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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2021

PRONOUNCED ON : 22.12.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.475 of 2020

Mr.Muthamizh Mudhalvan ... Appellant/Respondent/
Complainant

Vs.

1.Krishnamurthy
(This Criminal Appeal is dismissed
as abated as against the first respondent/1st appellant, as per
order in Crl.A.No.475 of 2020 dated 23.03.2021)

2.Lakshmipathy ... Respondent/Appellant/
Accused Nos.1 & 2

PRAYER: Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, 1973, to set aside the judgment of the appellate Court in C.A.No.45 of 2019 dated 06.03.2020 passed by the Principal Sessions Judge, Krishnagiri reversing the judgment of conviction passed by the learned Judicial Magistrate No.I, Krishnagiri, dated 05.09.2019 in C.C.No.273 of 2006 and thereby allow the appeal.

For Appellant : Mr.R.Ganesh Kumar

For R2 : Mr.S.Elambharathi

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment of the appellate Court in C.A.No.45 of 2019, dated 06.03.2020 passed by the Principal Sessions Judge, Krishnagiri, and to reverse the judgment of conviction passed by the learned Judicial Magistrate No.I, Krishnagiri, dated 05.09.2019, in C.C.No.273 of 2006.

2.The appellant had filed a private complaint against the respondents for the offence under Sections 499 and 500 IPC before the learned Judicial Magistrate No.I, Krishnagiri. The learned Magistrate taken cognizance of the private complaint



in C.C.No.273 of 2006 and after completing trial, the learned Magistrate found the respondents guilty for the offence under Section 500 IPC, convicted and sentenced to undergo 2 years of Simple Imprisonment and also pay a sum of Rs.5,00,000/- each, in default to undergo simple imprisonment for further period of three months. Challenging the said judgment of conviction and sentence, the respondents/accused filed an appeal before the Principal Sessions Judge, Krishnagiri in C.A.No.45 of 2019. The learned Sessions Judge, after hearing the arguments, allowed the appeal and set aside the conviction and sentence passed against the respondents. Challenging the said judgment of the learned Sessions Judge, the appellant/complainant has filed the present appeal before this Court.

3.During the pendency of the appeal, the first respondent died and therefore, this appeal is dismissed as abated, against the first respondent. Now, the appeal is pending only against the second respondent.

4.The learned counsel appearing for the appellant/complainant would submit that the respondents/accused exaggerating the character and high reputation of the appellant and damaged the same by publishing malicious articles. Therefore, the appellant has issued a legal notice, dated 09.01.2006 calling upon both the respondents/accused to pay a sum of Rs.10,00,000/- as damages within 10 days from the date of receipt of the said legal notice and on receipt of the said notice, the respondents/accused did not send any reply notice. Hence, the appellant/complainant preferred a private complaint against the respondents before the learned Judicial Magistrate No.I, Krishnagiri, for the offence under Section 500 IPC.

5.In order to prove the case against the respondents/accused, the appellant/complainant himself was examined as P.W.1 and four documents Ex.P.1 to Ex.P.4 were marked and apart from that, he examined 7 other witnesses. The learned Judicial Magistrate No.I, Krishnagiri, after evaluating the evidences, found guilty of the respondents/accused for the offence under Section 500 IPC and convicted and sentenced them to undergo the imprisonment as stated above. The lower appellate Court rejected the evidence of P.W.2 on minor contradictions, who had categorically deposed in the evidence as to how he had seen the articles and about the integrity of the appellant in the police service. P.W.2 has also deposed as to how he felt on reading the article about the appellant. However, the lower appellate Court, citing few lines in the cross examination, had rejected the evidence of P.W.2, as an interested witness. In the case of defamation, only the persons previously, who are known to him, can lead evidence about their impression about the person previously and after reading the content of the article. All the witnesses have clearly spoken about the reputation of the



appellant/complainant and also had seen the articles and heard the news published and on seeing the same, felt a bad impression about the appellant. The facts published in the newspaper is not true, since the respondents/accused published a false news against the appellant which degrade the reputation of the appellant. Though the learned Magistrate rightly appreciated the evidence of P.W.1 to P.W.8 and rightly convicted the respondents/accused, the lower appellate Court has failed to appreciate those evidence in a proper perspective and simply allowed the appeal and set aside the judgment of the learned Magistrate, which warrants interference of this Court.

6.The learned counsel for the second respondent/accused would submit that the first respondent, during the pendency of the appeal, died. Therefore, this appeal is dismissed as abated, as against the first respondent. As far as the second respondent is concerned, the appellant/complainant has not proved his case beyond all reasonable doubts and since the second respondent is only a publisher, she cannot be prosecuted. The appellant/complainant has not proved that the second respondent published a false news against him. Though the trial Court found guilty of the second respondent for the offence under Section 500 IPC, the lower appellate Court is a fact finding Court, had rightly re-appreciated the entire evidence independently and set aside the judgment of the trial Court. Therefore, there is no merit in the appeal. Further, the learned counsel would submit that the appeal filed against an order of acquittal, the Court cannot normally interfere, unless there is compelled circumstances and perversity in appreciation of evidence. In this case, the lower appellate Court has rightly re-appreciated the entire evidence and found that the second respondent has not committed any offence and rightly rejected the claim of the appellant/complainant and there is no merit in this appeal. Hence, this appeal is liable to be dismissed.

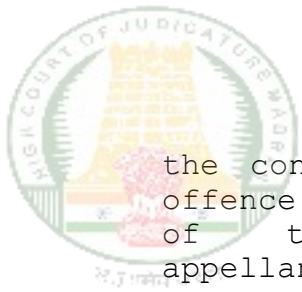
7.Heard Mr.R.Ganesh Kumar, learned counsel appearing for the appellant and Mr.S.Elambharathi, learned counsel appearing for the second respondent/accused and perused the materials placed before this Court.

8.The case of the appellant/complainant is that he had preferred a private complaint against the respondents/accused for the offence under Section 500 IPC before the learned Judicial Magistrate No.I, Krishnagiri in C.C.No.273 of 200. At the time of filing this complaint, the appellant/complainant was working as Inspector of Police, Karimangalam Police Station in Dharmapuri District. On 29.07.1987, the appellant joined as Sub-Inspector of Police and after getting promotion, he worked as an Inspector of HUDCO Police Station, from 18.06.2003 to 16.09.2005. The appellant had discharged his duties efficiently, honestly and with utmost integrity and earned good name amongst the public



as well as in the police Department. He got several awards for his exemplary work and he had seized number of vehicles transporting spirit and illicit liquor in an illegal manner. He got best performance award for the year 2004 and 2005 from the Additional D.G.P(Enforcement). Thereafter, the appellant joined duty in Krishnagiri Taluk Police Station, on 23.09.2006 and he had served till 02.03.2006. The appellant/complainant married one Suyambu on 27.10.1982. Even prior to her marriage, she was employed in the Bank and all the movable and immovable assets of the appellant and his wife are accounted. While the appellant was working as Inspector of Police in Krishnagiri Taluk Police Station, both the respondents/accused being the editor and publisher of Dhinamalar, Chennai Edition, and published a news article in the newspaper Dhinamalar, Chennai Edition, dated 15.11.2005 knowing that the news item is false and published the same to harm the reputation of the appellant. The respondents/accused, in the news item was imputed serious allegations of murder and bribery from sand smugglers and pay bribe for posting, thereby tarnishing the reputation, which directly degrade the character of the appellant and give a bad impression among the persons known to him. The article is published without any proof and the respondents/accused knowing the same to be false and being aware that the news item is read by the persons known to him, the same may cause disrepute to him. The news item harms the reputation of the appellant and tends to degrade the reputation of the appellant amongst the public and Police Cadre. The copies of the news paper, dated 15.11.2005, published by the respondents/accused were dispatched/distributed widely in Krishnagiri and thus, the defamatory article published by the respondents/accused reached the police station and public in and around Krishnagiri and Hosur. Consequently, the defamatory article was read by several Police Personnel, friends and relatives of the appellant. As a result, the appellant/complainant has been looked down by the public, colleagues and the persons in the Police Department. Since the respondents have exaggerated the character and high reputation of the appellant and damaged the same by publishing a malicious article, the appellant/complainant filed the private complaint before the Magistrate.

9. In order to substantiate the complaint filed by the appellant/complainant before the Magistrate Court, on the side of the appellant, during the trial, 8 witnesses were examined as P.W.1 to P.W.8 and four documents were marked as Ex.P.1 to Ex.P.4. On the side of the respondents, one document was marked as Ex.R.1. After trial, the learned Magistrate found guilty of the respondents/accused and convicted and sentenced them as stated above. When the respondents/accused filed an appeal before the Principal Sessions Judge, the learned Judge had dealt with the appeal in detail and allowed the appeal. The lower appellate Court, which is a final Court of fact finding, had re-appreciated the entire evidence and came to



the conclusion that the respondents have not committed any offence as charged above and therefore, set aside the judgment of the learned Magistrate. Therefore, the appellant/complainant has filed the present appeal before this Court. This Court has gone through the entire materials and found that absolutely there is no merit in the appeal, as the lower appellate Court, which is a final Court of fact finding, had rightly re-appreciated the entire evidence and acquitted the accused.

10. It is well settled principle that when an appeal is filed against an order of acquittal, normally the appellate Court will not interfere with the finding of the judgment of acquittal, unless the finding is perverse or any compelled circumstance to reverse the judgment. In this case, it is admitted that the appellant was working as a police officer in the various cadre and on hearing about the paper publication, he has filed a private complaint and the lower appellate Court has clearly stated that all the witnesses are interested witnesses and the complainant has not proved his case beyond all reasonable doubts and the evidence of the witnesses are not cogent and acceptable, the same do not inspire the confidence of the Court. Therefore, the lower appellate Court has discarded the evidence of the complainant and acquitted the accused. As already stated, unless any compelled circumstances warrants, appeal against acquittal cannot be interfered with. Therefore, this Court does not find any compelled circumstances and does not find any perversity in appreciation of evidence by the lower appellate Court and hence, this Court finds no merit in the appeal. The benefit of doubt has to be extended to the second respondent/accused and in the appeal filed against the judgment of acquittal, the lower appellate Court has already given sufficient reason for acquittal, which is final Court of fact findings.

11. In these circumstances, this Court does not find any reason to interfere with the judgment of the lower Court and the lower appellate Court and accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,

Krishnagiri,

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate No.I,
Krishnagiri.

3.The Public Prosecutor,
High Court, Madras.

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+1cc to Mr.R.Ganesh Kumar, Advocate SR. No.69419

+2ccs to M/s.S.Elambharathi, Advocate SR. No.69089

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SS (CO)

PR (07/01/2022)