

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.31783 of 2012

and

MP.Nos.1 & 2 of 2012

Ms.Sona

...

Petitioner

Vs

Advocate J.Janakiraman
Son of Mr.Jayaraman Naicker
P.M.K. State Deputy Secretary
Samuga Neethi Peravai
No.34H/10, Ammur Road,
Muthukadai, Ranipet.

....

Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in CMP.No.5004 of 2012 on the file of the District Munsif, Civil Judge (Junior Division), Ranipet, Ranipet and to quash the same.

For Petitioner : Mr.S.Thanka Sivan
For Respondent : No Appearance

ORDER

This Criminal Original Petition has filed by the petitioner, praying to call for the records in CMP.No.5004 of 2012 on the file of the District Munsif, Civil Judge (Junior Division), Ranipet, Ranipet and to quash the same.

2.The case of the petitioner is that the petitioner is the Managing Director of the Company M/s.Uniq Interiors & Designs Pvt. Ltd and she is a film artist/actress and film producer also. The petitioner has produced Tamil motion pictures viz. "Kanimozhi", 2010 Bagyaraj" etc. Apart from the above, the petitioner is carrying on the business of interiors ad exteriors and also running fashion jewellery showroom under the name and style of "Uniq" in the aforesaid address. The petitioner, being a popular film actress cum producer, various magazines in Tamil, Telugu, Kannada and Malayalam languages, used to take interviews from the petitioner and publish in their magazines and likewise, one Mr.T.L.Sanjeevi Kumar, claiming to be reporter of "Vikatan Time Pass" Magazine, had contacted the petitioner over phone on 3.11.2012 and requested

for an appointment with her for a short interview and the time for interview was fixed as 2.30 p.m. on 05.11.2012. On 05.11.2012, the said T.L.Sanjeevi and one Mr.Hussain came to the petitioner's office and the said T.L.Sanjeevi had the interview session with her in which he asked the petitioner regarding her career prospects, her ongoing and new film projects and the proposed album to be published by the petitioner and nothing else and she had answered the questions asked by the said person in a very decent manner and thereafter, the said reporter and the photographer wanted the petitioner to pose for few photographs and the petitioner allowed the same and that the petitioner was in a normal customary saree costume. Thereafter, suddenly the said persons asked the petitioner to pose for certain photo shots displaying sex appeal and this irked the petitioner and she refused for the same and immediately, the petitioner wound up the interview session. However, to her shock and surprise, a magazine viz. "Vikatan Time Pass" published totally vulgar and defamatory publication in the issue dated as 17.11.2012 under the heading "Mk;gis';f vdf;F o#;a{ ngg;gh;jhd;" and the answers published in the said write up are totally false, defamatory and contrary to the factual interview given by the petitioner. In fact, the petitioner did not give any such statement in the interview to the press reporter. However, thereafter considered the said statement and also the statement is malign the image of the petitioner. Immediately after coming to know about the said false and defamatory publications made in the said magazine dated 17.11.2012, the petitioner issued a legal notice through her counsel demanding damages of Rs.5,00,00,000/- from the said magazine and thereafter the magazine published a regret letter to the petitioner as well as the same was published in the Vikatan magazine dated 01.12.2012. While the factual details pertaining to the alleged interview remains so, without any subsistence, the respondent filed a criminal case in C.M.P.No.5004 of 2012 before the District Judicial Magistrate Court, Ranipet and the same has been taken cognizance by the trial Court, issued summons to the petitioner, challenging the same, the present petition is filed.

3.The learned counsel for the petitioner would submit that in fact the petitioner has not made any statement much less defamatory has alleged by the respondent in his complaint filed against the petitioner and after noticing the publication, the petitioner has issued a legal notice to the publishers of "Vikatan Time Pass" Magazine dated 15.11.2012 and thereafter the publishers of the said magazine also tendered apology and also they published regret letter in the magazine on 01.12.2012. Further even the publishers of the magazine themselves have tendered apology and published that the petitioner had not spoken any statement as alleged by the respondent. Therefore, the complaint lodged by the respondent has no substance and would not disclose any commission of offence alleged to have committed by the petitioner.

Therefore, the learned counsel seeks to quash the complaint.

4. In support of his contention, the learned counsel relied on a decision reported in 2010 (5) SCC 600 [S.Khushboo Vs. Kanniammal and another] wherein in similar circumstances, the Hon'ble Supreme Court has held as under in paragraphs Nos.34 & 35 which are extracted below:

"34.It is our considered view that there is no prima facie case of defamation in the present case. This will become self- evident if we draw attention to the key ingredients of the offence contemplated by Section 499IPC, which reads as follows:

"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. ..."

(emphasis supplied) The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499further

states that 'It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.'

35. With regard to the complaints in question, there is neither any intent on part of the appellant to cause harm to the reputation of the complainants nor can we discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. As mentioned earlier, the appellant's statement published in 'India Today' (in September 2005) is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a 'company or an association or collection of persons'. It is difficult to fathom how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if we refer to the remarks published in 'Dhina Thanthi' (dated 24.9.2005) which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if we consider these remarks in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. That imputation can only be found in the complaints that were filed by the various respondents. It is a clear case of the complainants reading in too much into the appellant's remarks."

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. There is no appearance on behalf of the respondent.

7. A perusal of the entire record including the complaint and on taking note of the subsequent events of the alleged publication, this Court finds that there is nothing against the petitioner to proceed against her. Since the publishers of the said magazine themselves admitted that the petitioner has not spoken the words which are published in the magazine and they have also regretted and published their regret in the magazine on 01.12.2012. Therefore when once the publishers of the magazine themselves cleared that the petitioner has not spoken any defamatory words which was the basis for lodging complaint by the respondent before the concerned learned Judicial Magistrate. This Court is of the view that the same cannot be sustained and therefore the same is liable to be dismissed.

8. According, this Criminal Original Petition is allowed and the complaint made in CMP.No.5004 of 2012 on the file of the District Munsif, Civil Judge (Junior Division), Ranipet, Ranipet is hereby quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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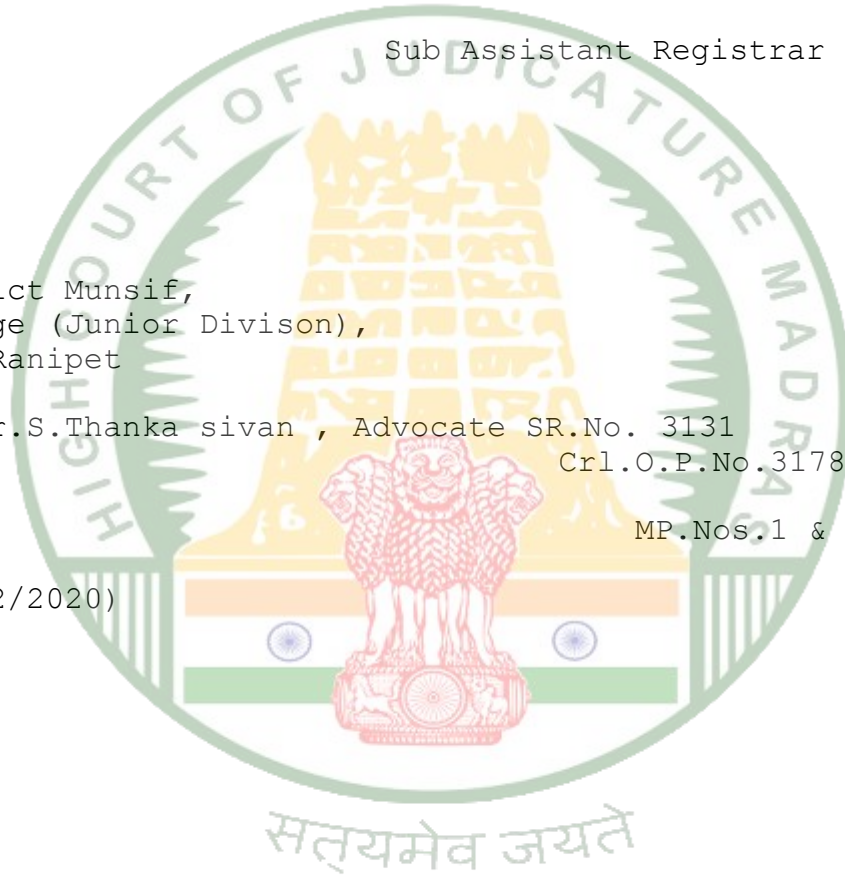
To

The District Munsif,
Civil Judge (Junior Division),
Ranipet, Ranipet

+1cc to Mr.S.Thankasivan, Advocate SR.No. 3131

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and
MP.Nos.1 & 2 of 2012

A.SK(20/02/2020)



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