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AS.No.300 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 13.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.300 of 2013

1. K.Ramachandran
2. S.Paul Anthony Raj
3. M.Manivannan

Appellants

Vs

1. Elizabeth Jacob @ Megha
2. M.Selvarangam

Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 CPC as against the judgement and decree, dated 31.08.2012, passed in O.S.No.7881 of 2010, by the XVII Additional District and Sessions Court, Chennai.

For Appellants : Mr.R.Amizhdhu

For Respondents : Mr.R.Palaniandavan-R1
2nd Respondent-Given Up

JUDGMENT

1. This appeal has been filed, challenging the judgement and decree, dated 31.08.2012, passed in O.S.No.7881 of 2010 by the XVII Additional District and Sessions Court, Chennai.
2. The said suit has been filed for damages to the tune of Rs.15,00,000/- and for publication of an apology/regret, in a manner as prominent as the defamatory article in the magazine.
3. The case of the Plaintiff is that in May 2007, the 4th Defendant had



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approached the Plaintiff and some of her friends, for taking their photographs and using them in a Weekly Magazine, Kumudham, in an article on Education. With her consent, the said article along with her photographs was published in the Kumudham magazine, in their issue, titled “Arpudhamana 5 Padippugal” dated 30.05.2007. After a period of 1 ½ years, the Defendants used her photos taken in the year 2007 for another article, titled as “Poi Solla Porom” in their magazine, dated 12.11.2008, without her consent. The said article was related to speak with boys in a husky voice at night times, which is clearly a defamatory material. After the publication of the article, her relatives, friends and family members opined that her good character and reputation were lowered. She has no connection with the said article. The Defendants have acted with a malafide intention and they are merely saying it was a mistake. The Plaintiff suffered a great amount of damage to her good character and reputation at her workplace and in the Society. She had sent a legal notice to the Defendants on 18.11.2008 for payment of damages and also to publish an apology/regret for the damage caused to the Plaintiff. In such circumstances, the suit was filed for the reliefs, as stated above.

4. In the written statement filed by the Defendants, it is stated that the suit was filed at the instance of the parents of the Plaintiff, with a view to shift the responsibility on them and to show to the Society that their daughter has not offered such contents in the article. She had willingly offered her comments, when approached by the 4th Defendant and consented to publish her photos in the article. The 4th Defendant approached the Plaintiff and her friends, took



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interview and also the Plaintiff and her friends had willingly given their consent to publish the contents of the reply and also consented to publish their photos.

The Plaintiff had consented not only for the publication of the contents of the reply, but also for the use of the photograph which was taken in an earlier occasion to be published in the magazine. The article contained the statement of the concerned persons is verbatim and did not contain any defamatory statement. The grievance of the Plaintiff that the regret was not published with all importance and in a prominent place deserves to be dismissed on the sole reason that the request from the Plaintiff and other friends came in the last minute of the printing of the next immediate issue. The Plaintiff had enjoyed the publicity for five days of the publication of the article and at the behest of her parents, foisted this suit against the Defendants. Therefore, this suit is liable to be dismissed.

5. Based on the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the Plaintiff is entitled for Rs.15,00,000/- as damages from the defendants?
2. Whether the plaintiff is entitled for the publication of apology as prayed for in the suit?
3. To what other relief?

6. Before the Trial Court, on the side of the Plaintiff, PW.1 and PW.2 were examined and Ex.A1 to Ex.A5 were marked and on the part of the Defendants, DW.1 to DW.4 were examined and Ex.B1 was marked. The Trial Court had decreed the suit. Aggrieved over the same, the Defendants



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have preferred this appeal suit.

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7. This Court heard the submissions of the learned counsel on either side.
8. The learned counsel for the Appellants has submitted that the Respondent having given an interview and consented for the publication, now she denied the same because of her parents' pressure. The article was published in the issue dated, 12.11.2008. A legal notice was also sent by the Respondent. The Respondent had approached the Appellants and informed that her parents got upset and requested her to publish the denial report. Then, the Appellants published the denial report with a note of regret before the legal notice. A reply was also given to the legal notice. Because it was not regarded, now she has filed the suit for claiming damages. Only her statement was published. There is a separate section in IPC for defamation. The Respondent has stated that her reputation was spoiled, which is not proved by the evidence. The contention of defamation is not proved. So she cannot claim any damages. The Trial Court, on sympathetic grounds, partly allowed the suit, without properly appreciating the oral and documentary evidence. Hence, he prays for allowing this appeal.
9. The learned counsel for the Respondent would submit that the article "Poi Solla Porom", was published in the issue, dated 12.11.2008, using her photographs, without her knowledge and consent and it is a defamatory one and that no documents were filed to prove that she has given such an interview to the 4th Respondent. The 4th Respondent was also not examined to prove that contention. They published a regret note also. Now, they cannot



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plead that it is not a defamation article. The Trial Court, properly appreciated the oral and documentary evidence and came to the correct conclusion and there is nothing, warranting interference by this Court in this appeal and hence, he would pray for dismissal of this appeal.

10.This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

11.PW.1 had deposed that in relation to an article on higher education to be published in the magazine, the 4th Defendant had approached her in 2007 and with her consent took photographs and used them in the Kumudham magazine, in the article “Arpudhamana 5 Padippugal”. Then, 16 months later, from the first article, the 4th Defendant had used her photographs without her knowledge and consent for an article, “Poi Solla Porom” in the magazine of the 1st Defendant in its issue dated 12.11.2008 and it is a defamatory article. Since her friends and relatives called her both personally and over phone, she has undergone pain and trauma. She has further deposed that the Defendants have clearly tarnished her image and reputation and then she sent a legal notice, dated 18.11.2008, calling upon the Defendants to pay damages and publish a regret note. The Defendants published a note in the subsequent issue, dated 19.11.2008. She has further deposed that the Defendants have clearly acted, with a mala fide intention to profit from the defamatory article and increase their circulation and they cannot now wash their hands off and their liability merely saying it was a mistake. She has further deposed that she suffered a great amount of damage and a great deal



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of mental agony and trauma due to the mindless act of the Defendants and that an apology was published in their issue dated 19.11.2008 and it confirms that the pictures have been wrongly used and the Defendants' action of printing such a regret in their issue is only an attempt to escape from the legal proceedings.

12.DW.1 had deposed that one of their Reporters approached the Plaintiff for an interview to be published in their magazine and the article was also published along with the photographs in the issue dated 30.05.2007. Once again, the Reporter approached the Plaintiff for an article and the reply given by them was published in verbatim as it is in the article. The article was published in the issue, dated 12.11.2008. He had further deposed that when the Reporter approached the Plaintiff for an interview, she had willingly given her consent to publish the contents of the reply and also consented to publish the photographs, which were taken in the past in connection with the earlier interview. Because of the objections from the parents of the Plaintiff, she took an inverse stand. He had further deposed that the article contained the statement of the concerned person in verbatim and did not contain any defamatory statement and that the Plaintiff in this suit contacted the 4th Defendant for help. It was informed by the Plaintiff that her parents got upset after reading the contents. She requested him to publish the denial report in the next issue as if the names and photographs were mistakenly published. Considering her age and status, the Defendants had taken the decision to publish a denial report with a note of regret. The Defendants bona fide



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believed that the representations and the request of the Plaintiff are true. The other persons, whose names and photographs were published in the same article did not deny the contents of the interview and did not object to the publication of the photographs. Considering her status and request only, the regret note was published to satisfy her, but the same was taken advantage of to issue a legal notice and file the suit demanding monetary claim. No liability can be fastened against the Defendants and no damages can be claimed.

13. In Ex.A2, it is published as follows:-

2.kpl;iel;Ly nghh;itt;Fs;s g[Fe;Jfpl;L ew!;fp tha;!;y bry;Yy
myg;giu gz;wP';fns/// mJ Vk;kh>
nkfhtpd; bgha;/P Jh';Fw neu;Jy ol;lh;g; gz;wJ ig;gpy;iyah>
ep\$ k;/P jpUl;Lj;jdkh ,g;gog; ngrWjyjh d; brk fpl;/ k;/
brhy;Ylh/// mg;g[wk; mg;g[wk;D gr';fis Nnlj;jyhkpy;;y/////

14. DW.1 in his evidence had deposed as follows:-

"mth;fSila ciuahly; nlg; buf;fhh;lh; K:yk; gipt[bra;atpy;iy/ 4k;
gpujpthjp me;j ciuahly; Fwpj;J Fwpg;g[fs; vGjpa[s;sh;/ me;j
Fwpg;g[fs ,e;j thf;fpy; jhf;fy; bra;atpy;iy/ me;j Fwpg;g[fs py;
rk;ge;jg;gl;lthplk; ifbaGj;J th';ftjpy;iy//////// thjp vGj;J
K:ykhfnth my;yJ vd;Dila Kd;dpiyapnynah g[ifg;gl';fisa[k;
ciuahliya[k; gj;jphpf;ifapy; btspapl mDkjp bfhLf;fpy;iy////////
thjp bjhyngrp K:yk; vd;id bjhlg;gl' bfhz;L me;j ngl;of;F
kWg;g[btspapl vd;dplk; brhd;dh;//////// ,e;j ngl;o btspapL
gw;wp thjpapd; bgw;nwhUk; ez;gh;fSk; jtwhf Twtjhf thjp
bjhptpj;jhh;/ vGj;J K:ykhf bjhptpf;fpy;iy/ tha; bkhHpahf
bjhptpj;jhh;/@

15. From the above answers, it is clear that the Defendants have not proved their contentions by documentary evidence. To prove their contentions, the 4th Defendant Manivannan was not examined. Another important aspect is that the 4th Defendant is the person, who has taken the interview and his evidence



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is very vital for the defence of the Defendants. But, he has deliberately avoided to appear before the Court and to give evidence. Therefore, an adverse inference is drawn against him.

16.DW.1 has further stated that she has contacted him through phone, but this was not stated in his written statement and in his chief examination. PW.2 has deposed that after reading the article, "Poi Solla Porom", he immediately called the Plaintiff over phone and expressed to her his complete displeasure about her action and the reply given. PW.1 has clearly deposed in her evidence. PW.2 also corroborated the evidence of PW.1. The Plaintiff has proved her case by oral and documentary evidence. The Trial Court, after appreciating the oral and documentary evidence, came to proper conclusion and rightly decreed the suit and there is nothing warranting interference by this Court and accordingly, this appeal is liable to be dismissed.

17.In fine, this Appeal Suit is dismissed. No costs.

13.06.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm/ata

To

- 1.The XVII Additional District and Sessions Judge, Chennai.
- 2.The Record Keeper, VR Section, Madras High Court, Chennai.



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A.A.NAKKIRAN, J.

Srcm

Pre-Delivery Judgement in
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