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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2022

PRONOUNCED ON : 24.03.2022

CORAM

THE HON'BLE MR. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.29987 OF 2015

AND M.P.NO.1 OF 2015

1.G.Boopathi

2.D.Renuka

...Petitioners/
Accused

Vs.

Lenin Balu

...Respondent/
Complainant

Prayer:-

Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceedings in C.C.No.180 of 2015 on the file of the learned Judicial Magistrate, Gudiyatham and quash the same.

For Petitioners: Mr.V.M.G.Ramakkannan

For Respondent : Mr.Lenin Balu, party in person for sole respondent.

ORDER

This Criminal Original Petition is filed to call for the records pertaining to C.C.No.180 of 2015 on the file of the learned Judicial Magistrate, Gudiyatham and quash the same.

2.The circumstances leading to filing of the case in C.C.No.180 of 2015 for the offence under Section 500 of the Indian Penal Code by the respondent are that,

The respondent is an Advocate. Second petitioner purchased the eastern side house of respondent's house in 2010. In May



2012, the second petitioner started to demolish the house to construct a new house. Petitioners constructed the western side wall after leaving 6 inch to 9 inch gap in between their houses. When the respondent asked the first petitioner to patch up the gap, first petitioner assured to patch up. On 04.05.2012, respondent again asked the first petitioner to patch up the gap. But, first petitioner and his brothers quarrelled with the respondent and attacked him. Therefore, a case was registered in Crime No.693 of 2012 under Sections 294 (b), 323 and 506 (ii) of I.P.C. against the first petitioner and his brothers. Subsequently, it was withdrawn on 17.07.2012 by the respondent. Second petitioner filed suit in O.S.No.102 of 2012 at District Munsif Court, Gudiyattam and both the petitioners filed suit in O.S.No.196 of 2012 against the respondent. In O.S.No.196 of 2012, petitioners made defamatory allegations against the respondent as follows,

In the para 5 of the plaint in O.S.No.196 of 2012, it is alleged as follows:

"The plaintiffs submit that the 1st defendant is styling himself as a practising at Gudiyattam town and in the High Court of Madras. He is not a believer in hard work and he is interested in earning quick money in a short period by hook or crook."

3. Even in the proof affidavit filed on 09.01.2015, same defamatory allegations are repeated. Due to these imputation, the reputation of the respondent has been lowered in the eyes of his clients, other Advocates, village people and in the society. Therefore, this complaint.

4. This complaint was taken cognizance by the learned Judicial Magistrate, Gudiyatham and summons was issued to the petitioners. Challenging the complaint, this Criminal Original Petition is filed for quashing.

5. Learned counsel for the petitioner submitted that the suit is still pending. The allegations are not per se defamatory. The allegations were made in good faith, only in support of the case of the petitioners. Petitioners should have an opportunity to prove these allegations in the course of trial. Only if they are not able to prove the allegations, respondent is entitled to prosecute them for defamation. When the suit is pending, the filing of criminal complaint for defamation cannot be maintained. The learned Judicial Magistrate, Gudiyatham, without properly applying his mind passed a non-speaking order and took cognizance. Therefore, the proceedings in C.C.No.180 of 2015 is liable to be quashed.

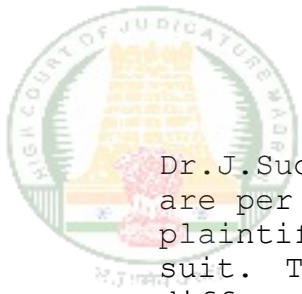


6. In response, learned counsel for the respondent submitted that the allegations have no relevance to the facts of the civil case. The allegations are aimed only at lowering the image of the respondent in the eyes of his clients, Advocates and the public. Even in civil case, where, the defamatory allegations are made, is pending, there is no bar to file criminal case for defamation. In support of his submissions, he relied on the judgments reported in 1) AIR 1926 Madras 906 Tiruvengada Mudali Vs. Tripursundari Amma, 2) AIR 1966 Mad 363 Thangavelu Chettiar Vs. Ponnammal, 3) 1985 (1) Part IV - Crime 848 K.L.Dhall Vs. B.P.Dutta, 4) 1992 CRL L.J. 2427 Dr.J.Sudarshan Vs. R.Sankaran, 5) 1996 (6) SCC 263 Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathi and others, 6) 2006 CRL L.J. 1872 M.K.Prabhakaran and another Vs. T.E.Gangadharan and another, 7) 2015 SCC Online Mad 3395 Mohanadevi Vs. Dr.C.V.Ranjan.

7. Considered the rival submissions and perused the records.

8. It is seen from the allegations made in para 5 of the plaint in O.S.No.196 of 2012 that the petitioners made allegations against the respondent that "He is styling himself as a practising at Gudiyatham town and the High Court Madras. He is not a believer in hard work and he is interested in earning quick money in a short period by hook or crook". The allegations made against the respondent, especially the allegation that "he is not a believer in hard work and he is interested in earning quick money in a short period by hook or crook is definitely a defamatory allegation. The issue now here is as to whether, when the civil suit in O.S.No.196 of 2012 is pending, whether criminal prosecution can be launched for defamation. Counsel appearing for the parties cited judgments in support of the case.

9. The survey of the judgments referred above show that, it is held in AIR 1926 Madras 906 Tiruvengada Mudali Vs. Tripursundari Ammal, that, if a Magistrate, prima-facie, came to the conclusion that the allegations might come within the definition of defamation under Sections 499 I.P.C, the case could be taken cognizance of. It is observed in AIR 1966 Mad 363 Thangavelu Chettiar Vs. Ponnammal, that, the defamatory matter contained in the plaint was admittedly signed and filed by the petitioner. There can be no doubt that there was publication of the defamatory matter. The same view is expressed in the judgment reported in 1985 (1) Part IV - Crime 848 K.L.Dhall Vs. B.P.Dutta. It is also observed in this judgment that the civil suit pending in the civil Court and complaint pending before the learned Magistrate are separate and independent proceedings and they can go on side by side. There is no bar to the learned Magistrate taking cognizance of the offence which he may be of opinion to have been committed by a person whose matter is still pending in a civil Court. It is observed in 1992 CRL L.J. 2427



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Dr.J.Sudarshan Vs. R.Sankaran, that, allegations in the plaint are per se defamatory and therefore, criminal prosecution against plaintiff is maintainable, irrespective of the pendency of the suit. Two proceedings are not parallel and scope is entirely different. It is observed in 1996 (6) SCC 263 Shatrughna Prasad Sinhak Vs. Rajbhau Surajmal Rathi and others, that, when the Magistrate, prima-facie, came to the conclusion that allegations might come within the definition of 'Defamation' under Section 499, can take the cognizance of the case, but the allegations are to be established at the trial. In 2006 CRL L.J. 1872 M.K.Prabhakaran and another Vs. T.E.Gangadharan and another, it is observed that once the case is taken cognizance for defamation, without considering the evidence to be adduced and the defence to be set up, it is not possible to come to a finding whether the statements contained in the written statement are defamatory or not. Therefore, the complaint cannot be quashed. In 2015 SCC Online Mad 3395 Mohanadevi Vs. Dr.C.V.Ranjan, it was observed that whether the imputation was made in good faith or not, has to be decided only during trial and at this stage, it cannot be considered. Therefore, the Criminal Original Petition for quashing was dismissed.

10.Consideration of the aforesaid judgment shows that, if the ingredients are made out for taking a cognizance of a case under Section 499 I.P.C., even if a civil proceeding is pending, the criminal prosecution can go on.

11.Learned counsel for the petitioner pressed into service judgment reported in 2007 (7) CTCOL 445 J.Gnana Kumar Vs. Joy Kanmani, and the order in Crl.R.C.No.784 of 2009 Geetha Vs. A.K.Dhamodharan, for the proposition that pleadings filed before the Court of law are not public documents. As per Section 499 I.P.C., publication should be made by the accused to third parties. When it is absent, complaint is liable to be quashed. Only after the disposal of the civil case, it would be known that whether the allegations made in the plaint are defamatory or not. When the civil proceedings are pending, there is no cause for taking cognizance for the offence under Section 499 I.P.C.

12.It is seen that most of the judgments expressed the view that even when a civil case, wherein, the alleged defamatory allegations are made, is pending, the criminal prosecution for defamation can go on. In the case before hand, prima-facie, the respondent made out a case for prosecuting the petitioners for making defamatory allegations in the plaint. All the issues raised here, in the considered view of this Court should be taken up by the trial Court for a binding adjudication, after recording the evidence of the parties.

13.In this view of the matter, Criminal Original Petition in



Crl.O.P.No.29987 of 2015 is dismissed. The trial Court is directed to dispose the case on merits, without being influenced by the observations made in this order. Consequently, connected miscellaneous petition stands closed.

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After the pronouncement of the order in CRL.O.P.No.29987 of 2015, learned counsel for the petitioners prayed for dispensing personal appearance of the petitioners before the trial Court.

2.Considering the nature of the case, the learned trial Judge is directed not to insist on personal appearance of petitioners on every hearing. Their personal appearance may be insisted, as and when, required by the trial Court. Learned counsel for the petitioners may file 317 petition to codone the absence of the petitioners and the learned trial Judge is directed to entertain 317 petition liberally without hampering the proceedings in the case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate,
Gudiyatham.

+1cc to Mr.V.M.G.Ramakkannan, Advocate, S.R.No.20218

+2ccs to Mr.S.Ravi, Advocate, S.R.No.20497

CRL.O.P.No.29987 of 2015
and M.P.No.1 of 2015

VBM(CO)
PM/13/04/2022