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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2021

PRONOUNCED ON : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.12176 OF 2021

AND

CRL.M.P.NO.6859 OF 2021

Elizabeth John

... Petitioner

Versus

Daisy Lydia

... Respondent

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the case pending trial in C.C.No.14139 of 2008 on the file of the learned V Metropolitan Magistrate, Egmore Chennai and quash the same.

For Petitioner : M/s.Lita Srinivasan

For Respondent : M/s.R.Revathi

ORDER

This petition has been filed to call for the records of the case pending trial in C.C.No.14139 of 2008 on the file of the learned V Metropolitan Magistrate, Egmore Chennai and quash the same.

2. On a private complaint filed by the respondent/complainant a case is registered against the petitioner/accused in C.C.No.14139 of 2008 for the offence under Sections 499 & 500 IPC. The respondent is married to one M.Samuvel and out of their marriage, two children are born viz., Johannes Finney and Jonna Cherub.



3. The contention of the petitioner is that the petitioner is the legally wedded wife of Late M.J.John. They got married on 21.07.1983 at Egmore Wesley Church and their marriage was registered. Out of the wedlock, they have two sons namely, Dennie John born on 28.04.1985 and Robbie John born on 01.07.1988. The petitioner's husband developed intimacy with Daisy Lydia, the respondent herein, which was disputed by both of them. The petitioner on coming to know about the illegal affair filed a divorce petition in O.P.No.133 of 2009, which is pending before the Family Court, Chennai. In the divorce proceedings, she filed proof affidavit, reiterating the illicit relationship and developed continued by the petitioner's husband and the respondent. The illegal relationship between the petitioner's husband and the respondent was proved by the fact that the respondent had given information to the Corporation Authorities that she is the wife of M.J.John at Kasimedu burial ground, on 02.05.2021, the Corporation Authority issued the death certificate of petitioner's husband M.J.John showing the respondent as his wife.

4. The respondent made false representation to the authorities in order to get her name to be included as his wife in the death certificate of Late M.J.John and in turn to obtain legal heirship status to claim and usurp both movable property and immovable property of the petitioner's husband. The petitioner handed over a letter to the Manager at Kilpauk, Cemetery and sent e-mail to the Secretary, Kilpauk Cemeteries Board on May 15th & 18th respectively along with all relevant documents to remove the name of respondent, but still, in the death certificate the respondent has been shown as wife. The respondent being the wife of one Samuvel, is now claiming to be the wife of Late M.J.John after his demise, in order to usurp all his properties. Due to prevailing pandemic situation, the petitioner was unable to produce the certified copy of the complaint made to authorities before the trial Court and the trial is kept pending for one reason or other. The Corporation Authorities sent a notice to the respondent with regard to the objections of the petitioner to delete the name of the respondent and include the petitioner's name as the wife of Late M.J.John. Despite receipt of notice, respondent failed to appear, clearly proves the criminal intent of the respondent to, somehow include her name as wife of Late M.J.John.

5. Further, using Late M.J.John's ATM card, an amount of Rs.20,000/- was withdrawn from his SB Account, for which, petitioner had lodged a complaint to the Inspector of Police, Aminjikarai and CSR.No.420 of 2021 was assigned, which is still pending. The petitioner by abundant caution sent a notice to the Thasildar, Egmore, not to issue any legal heir certificate to anyone other than the petitioner and her children. Further, the



petitioner submitted that the petitioner's son Dennie John was examined as PW2 in C.S.No.1170 2008, civil suit pending between the petitioner and her husband with regard to some property dispute. In the said case, her son deposed about the illicit illegal relationship of the petitioner's husband and the respondent. Stating the illegal relationship in the proof affidavit would not amount to any defamation. The consistent case of the petitioner is that the respondent was having illicit relationship with Late M.J.John. Hence, she filed a divorce petition in O.P.No.133 of 2009 before the Family Court on the ground of adultery. In the Civil Suit in CS.No.1170 of 2009, the petitioner's son had deposed about the illegal relationship of the petitioner. During trial, the fact about the illegal relationship was revealed for the purpose of public good. Since the petitioner's husband was running a NGO, involving various donors and working for the uplift of downtrodden people and others, namely, M/s.Farms India, the respondent's illicit relationship with Late M.J.John was disclosed which would not amount to defamation and prayed for quashing.

6. The respondent/complainant would state that, from the date of her marriage she is leading contented and happy marital life with her husband and till this moment no dispute or any sort of misunderstanding has arisen between the respondent and her husband. The petitioner herein is married to one M.J.John alias Monachan and out of their marital relationship, two sons viz., Dannie John and Robbie John were born. The petitioner's husband is a pious, religious and respectable citizen and philanthropist and god fearing man. He served as Executive Director of M/s.Farms India, Chennai, a registered Trust - a social organization - NGO, which mainly serves for downtrodden people all over India. The respondent is employed as Manager-Operations in M/s.Farms India under the leadership of the petitioner's husband. The petitioner was previously working in the Tamil Nadu Government Institute of Rehabilitation Medicine as Vocational Counsellor till 1999 and thereafter, she left the job without intimating to any one and without obtaining proper authorization to leave the job, had gone to Canada and stayed there for about nine years and thereafter, she returned to India during August 2008. The petitioner was frequently visiting Canada. The petitioner suspected her husband that he is having some relationship with the respondent and with other staff employed in M/s.Farms India social organization. Further, the petitioner spread derogatory remarks and statements about the respondent as though respondent was having illicit relationship with her husband and spreaded the message to the churches in Chennai and other parts of India, clients, donors of the organization, relatives, friends and Trustees of M/s.Farms India. Even the petitioner's husband had rebuked her about the same. During one of the meetings between the petitioner's



husband and the respondent, the petitioner barged into the meeting used unparliamentary words in front of subordinates, colleagues, immediate superiors and slapped and spat on the face of the respondent. She further sent an e-mail to the Trustees and other donors of the organization from the computer of the respondent on 12th November 2007, which reads as follows:-

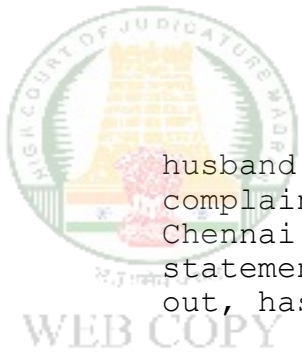
"Brother, I would like to inform certain disturbing factors going on between my husband and Daisy Samuel. This illicit relationship is affecting the credibility of the work done through FARMS as most of the people seem to know about their extra-marital relationship for over a period of time.... of later they both seem to be inseparable!... He apparently seems to have given lots of money to Daisy. They both have been to many places on fun trips and under the pretext of conducting trainings and visits all over India. They both have been travelling together by train and flights. People have reported to me saying that Dr.John and Daisy were seen at several odd places on and around Chennai."

" She came into this office with a fake certificate. The certificate was bought for Rs.2500/- then which was paid by Dr.John. Now she has been promoted as the Manager it seems. I believe he is compensating for her " services rendered in this way.... What has come out of this illicit relationship is that she has become very powerful and has trapped him. He is forced to give her position and money.... I am willing to let it go if he is willing to get rid off her. I am a trained social worker; I have lots of ideas to help him too. I have a government job in Chennai....

i am aware that at the end of the whole thing, he may walk out with her..."

7. Thereby, the petitioner had damaged the good name and reputation and character assassinated the respondent by making such false allegations.

8. The respondent had sent a legal notice on 12.04.2008 and thereafter, the final notice was sent on 17.05.2008. Despite the receipt of the same, the petitioner failed to send any apology. The petitioner received both the notices but neither she replied nor tendered unconditional apology for her illegal act. In fact, the petitioner's husband also filed defamation complaint against the petitioner and the same is pending before the Judicial First Class Magistrate Court at Thiruvalla - Kerala State in CMP.No.2101 of 2008. The respondent had only employer-employee relationship with the petitioner's



husband and nothing more. Hence, the respondent had filed a complaint before the V Metropolitan Magistrate Court, Egmore, Chennai and after taking sworn statement and recording the statement of the petitioner, finding prima facie case is made out, has taken the same on file in C.C.No.14139 of 2008.

9. The petitioner tarnished and damaged the image of the respondent in the public eye. The petitioner would often visit the M/s.Farms India and pick up fight with the Late M.J.John constantly and from the year 2007 litigations are pending in Courts between them. The respondent is working in the M/s.Farms India for the past 30 years. The petitioner had made derogatory statements and used unparliamentary words in the presence of subordinates.

10. The respondent had initiated the proceedings before the V Metropolitan Magistrate, to safe guard her self-esteem and prosecute the petitioner for the acts of defamation. Though the petitioner and her children were well aware of their father's (Late Dr.M.J.John's) unhealthy condition, neither the petitioner nor her sons came to visit him and arranged any medical help. The respondent along with her staff at M/s.Farms India arranged medical facilities to Late M.J.John. On 02.05.2021, Dr.M.J.John succumbed to his illness, and after his death, the respondent informed Dr.M.J.Phillip, the elder brother of late Dr.M.J.John about the death, who was residing at Kerala. Further due to the prevailing Covid situation, he was unable to attend the funeral. The respondent also informed the death of Dr.M.J.John to the petitioner and her sons. Neither the petitioner nor her sons attended the funeral of Dr.M.J.John. The respondent along with other staff members of M/s.Farms India somehow managed to arrange all the formalities and spent a sum of Rs.1,16,600/- for the burial of Dr.M.J.John. Dr.M.J.John devoted himself for the downtrodden people.

11. The respondent left with no option, filed certain forms for the burial. The Burial Receipt No.BR/42/052021RCPT dated 11.05.2021 issued by the Madras Cemeteries Board Trust would show the respondent scribed as 'Informant's Name.' As per the procedure, the burial receipt was forwarded to the Corporation Authority. Thereafter, the Corporation Authority mechanically without application of mind, inadvertently entered the respondent's name in the column name as wife. It was not on the respondent's application or representation the said error has crept in the said death certificate of Late Mr.M.J.John. Further, merely entering the respondent's name inadvertently will not give right over the properties of Late M.J.John.

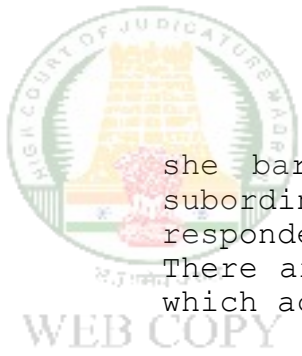


12. The respondent is the wife of one Samuvel. They got married and have two children, a daughter and a son. She is still residing in a rental house and with great difficulty she sustains herself along with her family members and providing what is possible to the children. The allegation made against the petitioner is that she defamed the name of the respondent by verbally abusing her in front of the Trustees of M/s.Farms India, donors of M/s.Farms India and other staff and E-mails sent to Dr.S.N.Patra, one of the Trustees, 2) Kunjunamma and Mary Kutty Amamma & families who was sister of Floyed A Brobbel one of the Donors of the M/s.Farms India. This E-mails are marked as Ex.P1 to Ex.P3. These exhibits are the crux of the issue in the defamation case.

13. The respondent declares that she is not the wife of Late Dr.M.J.John and it is the petitioner, who is the wife of Late Dr.M.J.John. The death certificate issued including the name of the respondent as his wife without verification by the concerned authorities is an unintended error, nothing more. Further there is nothing to show that using the death certificate issued by respondent she took any steps to apply for legal heir certificate of Late Dr.M.J.John. It is also pertinent to note that, even Late Dr.M.J.John filed a defamatory case against the petitioner before the Judicial First Class Magistrate, Thiruvalla - Kerala.

14. Heard, the submission of both the petitioner and the respondent and perused the typed set of papers filed by them.

15. It is not in dispute that the Late Dr.M.J.John is the Executive Director of M/s.Farms India, a social organization, in which, respondent was the Manager (Operations). The petitioner had left to Canada in the year 1999 and came back to India only during August 2007. After her return to India, she suspected the relationship of the respondent with her husband Dr.M.J.John. She filed a civil suit in O.S.No.3370 of 2021 arraying Dr.M.J.John as defendant. In the civil suit, apart from seeking the properties, serious allegations were made against the said Dr.M.J.John and the respondent not only by the petitioner, also by her son Dennie John, who was examined as PW2. In the divorce petition filed by the petitioner in O.P.No.133 of 2009 the respondent is shown as second respondent. In the divorce petition, it is clearly averred that the respondent herein developed illicit intimacy and had relationship with her husband Late Dr.M.J.John and hence she sought divorce on the ground of adultery. Till the death of Dr.M.J.John on 02.05.2021, the petitioner was not in good terms with Dr.M.J.John. It is seen that during one of the official meetings between the petitioner's husband and the respondent,



she barged into the office, used abusive words in front of subordinates, colleagues and immediate superiors of the respondent, slapped and spat on the face of the respondent. There are some E-mails sent by the petitioner to various persons which according to the respondent is per se defamatory.

16. This Court does not want to dwell into these E-mail messages at this stage. Likewise, recording the name of the petitioner as Informant in the burial ground records and thereafter, the respondent name found in the death certificate of Late Dr.M.J.John and later, now seeking to rectify it are not the issues in this case. According to the complainant, the defamation has taken place in November 2007. The respondent had examined herself in the case and marked documents Ex.P1 to P17 as early as in December 2015. Thereafter, the case was periodically adjourned and the witnesses are yet to be cross examined. This Court finds that the points raised by the petitioner are factual in nature, and the subsequent development which happened later ought to be put to the witnesses during trial. It is to be borne in mind that the petitioner had so far not denied the issuance of E-mails. The crux of the case is based on the E-mails. In view of the same, this Court is not inclined to allow this Criminal Original Petition.

17. Finding that earlier, the bundle was misplaced and could not be traced before the Lower Court and thereafter, the case was re-constructed and trial is pending and also the Calender Case is of the year 2018, in which, chief examination was completed in the year 2018, this Court finds that protraction of trial is unreasonable and directs the trial Court to complete the trial within a stipulated period.

18. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dna

To

1. The V Metropolitan Magistrate,
Egmore Chennai.



2. -do- thro The Chief Metropolitan Magistrate,
Egmore Chennai.

+lcc to M/s.R.Revathi, Advocate, S.R.No.52926

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Crl.O.P.No.12176 of 2021
and
Crl.M.P.No.6859 of 2021

GPL (CO)
PM/27/10/2021