

APPLICATION No.2896 OF 2016

IN

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M.GOVINDARAJ, J.

This application is for rejection of plaint as an abuse of process of law by the defendant.

2. The suit for recovery of damages for causing mental agony, stress and hardship due to the false written complaint dated 07.09.2015. The Plaintiff and defendant are working as Assistant Commissioner of Labour in Labour Department, Government of Tamilnadu. On 24.07.2015 an article was published in Tamil Magazine “NAVEENA NETRIKKAN” making allegations against the defendant of his official improprieties. The defendant did not take any steps against the magazine. The defendants attitude didn't change and again very same magazine published yet another article on 04.09.2015 about the conduct and behavior of the defendant. Without taking any action against the magazine , he made a false complaint against the

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Plaintiff to his superiors on 07.09.2015.

3. The Plaintiff got information from the known sources and applied for a copy of the complaint under Right To Information Act On 14.09.2015. The Public Information Officer furnished the publications dated 24.07.2015, 04.09.2015 and the complaint of the defendant dated 07.09.2015. On reading the complaint made by the defendant suffered heavy mental agony both physically and mentally and he was unable to concentrate on his job. The false and frivolous allegations in the written complaint made by the defendant is nothing but defamation. Hence he issued a legal notice to the defendant on 16.12.2015 calling upon to produce the evidences to substantiate the false allegations made against him. The defendant replied the notice on 22.12.2015 without producing the materials substantiating the allegations. It clearly shows that the defamatory statement made by the defendant is without any material or substance making him liable to pay Rs.25,00,000/- lakhs towards damages for causing mental agony, stress and disabling him concentrating on his job and family by complaint dated

07.09.2015 and also a sum of Rs. 1,00,000/- for making the false complaint with a vindictive intention to degrade the plaintiff as against his position to get posting at Chennai without having any substance or material to substantiate his allegations totaling to a sum of Rs.26,00,000/-.

4. The cause of action said to have arisen on the basis of publications made in Tamil Magazine Naveena Netrikkan dated 24.07.2015 , 04.09.2015 , the complaint made by the defendant to his superiors dated 07.09.2015 and exchange of legal notices dated 16.12.2015 and 22.12.2015.

5. The learned counsel for the applicant would contend that the defendant came to know through reliable sources that the plaintiff was behind the mischievous adventures of publications in the said magazine. Following the official procedure he made a complaint to his superiors on 07.09.2015 based on the information. Writing a complaint to a lawful authority to enquire will not amount to defamation. The High Courts of Delhi and Madras have held @002 DLT 573 (Punjabi Bagh Cooperative Vs K.L.Kishwar) and

1986 LW(Cr)16 (Bhanumathi Rajah Vs M.S.P.Rajesh that the test is as to whether complaint is made to a person having lawful authority or not?. If it is in the affirmative there is no defamation and no cause of action and the plaint is liable for rejection under Order VII Rule 11 C.P.C. The plaintiff with an ulterior motive to stall the enquiry by the superior authority and to pressurize the defendant has filed the above defamation suit. The action of the plaintiff is nothing but clear abuse of process of law and it shall be nipped at the bud. To buttress his argument the learned counsel would rely on the judgment of Justice V.R.Krishna Iyer in T.Arivanandam Vs Satyapal (AIR 1977 SC 2721).

6. The learned counsel for the respondent / Plaintiff would contend that the unsubstantiated allegation made by the defendant against the plaintiff would amount to defamation. The defendant did not take any action against the Tamil magazine for making serious allegations in respect of impropriety in discharge of his official duties. This amounts to admitting the contents published. A person in proceedings for defamation is protected by absolute

privilege and qualified privilege. Absolute privilege is a statement made by a person having immunity to make statement however it is defamatory. If it is an unprivileged statement it is actionable, however honest it may be. If the publication is not true, the defendant should have sued the magazine. Strangely he made a complaint against the plaintiff to a superior officer with an ulterior motive to degrade his reputation and his position and also to spoil his chances to get posting at Chennai. The authority has no power to carry out judicial or quasi judicial functions. The power is vested with the courts only. Even then the plaintiff caused a legal notice to furnish the evidence substantiating the allegations, which the defendant failed to produce. The failure to produce the material or substance amounts to defamation and he does not have qualified privilege to get exemption. Hence the complaint made to a third person of unsubstantiated allegations would amount to defamation. Therefore the complaint dated 07.09.2015 would give rise to cause of action and he would rely on the following judgments to support his contentions.

1. P.M.Govind Nair vs. M.Atchutha Menon, 1915(2) LW 290

2. Pandey Surendra Nath Sinha and another vs Bageshwari Pd, 1960

SCC Online Pat 116: AIR 1961 Pat 164

3. Daya Ram and others vs. Ganesh Ram, AIR 2000 Raj. 377

4. Ram Jethmalani vs. Subramaniam Swamy, 2001 (57) DRJ 476

5. Vijayalakshmi vs. R.Vaiyanaperumal and 2 others, 2002 -2-L.W.634

6. M.N.Roy and another vs. Snehasis Bagchi, 200 SCC Online Cal 613: (2003) 2 CHN 361: (2003) 4 ICC 107 (Cal)

7. J.Jayalalithaa vs. Nakheerangopal, 2009 (1) CTC 798

8. Esbi Hi-Flex Pvt. Lrd and Another vs. Vulkan Technologies Pvt. Ltd, 2015 SCC Online Cal 4421

7. I have considered the submissions

8. At the outset the judgment of this court reported in Vijayalakshmi's case is one of making complaint to various authorities and making propaganda against a person having reputation and dignity in the society. The false propaganda lowered her image in the minds public. On such averments

it was held that there is reasonable cause of action to maintain suit. But the present case will not fall under that category.

9. The judgment reported in M.N.Roy and another vs. Snehasis Bagchi, 2002 SCC Online Calcutta 613 is a case where by an order the action of a staff was called as “sheer stupidity” and “not only untrue but patently dishonest”. The said order was sent through a peon and copies were circulated among the employees. In such a circumstance, the court held that the plaint disclosed cause of action to maintain the suit. In J.Jayalalithaa vs. Nakheerangopal, 2009 (1) CTC 798, the case is about the publication made in a magazine and fairness of criticism.

10. All these cases cannot be equated to the case on hand. As referred by the learned counsel for respondent/Plaintiff, in a case for defamation there shall be publication derogatory to a person to reduce his dignity and reputation in the minds of right thinking people. The statement in that view should have been made to third person or persons. If it is made to a lawful

authority who can take action it is exempted. In the present case on hand the complaint was made to a superior officer in the department, where both plaintiff and defendant are working. The complaint was not made public, but to an authority competent to enquire and take action on that basis. The concerned authority has not even taken any action neither issued any show cause notice to the plaintiff. Yet the plaintiff without any publication or suffering harm or damage has rushed to this court hastily. As contended by the learned counsel for the applicant the action of the respondent is premature as held in *Raj Nath Khosla vs. Acharya DR John R. Biswas & Ors*, 2012(132)DRJ 790, the relevant portion reads as under:

“12. Now, for deciding the present application on the basis of the averments made in the plaint, let us first look into the law on defamation. It would be relevant to reproduce the observations of the Apex Court in the case Pandey Surendra Nath Sinha v. Bageshwari Pd. AIR 1961 Pat 164 which had discussed the law on defamation in full length. The court observed as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom

it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be shunned or avoided or regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Defamation, therefore, is the wrong done by a person to another's reputation by words, signs, or visible representations.

A wrong of defamation, as such, consists in the publication of a false and defamatory statement concerning another person without lawful justification.

The word 'defamation' is the generic name for the wrong; libel and slander are particular forms of it. Defamation, therefore, is of two kinds, namely, libel and slander. In libel the defamatory statement is made in some permanent and visible form in writing or otherwise recorded, such as, printing, typing, pictures, photographs, caricatures, effigies. In slander the defamatory statement or representation is expressed by speech or its equivalents, that is, in some other

transitory form, whether visible or audible, such as, a nod, wink, smile, hissing, the finger-language of the deaf and dumb, gestures or inarticulate but significant sounds.

The actions of libel and slander are thus private legal remedies, the object of which is to make reparation for the private injury done by wrongful publication to a third person or persons of defamatory statements concerning the plaintiff. The defendant in these actions may prove the truth of the defamatory matter and thus show that the plaintiff has received no injury. For though there may be damage accruing from the publication, yet, if the facts published are true, the law gives no remedy by action.

In an action for libel the plaintiff should prove that the statement complained of (1) refers to him; (2) is in writing, (3) is defamatory, and, (4) was published by the defendant to a third person or persons.

.....

15. It has been held in Shri Ram Singh Batra v. Smt. Sharan Premi, 133 (2006) DLT 126, that "A complaint to a lawful authority is not actionable if it is

not defamatory per-se unless it is established that the complaint is false and defamatory. Thus, till before the court of law it is not established that the FIR in question is based on a false allegation, no action is even maintainable."

16. Same has been held in the case of Prof. Imtiaz Ahmad v. Durdana Zamir, 2009 (109) DRJ 357 , wherein it was observed that:-

"Whenever a person makes a complaint against someone to the lawful authorities and in that complaint he makes imputations against the person complained of, it cannot be considered that the person has publicized or publically made defamatory averments against a person. If a prosecution is initiated against the person on the basis of such averments and the person is acquitted holding that the complaint was false, then only a cause of action arises against the complainant for launching a case for false prosecution or for damages on other grounds. Until and unless a competent court holds that complaint was false, no cause of action arises. Approaching a competent authority and praying that the authority should come to the rescue of the complainant

and prevent the interference of the plaintiff (in the family affairs of the defendant) cannot amount to defamatory imputation per-se and even if it is published, it does not tend to show that the defendant had tend to show that the defendant had intended to lower the reputation of the plaintiff."

17. Seeing the facts of the present case in the light of well settled law as enunciated above, the complaints that are filed by the defendants against the plaintiff are made to the lawful authorities. As we have already discussed, what has to be seen in deciding the application under Order 7 Rule 11, CPC, are the averments in the plaint, and no subsequent facts, not even the written statement can be considered in deciding such application. It is clear, on the perusal of the averments made in the plaint, that the present case is not that the court has declared such complaints made by the defendants to be false. Even if we consider the subsequent developments in the case, which are, indeed, not required to decide the present application, it is evident from the order of the Metropolitan Magistrate, Patiala House, New Delhi that the court has disallowed

the application of the defendants under 156(3) CrPC for the registration of an F.I.R. but had allowed the complainant/defendants to lead pre - summoning evidence. Hence, it is not the case that the complaints filed by the defendants have been declared to be false by the court. The complaints are still under adjudication. Same is the position with respect to the civil suit filed by the defendants against the plaintiff which is still to be adjudicated upon and which, as of now, has been withdrawn by the defendants with the permission of the court to re-file it after completion of certain formalities.

18. In the background of the above facts, it is held that the plaint in the present suit does not disclose any cause of action and the same in fact is pre-mature and therefore the same deserves to be rejected under Order 7 Rule 11, CPC, 1908.”

11. In that view of the matter it is a privileged communication. The communication was furnished to the plaintiff at his request under Right To Information Act. It was not circulated or published to all. Further the plaint shall disclose as to the nature of defamatory statement made and as to how it

reduced the good reputation and dignity of the individual in the minds of right thinking people. The averments made in the plaint reveal only a vague statement that false and frivolous allegations were in the complaint, but not any specific detail as to how it reduced the image of the plaintiff in the minds of right thinking people. Mere making a statement that the complaint contains defamatory statement is not enough, but it shall explain the same specifically. The High Court of Calcutta in a judgment reported AIR 1958 Cal 269, W.Hay and Ors Vs. Aswini Kumar Samantha, para 11 reads as under:

"11. It is well settled that, in a libel action, the defamatory words must be set out" in the plaint. Where the words are per se or prima facie defamatory only the words need be set out. Where, however, the defamatory sense is not apparent on the face of the words, the defamatory meaning, or as it is technically known in law, the "innuendo" must also be set out and set out in clear and specific terms. These are universally accepted propositions. Where again the offending words would be defamatory only in the particular context, in which they were used, uttered or published, it seems to us that it is

necessary also to set out, except where, as in England, the law is or has been made expressly otherwise, the offending context (Colloquium) in the plaint and to state or aver further that this context or the circumstances, constituting the same, were known to the persons, to whom the words were published, or, at least, that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.”

12. In the case of A.Selvaraj and 2 others Vs L.Gnanaraj in Application No.3776/2015 had an occasion to reject the plaint in a suit for defamation on the ground that complaints given to lawful authorities and allegations and counter allegations made during exchange of notices will not amount to defamation. If it is considered that the allegations are defamatory and a person making a complaint will be liable for prosecution and damages, nobody will come forward with truth. In all litigations, particularly in suits for defamations truth is the weapon. If speaking of truth or raising allegations

against each other or lodging a complaint to a law enforcing authority or sending complaint to a superior authority for redressing one's grievances will not fall within the purview of defamatory statement. For a better understanding the relevant portions of the judgments referred are given as under.

13. In the order passed by this Court in C.R.P.(PD)No. 547 of 2012 dated 09.01.2015, ***A.N.Shanmugam and another vs. G.Saravanan.*** The relevant portion reads as under:

“13.....If every complainant, who lodges a complaint with the Law Enforcing Agency for imputation against the persons accused are to face civil cases for defamation on the premise that the imputations, according to the accused, are false, many people fearing such actions on the part of the accused, may not come forward to lodge a complaint to the Law Enforcing Agency. When an imputation has been made in a complaint made to the Law Enforcing Agency with the belief that such Agency would take criminal action

against the persons against whom such imputation are made, the same will provide a valid exception taking such act outside the scope of tort of defamation. Besides, the lodging of the complaint with the police could not be considered to be a publication of a defamatory statement. If at all any wrong is committed by lodging a false complaint with the police and thereby setting the criminal law in motion, it may amount to malicious prosecution, for which action can be taken only after the disposal of the criminal case, wherein a specific finding shall be given to that effect.”

14. Another judgment of this court in CrI.R.C.(MD) No. 414 of 2014 dated 10.2.2015 in **A.Mohan & 3 others vs. A. Arulraj**, the relevant portion reads as under:

“ 6. Insofar as the first part of the complaint is concerned, this Court is of the view that the legal notices are exchange between the parties and even for the sake of argument, the notices contain some defamatory statement and it cannot be construed as defamatory for the reason that only the concerned parties, who

exchange notices, are said to be aware of the same.”

15. In the case of ***Bhanumathi Rajah vs. M.S.P. Rajesh reported in CDJ 1984 MHC 319***, para 8 reads as under:

“ 8. The second ground of revision is that the accused has only made a representation to the authorities and that her purpose was not to denigrate or to defame the complainant. In support of this ground, the learned Counsel for the accused places reliance on several decisions. Namely, M. Ramachandran v. P.S. Mehra, (1966) L.W. (Crl.) 78, K.P.S. Ponpandian v. C. Chinnasamy, (1984) T.L.N.J. 435, M. Ponnachamy Pillai v. Kandasamy, (1983) L.W. (Crl.) 26 and unreported decision in N.S. Radhakrishnan v. N.K. Kuppayyan, Crl.R.C. No.716 of 1980. All the above decisions are illustrations of Exceptions 8 and 9 under sections 499 defining defamation. When a person makes a statement about another, normally it will be either to the advantage or to the disadvantage of the other person. When it is to his disadvantage, it would be defamatory if the intention is to cause harm to the

reputation of the others. But even if the statement is such as in the ordinary course it will cause harm to the reputation of a person, such a statement could be made safely, if it is necessary for the protection of the interest of the person making it or of any other person or for the public good. It may not be defamation even if no interest is intended to be preserved, if the accusation is made to any of those who have lawful authority over that person with respect to the subject of accusation as provided in the Exception No. 8. Indeed, in the present case, Exhibit P-2 reads as follows:

"In support of my petition objecting Sri M.S.P. Rajesh alone to sign the TP3' of Stanmore Estate, I add the following facts to your consideration."

"The Stanmore Estate is the only Estate in the whole of Shevaroy's which gets best yield of coffee and it is easily the best administered estate in the Hills', as per the counter filed by Sri M.S.P. Rajesh for my petition filed in the Court of the Principal Subordinate Judge of Salem. On this basis when the crop was compared for the season 1979-80 it is only 167 tonnes for about' 335 acres. This works out to 1/2 ton per acre which is an

average production in Shevaroys. For Stanmore Estate it should not be not less than 251 tons on an average of 3/4 ton per acre."

"It is given to understand that some of Stanmore Coffee are pooled with Santhavally and Shevaroyan Estate Coffee. In some of the Estate the E.B. Forms are written by the end of the season by manipulating the figures and while transporting also the coffee loads are not checked on the way to Salem by any officials. Taking this opportunity in Stanmore Estate two or three loads of coffee are transported with single TP 3 upto Kannankuruchi and disposed of locally for face value than pooling to Coffee Board and waiting for payments in piecemeal."

"Mr. Rajesh has acquired half share of Cauvery Peak Estate from 15th July, 1980 by partition suit filed by me in the High Court. He has no pulping house at Cauvery Peak Estate coffee also to Stanmore for pulping. This will be an additional advantage for Mr. Rajesh to mix up Stanmore Estate Coffee with his Cauvery Peak Crop and pool it separately. I have 1/10th share in Stanmore Estate and I am deprived of signing

the T.P.3's jointly with Sri M.S.P. Rajesh thereby I am unable to know the exact crop harvested and I am deprived of my actual profit from the Estate."

"I request the department to keep a check on the Stanmore Estate, M.S.P. Cauvery Peak Estate M.S.P. Belvidere Estate, M.S.P. Clenfell Estate, Shanthavally Estate and Shevarayan Estate all under the control of M.S.P. Rajesh."

The interest, if any of the accused in this case is in respect of her 1/10th share and her avowed purpose of writing the letter is obviously to get fully and exactly informed about the output of the estate and the real income derived therefrom. For that purpose, it is not necessary for her to make the other allegations which are contained in the letter which are certainly susceptible of impairing the reputation of an estate owner. A disparaging statement could be made when it is essential and necessary to protect the interest of the person making the representation but in the present case, most of the statements were made without any such interest in mind, but with malice. The revision petitioner has not shown at any point of time that it was necessary

for her to make such statements in order to promote her interest.”

16. In the case of **Laxman Jairam Malvankar vs. Reshma Ramesh Narvekar**, **MANU/MH/0661/2012**, para 25 reads as under:

“ 25. The defendant no. 1 has admitted that she has lodged the complaint against the plaintiff for illegal and criminal acts committed by him. Police are the authorities before whom complaints for criminal act against anyone can to be filed. Police have the authority to investigate into the said complaints. Therefore, merely by lodging complaint with police, no one may commit the offence of defamation. Admittedly, there was a civil litigation pending between the plaintiff's brother and the family of the defendant no. 1. The plaintiff has not produced any evidence to prove that the police, after investigation, found that the said complaint was false and fabricated. The plaintiff has not proved that it is the defendant no. 1 who caused to publish the contents of the complaint in the newspaper. The defendant no. 2 has published the news about the complaint which has been

admittedly lodged at Bicholim Police Station. The news does not state that the contents of the complaint are true. The plaintiff has also failed to prove that the defendant no. 2 published the news with a view to defame the plaintiff.”

17. The High Court of Delhi I.A.No 10367/2007 in CS(OS)569/2006 dated 02.03.2009 in the case of **Prof Imtiaz Ahmad vs. Durdana Zamir**, Para 11 reads as under:

“11. Moreover, the defendant had a right to make complaints of her grievances to the authorities. Whenever a person makes a complaint against someone to the lawful authorities and in that complaint he makes imputations against the person complained of, it cannot be considered that the person has publicized or publicly made defamatory averments against a person. If a prosecution is initiated against the person on the basis of such averments and the person is acquitted holding that the complaint was false, then only a cause of action arises against the complainant for launching a case for false prosecution or for damages on other grounds. Until

and unless a competent court holds that complaint was false, no cause of action arises. Approaching a competent authority and praying that the authority should come to the rescue of the complainant and prevent inference of the plaintiff in the family affairs of the defendant cannot amount to a defamatory imputation per se and even if it is published, it does not tend to show that the defendant had intended to lower the reputation of the plaintiff.”

18. The plaintiff without even waiting for a show cause notice by the disciplinary authority or initiation of disciplinary proceedings and a finding that the allegation are false has rushed to this court for damages. When there is no material or specific detail as to making of defamatory statement, it shall be considered that the plaint does not disclose any cause of action.

19. In ***T.Arivandandam vs. T.V.Satyapal, AIR 1977 SCC 2421***, the Hon'ble Supreme Court has observed as under:

“.....The learned Munsif must remember that if on

a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled.”

The present suit also, as contended by the applicant, gives an impression that it is filed prematurely for the purpose of stalling further action on the complaint made by the applicant. As we have already discussed that the complaint given to a lawful authority will not amount to defamation and no cause of action said to have arisen on that count, the plaint is liable to be rejected for no cause of action and struck off for abuse of process of law and accordingly struck off.

In fine, the application stands allowed.

14.08.2020

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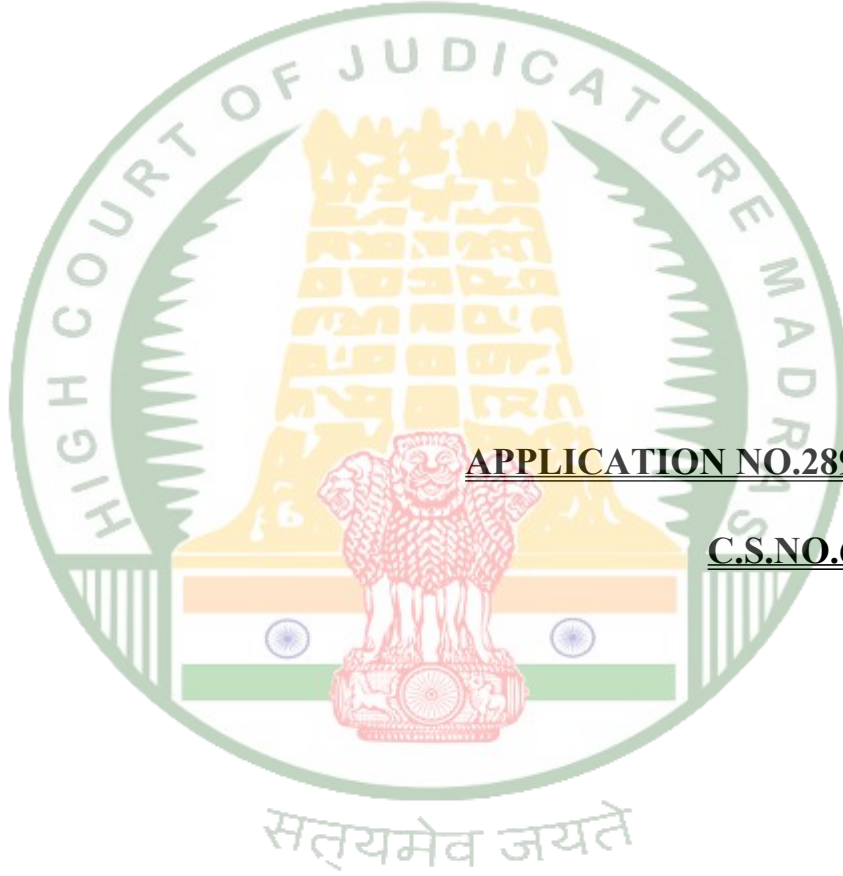
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