

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 16.09.2021	Orders pronounced on 22.10.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1531 of 2021
and
C.M.P.No.12003 of 2021

Shaheen Nilofer

... Petitioner

Vs

1. Naim Tabriz Khan
2. Mrs.A.Gulnar
3. Mr.Fazlulla Khan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 16.04.2021 in I.A.No.3 of 2019 in O.S.No.5281 of 2019 on the file of XVIII Additional Judge, City Civil Court, Chennai.

For Petitioner

..

Mr.AR.L.Sundaresan
Senior Advocate
for
M/s.AL.Ganthimathi

For Respondents

..

Mr.M.J.Jaseem Mohammed

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.3 of 2019 in O.S.No.5281 of 2019. This Interlocutory Application was filed by the petitioner under Order VII Rule 11 CPC for rejecting the plaint.

2. The respondents filed O.S.No.5281 of 2019 claiming a sum of Rs.1,00,00,000/- (Rupees one crore only) with interest at the rate of 18% per annum towards damages for the alleged defamatory mail sent by the petitioner to the respondents on 01.04.2014. Petitioner's contention is that the contents of the mail dated 01.04.2014 cannot be construed as defamatory entitling the respondents to file the suit. This email had neither been published nor circulated. There is no cause of action for filing the suit. The suit was not filed within the time and barred by limitation. The contents of the email dated 01.04.2014 is a mere statement neither circulated nor published. The petitioner had only expressed her concern and anguish meted out to her sister at the instance of the first respondent, who is her sister's husband and his family members. There are parallel proceedings pending between the parties.

The email was sent when the first respondent/husband has pronounced triple talaq when her sister just gave birth to a child. The respondents contested the petition and submitted that the reading of the contents of the email dated 01.04.2014 will make out a prima facie and clear case that the allegations are perse defamatory, made only with an intention to defame the respondents and their family members in the eyes of friends and relatives and ultimately in the eyes of public. The suit was filed within the time and it is not barred by limitation. The allegations made in the plaint clearly makes out that there is cause of action for filing the suit. The learned XVIII Additional Judge, City Civil Court, Chennai, on considering the rival submissions dismissed the petition. Against the order of said dismissal, this Civil Revision Petition is preferred.

3. Learned counsel for the petitioner submitted that the contents of email dated 01.04.2014 cannot be construed as defamatory. The email was sent expressing the genuine anguish and feelings of the petitioner when the petitioner's husband unjustifiably pronounced triple talaq against his wife when his wife just delivered a baby. Petitioner's

sister was harassed by the respondents. That was the reason for sending the email expressing her true feelings. This email was not published or communicated to third parties. Communication and publication are the essential ingredients for making out a case of defamation. When the email was not communicated to the third parties, it cannot be said that the respondents suffered defamation. Email dated 01.04.2014 cannot be the reason for filing the suit and there is no cause of action for filing the suit. However, without considering these aspects, the learned XVIII Additional Judge, City Civil Court, Chennai, dismissed the petition filed to reject the plaint. Therefore, learned counsel for the petitioner prayed for setting aside the order of XVIII Additional Judge, and prayed for rejecting the plaint.

4. In response, learned counsel for the respondents submitted that the plain reading of email dated 01.04.2014 makes it plain and clear that there are scathing and defamatory allegations made against the husband/first respondent and his family members, which are not true. This email was sent not only to the first respondent, but to his close

relatives as well. Sending email to the close relatives of the husband/first respondent amounts to publishing or communicating the email with defamatory contents. The petitioner has not filed written statement in the suit, even though the suit was filed in the year 2014. She has been filing petitions after petitions to protract the proceedings. She had already filed I.A.No.1 of 2019 for impleading her sister and father as defendants in the suit. After the dismissal of that petition, she has now filed this petition for rejection of the plaint. The object of the petitioner is only to drag on the proceedings and to see that the suit is not disposed. The suit was filed within the period of limitation, when the husband/first respondent came to know about the email. Considering all these aspects, learned XVIII Additional Judge rightly dismissed the petition and he prayed for confirming the order of learned XVIII Additional Judge, City Civil Court, Chennai, and for dismissing this petition.

5. Considered the rival submissions and perused the records.
6. The email dated 01.04.2014 was filed along with the plaint

as Document No.14. The respondents have extracted the contents of the emails part-by-part in the pleadings and gave detailed explanation as to how the particular part is defamatory in nature. The contents of email was extracted in 31 parts in the plaint with explanation as to how those contents are defamatory in nature causing mental torture and losing the esteem in the eyes of close relatives, friends etc.

7. Defamation is an act of defaming. Defame, according to Chamber 20th Century Dictionary, means to take away or destroy the good fame or reputation; to speak evil of; to charge falsely or to asperse. Defamation is the publication of false and defamatory statement concerning another without just cause or excuse, whereby he suffers injury to his reputation. To succeed in an action for defamation, the claimant must prove:-

1. the statement complained of is defamatory
2. the statement referred to the claimant
3. the statement was published

These are the basic principles and ingredients required for proving a case

of defamation. With this in mind, we have to peruse the plaint, which has the contents of email dated 01.04.2014 in 31 parts. Petitioner did not deny that she had not sent this email to the first respondent/husband and his close relatives numbering 8 persons.

8. Some of the contents of the email dated 01.04.2014 are:-

“Can't get more cruel than that as even an animal will not do that during this extremely sensitive time”.

“Well done Mr.Khan!! We can see the true colours of a true 'muslim' ”.

“I have been controlling myself for the past one year after your disgusting emails asking not to interfere in your lives but you and your horrendous parents have been just uncontrollable and have left no stone unturned in insulting my parents and Sofia.”

“The letters, the emails and the final straw of shouting at my parents when they visited your disgusting house bolted me at that time to put you and your mentally sick family through horrible times the very next

day, fortunately for us we have been brought up in decent families unlike yourself to respect elders no matter how arrogant they are and be logical in our thinking, not like barking dogs and wretched liars like your parents and yourself.”

“So lets get down to some reality facts Mr.Khan about who you really are, as we did not sign up to a family of deceivers who play around with girls and divorce them at a drop of a hat.”

“Dint know she was signing up for a sick and a mentally retarded family, you and your retarded mom better see some psychiatrist there, you sure could use some doses yourself.”

“Was she really speaking to boys later night or did u take her to them and put false accusations like you did to Sofia.”

“You and your fake Islamic attitude is now revealed so get that straight instead of accusing the whole world about it. Your attitude at issuing this notice right at this precious hour shows how mentally

sick, unislamic, disgusting and downtrodden your values are don't tell the world what you did they might look at you with disgust.”

“and most important did you divorce because shes a girl child? You disgusting prick.”

“Whats your story like, why have your devious parents pushed a hideous person like u who married my sister for a selfish reason?”

“What kind of families are you people?? mentally sick?? You and your parents need mental help!!”

“So what was the big hurry behind the notice, are u involved with anyone there ? So whats the truth Mr.Khan out with it?”

“Why did u make such a big hue and cry when I took the gold from your sister, Don't you have the spine to ask me instead of harassing my mother in the US who was cooking and cleaning for you and your family and you shameless man behave like a maniac.”

The petitioner had used the following words:-

- a) *'horrendous parents'*
- b) *devious parents*
- c) *barking dogs*
- d) *wretched liars*
- e) *mentally sick*
- f) *spineless parents*
- g) *retarded mom*
- h) *you disgusting prick*
- i) *swine*
- j) *downtrodden*
- k) *disgusting*
- l) *cruel*
- m) *hideous person*
- n) *fake religious attitude*
- o) *shameless man*
- q) *behave like a maniac*

and many sentences which are defamatory and threatening. Some of the sentences are :

a) *“to put you and your mentally sick family through horrible times the very next day”*

b) *you will pay for it big time Mr.Khan in this world and hereafter.*

c) *You are going down big time Mr.Khan and I mean it. You and your parents are going down big time.*

9. Reading of the contents of the email dated 01.04.2014 shows that the contents are per se defamatory, intended only to defame the respondents and lower their image. This was communicated to close relatives. Thus, it is clear that the respondents have made out a cause of action for filing the suit claiming damages. Whether they are entitled for the damages of Rs.1,00,00,000/- (Rupees one crore only) or not is a matter for trial. The fact remains that the contents of email dated 01.04.2014 are ex facie defamatory. Contents had also been communicated to close relatives. Thus a clear case for proceeding against the petitioner is made out by the respondents. The suit was filed within the period of limitation from the date of the first respondent coming to know about this email. It is also seen that the petitioner has not filed written statement, despite the suit was filed in 2014. She had already filed a petition for impleading her sister and father as defendants in the suit. After the dismissal of impleading petition, the present

petition is filed. It shows that the intention of the petitioner is only to protract the proceedings. The learned XVII Additional Judge has considered the petition in the right perspective and dismissed the petition. This Court finds no reason to interfere with the order of the learned XVIII Additional Judge, City Civil Court, Chennai. and the order of the learned XVIII Additional Judge, City Civil Court, Chennai, made in I.A.No.3 of 2019 in O.S.No.5281 of 2019 dated 16.04.2021 is confirmed.

10. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes / No
Speaking order : Yes / No

22.10.2021

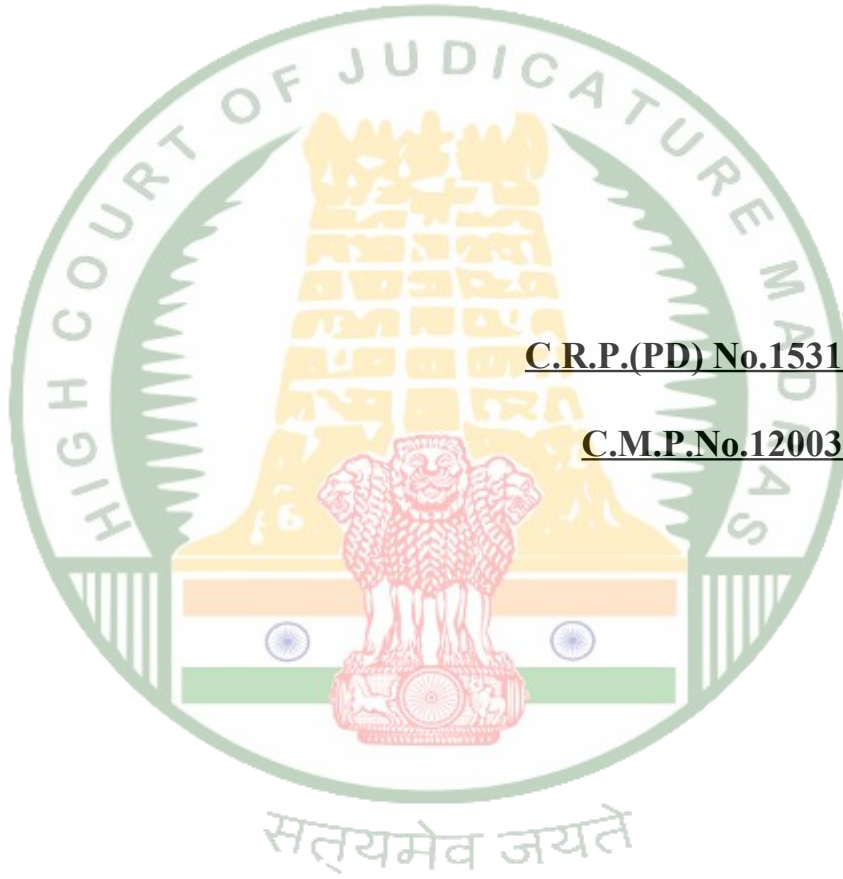
To,

1. The XVIII Additional Judge, City Civil Court, Chennai.

C.R.P.(PD) No.1531 of 2021
and
C.M.P.No.12003 of 2021

G.CHANDRASEKHARAN, J.

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order in
C.R.P.(PD) No.1531 of 2021
and
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