they were constrained to issue public notice, so that the property would be secured and future complications would be prevented.

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7. According to the accused, they had approached the jurisdictional police and attempted to lodge a complaint on 21.04.2010. Since it was a civil dispute, jurisdictional police refused to register the case. The same was filed before the trial court on behalf of the accused. Therefore, the case of the accused was that there was no offence made out attracting Section 500 IPC since the property belong to the ancestors of the accused and civil litigation ended in their favour.

8. The trial court, after analyzing evidence and the materials placed on record, has finally come to the conclusion that the offence against the accused under Section 500 IPC was not made out and acquitted the accused from the charges. According to the trial court, witnesses have deposed that they did not see the public notice published in the newspaper properly and they were not aware of the civil litigation in regard to the property in question. In fact, the trial court has stated that when the so-called witnesses have not properly read the public notice dated 26.04.2010 and were also not aware of the contents of the public notice, the question of defaming the complainant did not arise at all. Moreover, the trial court has also held that the Second Appeal pending before this Court had ended in favour of the ancestors of the accused and the property was in possession of the accused after the demise of their ancestors and this fact was not disproved by the complainant and therefore, concluded that the property, which was transferred by way of sale transaction to the complainant, was actually belonging to the accused.

9. In such circumstances, the trial court acquitted the accused from the charges. As against the same, a criminal appeal has been filed before the lower appellate court.

10. The lower appellate court has doubted the conclusion reached by the trial court for the reasons that no document was filed by the accused in regard to the complaint said to have been filed before the District Crime Branch, Karur on 21.04.2010 as claimed by the accused. According to the lower appellate court, Ex.D.1 a copy of the complaint was filed before the trial court only on 15.09.2010, after five months from the alleged refusal by the Crime Branch to register the complaint. In the meanwhile, complaint before the trial court was taken on 08.06.2010 and copies of the same were supplied on 07.07.2010 and the accused was also questioned on 13.07.2010. Therefore, the lower appellate court held that the conduct of the accused would show that the complaint being lodged on 21.04.2010 was only an afterthought it was only to escape from the



11. The lower appellate court has therefore, held that conduct of the accused clinchingly prove that the accused have damaged the reputation of the complainant by making publication in the newspaper.

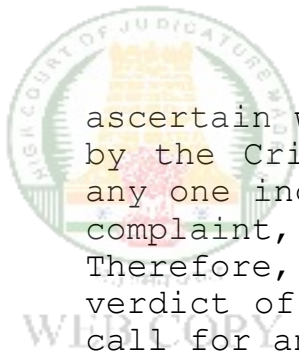
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12. The lower appellate court has ultimately overturned the verdict of the trial court and convicted the accused under Section 500 of IPC and imposed a fine of Rs.1000/- each and in default of payment, to undergo one month simple imprisonment. As against the appellate order, the present revision petition has been filed.

13. The learned counsel for the revision petitioners would submit that the trial court has given extensive reasons for acquitting the accused since it has appreciated the civil litigation, which was filed in relation to the property in question and the said civil litigation has ended in favour of the accused. Therefore, the accused were under a lawful and *bonafide* impression that they were the original owners of the property and therefore, they were constrained to cause paper publication when their property had been sold by a third party to the complainant. In fact, the learned counsel has drawn attention of this Court to the evidence of the witnesses, who have deposed that they were not aware of the actual content of the paper publication and therefore, the trial court has concluded that in the absence of proper knowledge in regard to the contents of the paper publication, the complainant cannot complain about loss of reputation of goodwill at all. Therefore, he would submit that the trial court has rightly concluded that the conduct of the accused did not attract the offence under Section 500 IPC.

14. Moreover, the learned counsel would submit that in view of the conclusion by the trial court on the basis of proper appreciation of civil case ending in favour of the accused's ancestors and the factum of possession of the property in question with the accused after the demise of their ancestors, the question of defaming the complainant could not be made out at all. Such finding of fact is not liable to be interfered with by the lower appellate court. But unfortunately, the lower appellate court had merely held that the case for defamation was made out without any reference to the civil litigation, which ended in favour of the ancestors of the accused.

15. On behalf of the respondent/complainant, it is submitted that the lower appellate court has correctly doubted the version of the accused about giving of complaint on 21.04.2010 to the District Crime Branch, Karur, since no document was marked for such complaint. In fact, as rightly held by the appellate court, in case of refusal to register the complaint, the accused could have gone to the Superintendent of Police for filing the complaint. In fact, when the accused approached the Crime Branch, Karur and in order to



ascertain whether any complaint was made against him, it was replied by the Crime Branch, Karur, that there was no such complaint from any one including from the accused. Therefore, in the absence of any complaint, causing publication would *per se* be defamative. Therefore, the lower appellate court has correctly overturned the verdict of the trial court and convicted the accused which does not call for any interference from this Court.

16. Considering the submission of the learned counsel for the parties and also perusing the pleadings and materials place on record, this court is of the view that the trial court, while coming to the conclusion in favour of the accused, has acquitted the accused on the grounds that there was no oral evidence to prove that the paper publication, which was effected at the instance of the accused on 26.04.2010, has affected the image, prestige and reputation of the complainant. In fact, the witnesses have deposed in the cross-examination that they were not aware of the contents of the public notice at all. Therefore, the trial court has come to the conclusion that the accused could not have defamed the complainant as only two witnesses were examined apart from the complainant himself.

17. Moreover, the trial court has also rightly appreciated the civil litigation which was filed by the ancestors of the accused which ultimately ended in favour of them by judgment of this Court in the Second Appeal and the property in question was in the possession of the accused after the demise of their ancestors. Therefore, the trial court has held that the accused were under the *bonafide* impression that they are the lawful and actual owners and therefore, the publication caused by the accused cannot be construed as being defamatory at all. In fact, the trial court has held in categorical terms that possession was with the accused and the property belong to them and in such event, the question of defaming the complainant did not arise at all.

18. Unfortunately, the appellate court, by slender reasoning, overturned the verdict of the trial court only on the ground that so-called complaint to the District Crime Branch by the accused on 21.04.2010 could not be believed as no supportive document is filed in support of such contention. However, the appellate court has not referred to the civil litigation, which ended in favour of the ancestors of the accused eventually. The civil litigation, which was the crucial factor and which was the basis for causing the paper publication by the accused, was not noted by the lower appellate court and the lower appellate court has fell into error in coming to a different conclusion than that of the trial court.

19. Needless to mention that unless the reasons rendered by the trial court are found to be legally unacceptable and perverse, such conclusion arrived at by the trial court is not liable to be



basis of the doubt entertained by it in regard to the so-called complaint on 21.04.2010 by the accused has come to a different conclusion and convicted the accused.

20. This Court even otherwise is of the view that the ingredients of Section 500 IPC are not satisfied in this case and in view of the above narrative, there being no unlawful conduct or intention by the accused to defame the complainant in the eyes of the public at large. Even otherwise, it was not fully demonstrated by the complainant before the trial court that he suffered loss of business reputation of goodwill. In the absence of such demonstration, the trial court has come to the conclusion that the criminal case filed against the accused is liable to be dismissed and dismissed the same by acquitting the accused.

21. In such circumstances, this Court is of the considered view that the judgment acquitting the accused has to be sustained and the judgment of the appellate court convicting the accused is liable to be set aside and the same is set aside.

22. Accordingly, the criminal revision petition is allowed and the order passed by the learned Judicial Magistrate No.II, Karur, dated 13.12.2017 in S.T.C.No.178 of 2010 is restored setting aside the order passed by the learned Additional Sessions Judge/Fast Track Mahila Court, Karur, dated 18.03.2019 in C.A.No.106 of 2018. Fine amount, if any, paid in pursuance of the conviction shall be refunded to the accused forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

CM

To

1.Additional Sessions Judge/Fast Track Mahila Court,
Karur.

2.The Judicial Magistrate No.II,
Karur,

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,



+1 CC to M/s.V.BALAJI, Advocate (SR-90948[F] dated 03/10/2019)

+1 CC to M/s.K.BALASUBRAMANI, Advocate (SR-91052[F] dated 03/10/2019)

Crl.R.C. (MD) No.458 of 2019
and Crl.M.P(MD)No.6344 of 2019
03.10.2019

JM/17.10.2019/7P/7C