

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2020
PRONOUNCED ON : 14.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.24370 OF 2014
AND
CRL.M.P.NO.1 OF 2014

Babu.E

...Petitioner

Vs.

S.Ramesh,
Prop.S.R.S.Flat Promoters,
No.6/33 First Floor, C.C.Complex,
Third Cross Road,
R.A.Puram, Chennai-600 028.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records on the file of XVIII Metropolitan Magistrate Court at Saidapet, Chennai in CC.No.107 of 2014 and quash the same as illegal, false not maintaining and the same be dismissed as without jurisdiction.

For Petitioner : Dr.R.Meenakshisundaram
For Respondent : Ms.G.Vrinda Ramesh
Legal Aid Counsel

ORDER

The petitioner/accused in the private complaint filed by the respondent for offence under Section 500 IPC, which is pending trial before the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.107 of 2014.

2.There was no representation for the respondent despite service of notice. Keeping the petition pending from the year 2014 would serve no purpose. Hence, this Court appointed Ms.G.Vrinda Ramesh as Legal Aid Counsel to represent and defend the respondent.

3.The case is that the respondent is a reputed flat promoter and carrying on the business under the name and style of SRS Flat Promoters and he was also doing various interior works and other allied civil works. The respondent is in the field of construction for more than 15 years. The petitioner and the respondent are Alma Matter friend and the petitioner was doing painting work on the contract basis in the name of Babu Arts. The petitioner sustained loss and he was forced to close his establishment and sought asylum at the hands of the respondent. The respondent accommodated the accused, asked him to work on brokerage basis. The petitioner used to bring prospective persons for joint venture and get brokerage for his work. During the month of January 2012, the petitioner representing one Raghavan the owner of the flat situated at No.113, 3rd floor, R.K.Mutt Road, Mandaveli, who mortgaged the property to Bank of India and he was unable to repay the loan, the bank had initiated distress sale under SARFEASI proceedings. The petitioner as a power agent of the said Raghavan, received a sum of Rs.25 lakhs from the respondent to tide over from the bank proceedings. On receipt of Rs.25 lakhs, a promissory note was executed on 18.01.2011. The said Raghavan got discharged from the mortgage loan and obtained no due certificate from the bank, all the relevant documents including the title deeds pertaining to the said property of Raghavan had been delivered and handed over to the custody of the respondent on 20.01.2012.

4.The petitioner taking advantage of the relationship with the respondent was making representation and projecting himself as partner in the business of the respondent. The respondent questioned the behaviour and attitude of the petitioner, due to which disputes aroused. Thereafter, they parted away. The petitioner joining hand in glove with the said Raghavn, to take back the property by force had given a false complaint to the Commissioner of Police on 08.02.2013 stating that the respondent has to pay a sum of Rs.14,80,000/- to the petitioner, that apart he had leveled serious libellous allegation of stealing the property documents. The said complaint was forwarded to the Deputy Commissioner of Police, DC-CCB in C.No.1925/COP/Visitors/2103 for further action. On enquiry the complaint was closed and dropped. In the complaint dated 08.02.2013, the petitioner depicted and projected the respondent as 'Thief'. Hence, a case of defamation has been filed against the petitioner.

5.The learned counsel for the petitioner submitted that the petitioner was doing liaisioning work for getting certificates clearance from the revenue department, CMDA, Corporation and other statutory bodies for the respondent as well for others. From the year 2007, the petitioner has done several works to SRS Flat Promoters. The petitioner was sharing the office at

St.Marrys Road, Chennai of the respondent, the petitioner was given a cabin in the said premises to do his business and the petitioner was paying rent to the respondent. The rent was not recorded since it would affect the tenancy of the respondent, who is not to sublet the premises. The petitioner was paying the rent to the respondent. The petitioner brought one Raghavan, who was facing SARFAESI proceedings for business venture to the respondent.

6. There was some dispute with regard to settling of accounts between the petitioner and the respondent, finally the respondent agreed to pay a sum of Rs.14,80,000/- to settle the same. But he failed to do so, for which the petitioner lodged a complaint. In the meanwhile, the petitioner vacated his office from the respondent's establishment. The petitioner lodged a complaint to the Commissioner of Police. The respondent using his clout influenced the police and closed the complaint. Thereafter, the petitioner filed a direction petition before this Court. There are complaint and counter complaint between the petitioner and the respondent. The respondent with ulterior motive had filed the above case. From reading of the complaint, it is seen there is no imputation which is per se defamatory. The learned counsel further submitted that other than the complainant, no other witnesses are there to prove the imputation, its publication and due to the publication the respondent was looked down in the estimation of others and thus, the respondent was defamed. Hence he prayed for quashing of the complaint.

7. The learned counsel for the respondent submitted that the petitioner claim is that he lodged the complaint on good faith and to protect his interest, would fall under exceptions 8 and 9 of Section 499 IPC cannot be decided in a quash petition. Any exception to the Section is a matter of fact which is to be decided only during trial.

8. The learned counsel for the respondent further submitted that the petitioner to exert pressure and to take away the mortgaged property gave a false complaint to the police in which the respondent was referred as 'Thief' which is per se defamatory. In order to substantiate her arguments, the learned counsel for the respondent relied upon the judgment in the case of "M.A.Rumugam Versus Kittu @ Krishnamoorthy in Criminal Appeal No.1749 of 2008", wherein the Hon'ble Apex Court had clearly held that seeking exception on the ground of good faith is to be decided only during trial and not in a quash petition. Further submitted that the citation referred is identical to the facts

of this case and prayed this Court to dismiss the quash petition and direct the trial Court to proceed with the trial.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is seen that the petitioner and the respondent are known to each other and the petitioner was working as Liaisoning agent for getting certificate clearances from the revenue department, CMDA, Corporation and other statutory bodies for the respondent. In fact the respondent gave space in his establishment and they were together for quite some time. During the business, they had some misunderstanding and hence, the petitioner vacated the premises. There are complaint and counter complaint between the petitioner and the respondent. In one such complaint given by the petitioner to the Commissioner of Police, the petitioner made allegation against the respondent that the property documents were taken away by the respondent without the permission and knowledge of the petitioner, which amounts to theft.

11.The respondent is referred as 'Theif' in the complaint and hence, he has been defamed is on a wrong premise. The complaint given to the police authorities by the petitioner is for his grievance, for which he had narrated certain aspects as he perceived. The police authorities on enquiry closed and dropped the complaint which alone would not prove the fact that imputations were motivated with malice, per se defamatory. Further, there is no material to show that the defamatory words shown in the complaint were publicised and due to the publication, harm was caused to the respondent's reputation, directly or indirectly in the estimation of others. In absence of such averments and materials in the complaint, this Court finds that the continuation of the proceedings against the petitioner would amount to abuse of process of law.

12.Hence, the proceedings in C.C.No.107 of 2014 against the petitioner pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai is hereby quashed. The petition is allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The XVIII Metropolitan Magistrate Court,
Saidapet, Chennai.

PRE-DELIVERY ORDER IN
Crl.O.P.No.24370 of 2015

RSV (CO)
KKV/07/09/2020



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