

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2020

Delivered on : 19.08.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.3967 of 2019

in

C.S.No.82 of 2019

Mathew Sameul

... Applicant

Vs

1.Edapadi K.Palanisamy

2.Jibin Pulian Godan

3.Shija Anil

4.Shivani

5.Radha Krishnan

6.Sayan

7.Valayar Manoj

... Respondents

Prayer: Judges Summons filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 (a) of the Code of Civil Procedure

to grant an order of rejection of the plaint in C.S.No.82 of 2019 filed by the 1st respondent / plaintiff.

For Applicant : Mr.N.R.Elango
Senior Counsel
for Mr.E.Raj Tilak

For Respondent : Mr.Sathish Parasaran
Senior Counsel
Mr.S.R.Raghunathan

ORDER

This application for rejecting the plaint has been filed by the 1st defendant in a suit filed by the plaintiff seeking damages from the defendants for the defamatory video put up in the YouTube and other social medias and for an injunction restraining the defendants, their men, agents etc., from releasing, circulating, publishing any video clippings or articles or giving press interviews and / or post any items, messages on social media containing any allegations as found in the videos that had been uploaded in the social media platform. The 1st respondent / plaintiff would set out the following in his pleadings which is extracted in brief

hereunder.

2. The events that has compelled the 1st respondent / plaintiff to file the above suit was a video uploaded on YouTube and other social media platforms in which the applicant / 1st defendant is shown as interviewing one Sayan who is an accused in a pending criminal case. The very interview and the choice of words has been made with the singular motive of maligning the 1st respondent herein and casting aspersions on his character. The video clipping related to an incident of criminal trespass, murder and robbery which had occurred in the Kodanadu Estate at Nilgiris (hereinafter referred to as the Kodanadu Estate Case) which was the home of the former Chief Minister of the State, Dr.J.Jayalalitha, to whose party the 1st respondent belongs to.

3. The 1st respondent in his plaint has described in detail his public standing. He would state that he is not only a member of a recognized political party but is today the Chief Minister of the State. He has also described the reputation that he enjoys in the midst of the public on

account of the public services and contributions that have been made by him and also on account of his standing in politics which spans a period of over four decades. The plaintiff would also narrate as to how the content of the video is *per se* defamatory and how people known to him and several others have viewed the said clipping and informed him about the same.

4. The 1st respondent has stated that the timing of the video was such that it was aimed at lowering his image when the Lok Sabha elections were round the corner. In this interview the applicant sought to implicate the 1st respondent in respect of the deaths of two of the accused in the Kodanadu estate case. This was not only defamatory but also far from the truth as the deaths were on account of two separate road accidents. The interview itself has been done with one of the accused in the said crime. The 1st respondent has stated that the video clipping has tarnished his image and more particularly the reputation that he enjoyed in the midst of the public. The 1st respondent has also contended that the allegations made in the video has caused immense mental agony not only to himself but also to his

family members. In these circumstances, he has come forward to file the above suit.

5. The interlocutory application was also moved for an ad interim injunction in O.A.No.86 of 2019 in the above suit. This Court by its order dated 23.01.2019 has granted the ad-interim injunction.

6. The 1st defendant on entering appearance in the above suit has come forward with the instant application for rejecting the plaint. The grounds on which that the applicant has sought to reject the plaint are in a nutshell detailed below:

“a)The plaint does not make out any cause of action;

b)The plaintiff has no reputation and therefore there is no question of he being defamed;

c)The non – joinder of the political party is a ground for rejection since one of the statements in the plaint is that the defamatory statement has been made with an intention to mar the party's chances in the general elections;

d)The prayer of declaration should have preceded the prayer for damages for injunction and defamation;

e)The plaintiff has not stated as to which statement in the clipping had defamed him;

f)The suit has been filed on the basis of a non-existent cause of action; and

g)A public servant cannot maintain a suit for defamation”.

7. Mr.N.R.Elango, the learned Senior Counsel who has entered appearance on behalf of the learned counsel for the applicant would submit that he was submitting his arguments only on the ground that the plaint does not make out a cause of action and was not canvassing the other grounds set out in the application.

8. The learned Senior Counsel would contend that the plaint suffers from lack of pleadings regarding the cause of action since there is no mention as to what was the exact content of the video which is defamatory.

He would further argue that the 1st respondent is a person in public office and therefore open to public scrutiny and cannot gag the public from commenting about his actions. The 1st respondent has not pleaded the actual malice that is there in the publication. In this regard, he would rely upon the Judgement of the Honourable Supreme Court reported in **1994 (6) SCC 632 - R.Rajagopal and another Vs. The State of Tamil Nadu and others**. He would rely on paragraph no.26 (3) of the said Judgement in which the Honourable Supreme Court observed that in case of a public official right to privacy and for that matter, the remedy of action for damages is not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official is able to establish that the publication has been made with a reckless disregard for the truth. Where the complaint made is not in the discharge of the person's public duty then the person is entitled to a right to privacy as available to any other citizen. He would also rely upon the Judgement of the Delhi High Court reported in **2014 SCC OnLine Del 2384 - Harvest Securities Pvt. Ltd & another Vs. BP Singapore Pvt. Ltd & another** to

show that where a plaint is lacking in necessary particulars with reference to the defamatory content the plaint was liable to be rejected.

9. The 1st respondent has filed a counter statement *inter alia* contending that the plaint cannot be rejected on the ground that there is no cause of action since a reading of the plaint would clearly show the narration as to how the publication made by the applicant has defamed the 1st respondent which is the cause of action for the suit. The 1st respondent has reiterated how the message has been uploaded and viewed by several persons and how the same has been shared on other social media like WhatsApp, Twitter, etc., as a result of which the video has had a wide circulation amongst the public which has caused immense harm to the public image of the 1st respondent. The 1st respondent has further reiterated how being the incumbent Chief Minister of the State his reputation has been sullied. The 1st respondent would further contend that in the guise of the application the applicant has reiterated his vituperative against the 1st respondent with an added vengeance.

10. Mr.Sathish Parasaran, the learned senior counsel appearing on behalf of the 1st respondent would contend that the allegation of the applicant that the 1st respondent has not pleaded a cause of action is totally contrary to the contents of the plaint. He would draw the attention of this Court to paragraph No.10 of the plaint, wherein there is pleading that the death of Kanagaraj, the prime accused was on account of his riding bike in intoxicated state and not due to the machinations of the 1st respondent. Infact the FIR in respect of the accident has been registered on the basis of the complaint given by the deceased's brother Dhanapal. In paragraph No.14 of the plaint, the 1st respondent has also stated as to how other accused, Dhinesh had committed suicide and in respect of which also a case has been registered which would show that the video put up by the applicant contained false and defamatory statements.

11. The 1st respondent has clearly set out how the false submission have shown him in a poor light before the general public. In the plaint he has also stated how the publication was being made with the singular

motive of maligning him. The 1st respondent has also indicated the innuendos in the interview aimed at maligning him in his plaint. The learned senior counsel would submit that in the affidavit which is filed in support of the reject the plaint application further allegations have been made and from a perusal of the same it is clearly evident that the applicant has used hearsay to create the publication / video. In paragraph No.37 of the affidavit the applicant would clearly state as follows:

"I submit that the opinion of the plaintiff involvement was deduced by me,"

12. In paragraph nos.35 and 36, the applicant has clearly stated that the interview regarding the involvement of the 1st respondent in the robbery, murder is a statement of opinion which is formed by inferences thereby admitting that the said allegations are not backed by concrete evidence. The learned senior counsel would further submit that while considering the application for rejecting the plaint the contents of the plaint alone has to be read as whole along with the documents that are filed therewith and portions of the plaint alone cannot be read in isolation

to suggest that there is no cause of action. The learned senior counsel would also submit that the person who has been accused on the basis of inferences and opinion is none less than the Chief Minister of the State and therefore since the applicant has not made out a case that the plaint lacks cause of action, the application deserves to be dismissed.

13. Heard the learned Senior Counsels and perused the contents of the plaint as well accompanying documents more particularly the transcript of the interview. The discussion herein below is not a pronouncement on merits.

14. Before adverting to the arguments advanced on either side and the plaint and affidavit it is necessary to first consider the provisions of Order VII Rule 11 of the Code of Civil Procedure, hereinafter after called the Code. The same is extracted herein below:

"Rejection of plaint — The plaint shall be rejected in the following cases

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) Where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;*
- (d) Where the suit appears from the statement in the plaint to be barred by any law."*

15. In the instant application, the applicant has invoked the provisions of Order VII Rule 11 (a) of the Code. A cause of action is bundle of facts which put together gives raise to the suit. The Court has to read the entire plaint in order to appreciate if the same discloses a cause of action and if it does the plaint cannot be rejected merely on the opinion of the Court that the plaintiff may not ultimately succeed in the suit. So long

as cause of action has been averred and pleaded the plaint cannot be rejected at the threshold. The exceptions to this being where the defendant is able to demonstrate that the suit is of abuse of process of the Court, re-litigation and that it is smacks of fraud, misrepresentation, etc.,. Though the principles of re-litigation, fraud, etc., does not find place in the provisions of Order VII Rule 11 of the Code, however the Honourable Supreme Court in the case of ***K.K.Modi Vs. K.N.Modi*** reported in **1998 (3) SCC 573** had observed that the power to strike out a pleading on the ground of abuse of process of Court is available under the provisions of Order VI Rule 16 of the Code and that re-litigation would also amount to an abuse of process of Court.

16. In the Judgement reported in **2013 (1) MWN Civil 531 - R.Arumugam vs Pr.Palanisamy**, this Court has held that when the Court is dealing with a petition under Order VII Rule 11 of the Code, the Court cannot go into question as to whether a cause of action alleged is true or false or take a decision based on the defense plea taken by the defendant or the document of the defendant. It is only the contents of the plaint and the

documents filed along with the plaint that can be looked into. In the instant case whether the publication is defamatory or otherwise can be decided only after a full-fledged trial. The Court is only concerned as to whether a cause of action can be inferred from a reading of the plaint and documents as a whole.

17. A perusal of the plaint and the transcript of the publication would show that a statement has been made implicating the 1st respondent both in the robbery at Kodanadu estate as well as the death of the three persons. In the transcript the accused, Sayon would state that the deceased Kanagaraj had informed him that they are doing everything for and on behalf of the 1st respondent herein. This statement, according to the plaintiff is false and defamatory.

18. In the plaint, the 1st respondent has clearly set out how the applicant has made innuendos trying to link the incident at Kodanadu estate directly to the 1st respondent just based on hearsay. The 1st respondent has not only set out how he is a public figure but also how the

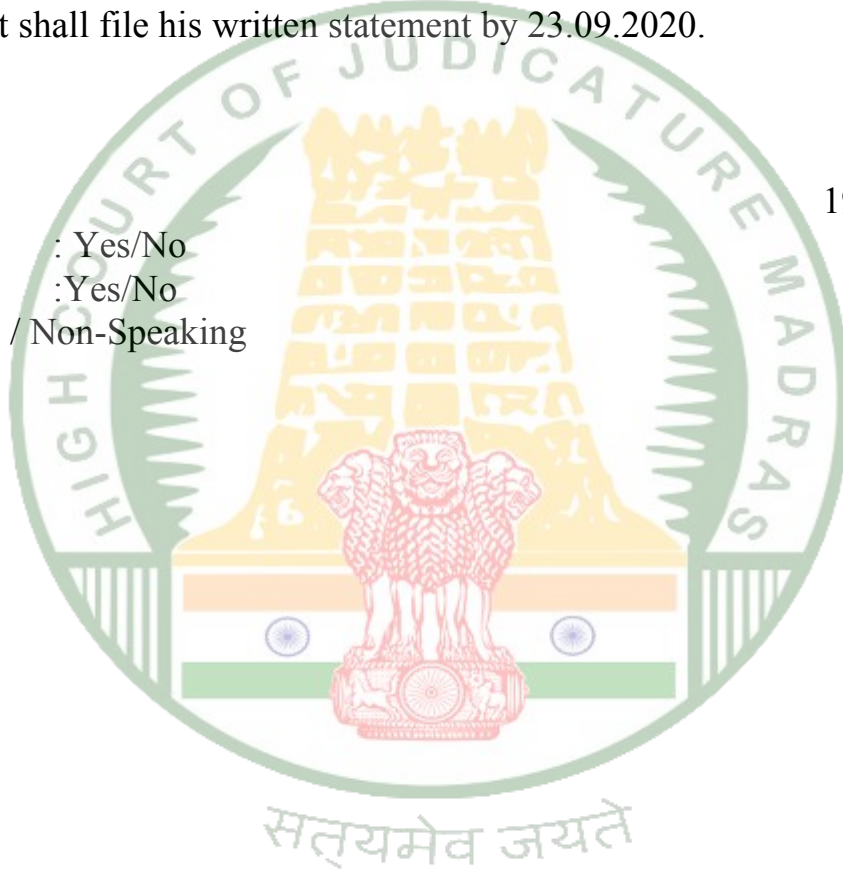
statement has affected his reputation before the general public. A reading of the plaint and the accompanying documents would establish that the 1st respondent has made out a substantial cause of action for instituting the above suit for defamation.

19. In fact in the Judgement relied upon by the learned senior counsel for the applicant in *1994 (6) SCC 632*, the Honourable Supreme Court has only stated that in the case of the public official the right to privacy would not be available if the conduct, action in respect of which publication has been made relates to the discharge of their official duty. In the instant case nowhere in the interview which is the subject matter of the defamation has the applicant or the persons being interviewed alleged that these actions have been undertaken by the 1st respondent in his official capacity. The publication only refers to the 1st respondent as the Chief Minister of the State but the contents does not in any fashion relate to the discharge of his duties in his public office.

20. Considering the fact that the applicant has not made out a case that the plaint suffers from an absence of a cause of action this application has to necessarily fail and is accordingly dismissed. The applicant / 1st defendant shall file his written statement by 23.09.2020.

19.08.2020

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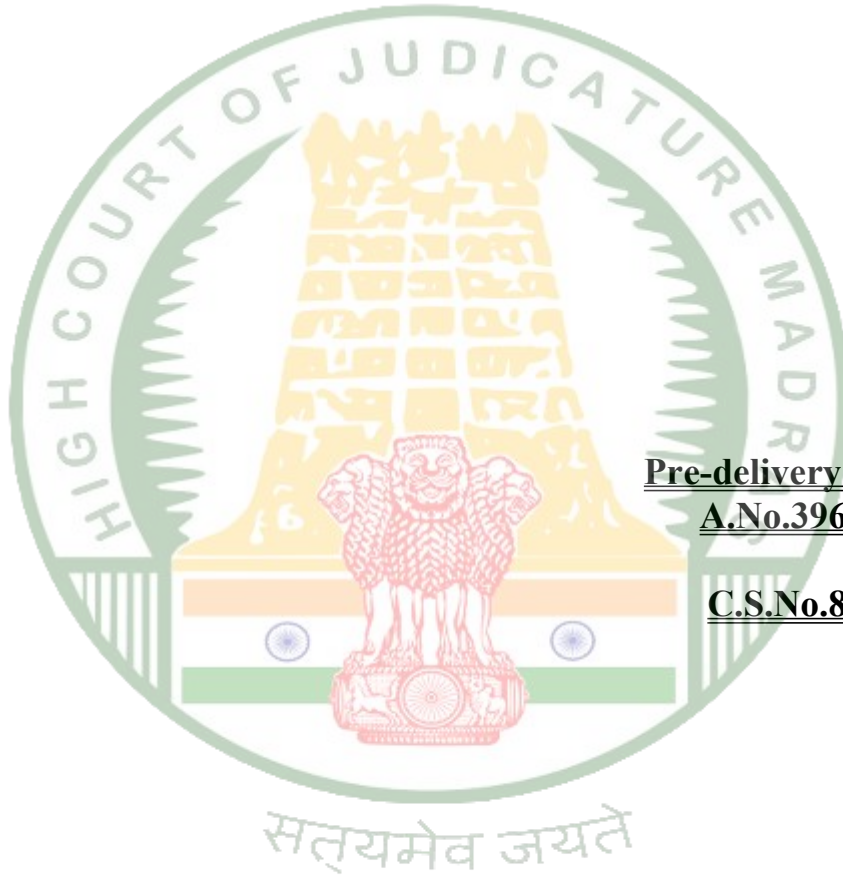


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