



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.863 of 2014

WEB COPY

Amala Xavier

... Appellant / Respondent / Plaintiff

Vs.

A.Swaminathan

... Respondent / Appellant / Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment passed in A.S.No.30 of 2011 dated 29.11.2013, on the file of the District Court, Sivagangai, reversing the decree and judgment passed in O.S.No.57 of 2007 dated 10.01.2011 on the file of the Sub Court, Devakottai.

For Appellant : Mr.C.Vakeeswaran
For Respondent : Mr.V.Meenakshisundaram
For Mr.D.Nallathampi

JUDGEMENT

The plaintiff in O.S.No.57 of 2007 on the file of the Sub Court, Devakottai is the appellant in this second appeal. The case of the plaintiff is that he was working as lecturer in Sree Sevugan Annamalai College, Devakottai and that his reputation was ruined by the respondent herein by writing several complaint letters to various authorities describing the plaintiff as a "cheat". The plaintiff sought payment of a sum of Rs.5 Lakhs as damages from the defendant.

2.The plaintiff examined himself as P.W.1 and seven others as P.W.2 to P.W.8. Exs.A1 and A16 were marked. The defendant examined himself as D.W.1 and one Michael Raj as D.W.2 and marked Exs.B1 to B7. Exs.C1 to C26 were also marked.

3.The learned trial judge by judgment and decree dated 10.01.2011 partly decreed the suit and directed the defendant to pay a sum of Rs.10,000/- to the plaintiff. The trial court gave a finding that the defendant had defamed the plaintiff and that therefore, he was bound to pay damages to the plaintiff. Aggrieved by the same, the defendant filed A.S.No.30 of 2011 before the District Court, Sivagangai. The plaintiff also filed cross-appeal. The first appellate court by judgment and decree dated 29.11.2013, allowed the appeal filed by the defendant and dismissed the cross appeal. Challenging the same, this second appeal came to be filed.



4.The second appeal was admitted on the following substantial question of law:-

"Whether the lower appellate court was right in allowing the appeal, when the respondent herein admitted having sent Ex.A4, Ex.X19 and Ex.X20 which defame the appellant herein ?"

5.Heard the learned counsel on either side.

5.The learned counsel appearing for the appellant submitted that it has been established beyond dispute that Ex.A4, Exs.C19 and C20 were sent by the defendant to various authorities and that those notices contained defamatory words against the appellant herein. He would also point out that O.S.No.69 of 2005 on the file of the Sub Court, Devakottai filed by the defendant on the strength of pro-note said to have been executed by the appellant herein was dismissed and the District Court, Sivagangai confirmed the same in A.S No.1 of 2007. Thus, the civil proceedings instituted by the respondent against the appellant ended against him. Only after instituting the civil proceedings, the offending notices were sent. Since the civil proceedings instituted by the defendant failed, it is clear that there was no truth in his complaints. In any event, after the dismissal of his first appeal, the defendant ought not to have sent the offending complaints. He therefore submitted that the first appellate court clearly went wrong in holding that the act committed by the defendant will not amount to defamation. He called upon this Court to answer the substantial question of law in favour of the appellant and reverse the decision of the first appellate court and decree the suit as prayed for.

6.Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment passed by the first appellate court does not call for any interference.

7.I carefully considered the rival contentions and went through the evidence on record. The appellant was working as lecturer in a college. There is no dispute that the offending complaints were sent by the defendant only to certain statutory authorities who had disciplinary jurisdiction over the appellant herein. The defendant had not caused publication in any other manner. In other words, the defendant did not circulate any defamatory material against the appellant. It is true that the appellant had been described as a "cheat" in the said complaints.

8.The question is whether this can furnish cause of action for maintaining the suit in question ? A civil action for defamation will not lie if the person who is sued has sent the complaints only to the authorities and if his action is bonafide. The learned counsel for the respondent draws my attention to the



decision rendered in Application No.98 of 2019 in C.S.No.870 of 2017 dated 08.09.2017. A learned Judge of this Court held as follows:-

"39. Complaints have been lodged only to the statutory Authorities who have an obligation under law to ensure proper and smooth functioning of the Company. Even in the judgment relied upon by Mr.P.H.Arvind Pandiyan in Raj Nath Khosla Vs. Acharya Dr John R Biswas and others reported in 197 (2013) DLT 728, the Delhi High Court had extracted the observations of the Patna High Court in Pandey Surendra Nath Sinha Vs. Bageshwari Pd. reported in AIR 1961 Patna 164 which reads as follows:-

"If a person who makes the statements has an interest or duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has as corresponding interest or duty to receive it such statement commands a privilege and cannot be made basis of an action for defamation."

9. There is no dispute that the complaints were sent only to statutory authorities. I will of course have to see if that respondent was bonafide in his conduct. The allegation of the respondent is that the appellant had cheated him by not refunding the sums received from him. Originally the learned counsel appearing for the appellant submitted that the family of the appellant was running a financial establishment and that the appellant was not actually running the finance business. This stand of the appellant is not in consonance with the stand taken in Ex.B2/reply notice issued to the defendant on 24.02.2005. In the said reply notice, in paragraph No.3, the appellant had admitted that he was running a financial establishment and that the defendant's family had invested to the tune of Rs.3,60,000/- in it. The appellant claims that the persons to whom, he had lent money had cheated him and as a result, the financial establishment had suffered a huge loss. Yet the appellant had negotiated with his investors and paid a substantial sum towards full and final settlement of their claims. The respondent was paid a sum of Rs.3,00,000/- towards full and final settlement on 29.05.2001. The allegation of the appellant is that after receiving the said amount, without returning the original promissory note, the defendant/respondent herein filed a civil suit. From the reply notice given by the appellant, it can be seen that even though the respondent's family had invested a sum of Rs.3,60,000/-, what they eventually got was only a sum of Rs.3,00,000/-. Thus, the defendant was put to loss on account of appellant. Therefore, the defendant did have a serious grouse against the appellant. That apart, the appellant as a serving lecturer in a college was not



supposed to be engaged in financing business. That was clearly contrary to service rules. The defendant having lost the civil proceedings felt it necessary to bring this to the notice of the higher authority. This action by the respondent can by no stretch of imagination be said to constitute an act of defamation. The respondent had complained only to the statutory authorities, who had some kind of jurisdiction or control over the appellant herein. They had a duty to receive the complaint submitted by the respondent. Whether to initiate action or not was left to their discretion. The respondent definitely had a right to bring it to their notice that the appellant was indulging in an act not in consonance with his conduct rules. Looked at from any angle, the conclusion of the first appellate court that the action of the respondent does not amount to defamation does not warrant interference. The substantial question of law is answered against the appellant and the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ias/skm

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The District Judge, Sivagangai.
- 2.The Sub Judge, Devakottai.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- +1 CC to M/s.D.NALLATHAMBI, Advocate (SR-19462[F] dated 17/06/2021)
- +1 CC to M/s.C.VAKEESWARAN, Advocate (SR-19463[F] dated 17/06/2021)

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