



Bail Slip in Crl.R.C.No.971 of 2014

The Petitioners/Accused Viz., 1.S.Ramu, male aged 45 years S/o Suruttaiyan, 2.Durairajulu, Male aged 51 Years S/o.Devarajan were directed to be released on bail by orders dated 25/09/2014 vide order Crl.M.P. 1/2014 in Crl.R.C.971/2014 by order of this Court.

Bail Slip in Crl.R.C.No.938 of 2014

The Petitioners/Accused Viz., 1.Pusbhavenkatavenu, Female aged 54 years W/o Venkatavenu 2.Moohamedkani, male aged 87 years S/o Abdulshah were directed to be realeased on bail by order dated 15/09/2014 vide order Crl.M.P. 1/2014 in Crl.R.C.No.938 of 2014 by order of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 03.02.2022

Order Pronounced on : 15.02.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.971 and 938 of 2014

1.S.Ramu

2.Durairajulu (Died)

... Petitioners
(in Crl.R.C.No.971 of 2014)

1.Pushphavenkatavenu

2.Moohamed Kani

... Petitioners
(in Crl.R.C.No.938 of 2014)

Versus

Dr.M.Valluvan

... Respondent
(in Crl.R.C.No.971 of 2014)

1.State rep. by Public Prosecutor,
Virudhachalam.



2.Dr.M.Valluvan

... Respondents
(in Crl.R.C.No.938 of 2014)

Prayer in Crl.R.C.No.971 of 2014: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed by the learned III Additional Sessions Judge, Cuddalore sitting at Virudhachalam in C.A.No.115 of 2010, dated 07.08.2014 in C.C.No.70 of 2006 on the file of the learned Judicial Magistrate No.I, Virudhachalam and acquit the accused.

Prayer in Crl.R.C.No.938 of 2014: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment in C.A.No.120 of 2010, dated 07.08.2014 on the file of the III Additional District-cum-Sessions Court, Cuddalore @ Virudhachalam confirming the sentence imposed by the learned Judicial Magistrate No.I, Virudhachalam in C.C.No.70 of 2006, dated 24.09.2010.

For Petitioners : Mr.M.Soundar Vijay Arul Ram
(in Crl.R.C.No.971 of 2014)

For Petitioners : Mr.P.Palaninathan
(in Crl.R.C.No.938 of 2014)

For Respondent : Mr.Sushanth
(in Crl.R.C.No.971 of 2014)
and

For R2
(in Crl.R.C.No.938 of 2014)

For R1 : Mr.L.Baskaran
(in Crl.R.C.No.938 of 2014) Government Advocate
(Criminal Side)

COMMON ORDER

A. The Revision Petitions :

This Criminal Revision in Crl.R.C. No. 938 and 971 of 2014 are filed by the Accused 1 & 2 and Accused 3 & 4 respectively, aggrieved by the Judgment of the Learned Judicial Magistrate No.1, Virudhachalam, dated 24/09/2010, in C.C.No.70 of 2006, thereby, convicting the petitioners/accused 1 to 4 for the offence punishable under Section 500 of Indian Penal Code and imposing a sentence of 6 months Simple Imprisonment and fine of Rs.750/- each, in default of payment of fine, to undergo Simple Imprisonment for a period of one month and under Section 501 of



Indian Penal Code and imposing a sentence of 6 months Simple Imprisonment and fine of Rs.750/- each, in default of payment of fine, to undergo Simple Imprisonment for a period of one month and the Judgment of the Learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam, dated 07/08/2014 in CrI.A.Nos.115 and 120 of 2014, thereby dismissing the appeal by confirming the conviction and sentence of the trial court.

B. The Case & The Trial :

2. This is a case on a private complaint by the respondent, namely Dr.N.Valluvan, filed on 06/01/2004 under Section 200 of the Code of Criminal Procedure, complaining of the offence of defamation. The gist of allegations in the complainant is that the complainant was the Chairman of Virudhachalam Municipality and he conducted himself in a straightforward manner and brought out all the corruption and misdeeds of the office bearers, councilors and others and attempted to cleanse the system. Irked by the same, the four accused who are Ex-Vice-President and present councilors, printed a 4 page hand bill and titled "Perceived to be mentally affected -(Picture)- Municipal Chairman Dr.M. Valluvan" (It is mentioned in Tamil "மனநிலை பாதிக்கப்பட்டதாக கருதப்படும் (picture) நகர் மன்ற தலைவர் டாக்டர் மு.வள்ளுவன்") inserting his picture in between the two lines, distributed the same, which contained the above innuendo defaming his character and reputation, besides other defamatory statements. Upon complaint, the Learned Magistrate recorded the sworn statements of one Sivamoorthy on 13/02/2004, and Dr.N.Valluvan, the complainant on 13/02/2004 and one Balamurugan on 16/02/2004 and thereafter took cognizance of the offences under Sections 500 and 501 of the Indian Penal Code and issued summons to the accused. Upon appearance and being furnished with the copies as per Section 207 of Cr.P.C., the accused denied the charges and stood trial.

3. Thereafter, the complainant examined himself as PW-1, One Balamurugan as PW-2, One Sivamoorthy as PW-3, One Mappillai as PW-4, One Samuel Kennedy as PW-5 and One Murugan as PW-6. On behalf of the complainant, the handbill, regarding the complainants protest was marked as Ex.P-1; the offending handbill, printed and distributed by the accused, as Ex.P-2; the legal notice, caused by the complainant to the accused as Ex.P-3; the reply notice issued by the accused as Ex.P-4; the rejoinder notice, issued by the complainant, as Ex.P-5 and the news item in Tamizhan Express as Ex.P-6.

4. Upon being questioned about the adverse evidence and circumstances on record, as per Section 313 Cr.P.C., the accused



denied the same as false. Thereafter, no oral or documentary evidence was adduced on behalf of the accused. The Trial Court proceeded to hear the Learned Counsel on either side and by Judgment, dated 24/09/2010, found that from the evidence of PW-1 to PW-6, the heading of the handbill itself was an innuendo hurled with a malafide intent of bringing down the reputation of the complainant and rejected the defence contention that the complainant has not proved that it is only the accused who had printed and distributed Ex.P-2 handbill by reading of Ex.P-4 reply notice caused by them holding that the same amounted to tacit admission of their printing and distributing the Ex.P-2 offensive handbill. Therefore, the Trial Court convicted the accused for the offenses punishable under Sections 500 & 501 of Indian Penal Code and sentenced as aforesaid.

C. The Appeal :

5. Aggrieved by the same, the first and second accused filed Crl.A.No.120 of 2010 and the third and fourth accused filed Crl.A.No.115 of 2010, on the file of the Learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam. Both were taken up together and by a common judgment, dated 07/08/2014, the Appellate court again considering Ex.P-4 reply notice held that it cannot be said that the complainant has not proved the connection of the accused with the Ex.P-2 handbill and considering the judgments relied upon by either side concluded that the offending portion of the handbill amounted to defamation and confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present revision petitions are laid before this Court. Pending the Criminal Revision Case, the second petitioner in Crl.R.C.No.971 of 2014, namely Durairajulu died and the learned Counsel was unable to furnish the particulars of the legal heirs. In that view of the matter, the learned Counsel was requested to be the Amicus Curiae so as to determine the correctness of the order in respect of the said deceased petitioner Durairajulu also and the learned Counsel argued for and on behalf of both the petitioners.

D. The Submissions:

6. Mr.Palaninathan, the Learned Counsel appearing for the petitioners, submitting the Judgment of the Civil Court inter-parties, in the same matter of defamation, made the following contentions :

(i) There is no evidence that the hand bill is printed or distributed by the accused. The complainant had to ascertain and find out as to where the handbills were printed, at whose instance etc., and let in positive evidence so as to connect the accused with the handbill;



(ii) The very same matter is also printed in Tamizhan Express, a Tamil magazine, therefore, when the magazine is widely circulated, no defamation can be attributed only by circulation of Ex.P-2 handbill;

(iii) Apart from the complainant, except to examine interested persons, no neutral person or common public was examined to corroborate the evidence of complainant;

(iv) The complainant has not made clear as to what exactly is the portion of the handbill which is offensive;

(v) The expression forming the heading of the handbill would fall under the Exception-3 of Section 499 of Indian Penal Code as it touches only a public question and conduct relating to public office;

(vi) The same would also come within the Exception No. 9 of Section 499 of Indian Penal Code as it was made in good faith for protection of the interests of the public;

(vii) The respondent/complainant also filed a civil suit for compensation in respect of the self same incident and the Civil Court has found on merits that the complainant should have produced material to connect the accused with the handbill and in the absence of the same, the complainant has not proved its case and holding so already the suit is dismissed on merits in O.S.No.75 of 2004, on the file of the Principal Subordinate Court, Virudhachalam, confirmed in A.S.No.11 of 2006, by the Learned III Additional District Judge (Fast Track Court), Virudhachalam and this Court also dismissed S.A.No.463 of 2008 filed by the respondent/complainant for non-prosecution. The same shall also be considered and the petitioners/accused are entitled for an acquittal.

7. Mr.Vijay Arul Ram, the Learned Counsel appearing for the petitioners in CrI.R.C.No.971 of 2004, adopting the above said submissions, reiterated that there is nothing on record to show the involvement of the accused in the offenses except for the fact that their name finds place in the Ex.P-2 handbill. According to the Learned Counsel, given the political rivalry between the parties, it would be unsafe to convict the petitioners/accused in the absence of clinching evidence to prove that act of defamation on the part of petitioners/accused and pleaded that this is a case for interference by this Court in exercise of revisional jurisdiction.

8. Mr.Sushanth, the Learned Counsel appearing on behalf of the respondent/complainant would submit that the offensive portion is clearly indicated in the complaint. It has resulted in grave harm to the reputation of the complainant. The Ex.P-2 handbill is printed with a malafide intention just because the



complainant took action against irregularities in the functioning of the municipality and is motivated and willfully distributed with an intention to tarnish the complainant. The evidence of PW-2 to PW-6 establishes the impact of Ex.P-2 and therefore, the complainant has proved the offenses beyond any doubt and therefore he would pray that the revisions be dismissed.

E. The Questions:

9. Upon considering the rival submissions made on either side and upon perusal of the material records of this case, the following questions emerge for consideration in this revision :

(i) Whether or not the Judgment of the Civil Court finding that the defamation is not proved has to be considered by the Criminal court while deciding the criminal offense ?

(ii) Whether the complainant has proved that Ex-P2 is printed and circulated by the petitioners/accused ?

(iii) Whether the imputation in question amounts to defamation and if so, whether it would fall under the exceptions 3 and/or 9 ?

F. Question No.1:

10. The complainant apart from filing the complaint, on the same cause of action, filed a civil suit claiming damages of a sum of Rs.1,01,000/- for defamation. The suit in O.S.No.75 of 2000 was dismissed inter alia holding that the plaintiff had not let in positive evidence to connect the defendants to the alleged hand bill and the Appeal Suit and the Second Appeal also stood dismissed. Therefore, the Learned Counsel would submit that finding to the contrary by the Trial Court and the Appellate Court in the criminal proceedings is unsustainable and submits that the said Judgment inter parties have to be taken into account.

11. There is no quarrel over the proposition, that the respondent complainant is entitled to have both the independent remedies by way of filing civil suit and prosecuting for the offence, the law having been well settled, is recently restated in extenso by the Delhi High Court in Arvind Kejriwal Vs. Arun Jaitley¹.

12. The question, if the Civil Court or the Criminal Court renders a verdict in respect of the same cause of action, how



that could be treated by the other, the law is laid down by the Hon'ble Supreme Court of India in K.G. Premshanker v. Inspector of Police². Paragraph 30 of the said judgment, reads as follows:-

"30. What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein."

13. Therefore, it is clear that the Judgment of the Civil Court, will be relevant only if the conditions of Sections 40 to 43 of the Evidence Act is satisfied. The same Judgment details the about Sections 40 - 43 of Indian Evidence Act also in paragraphs 16 -22, which is reproduced hereunder :

"16. Sections 40 to 43 of the Evidence Act provide which judgments of courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents any court while taking cognizance of a suit or holding a trial, to be a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:

"40. Previous judgments relevant to bar a second suit or trial.- The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

17. Section 41 provides for relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction and makes it relevant or conclusive as provided therein.

18. Section 41 reads thus:

"41. Relevancy of certain judgments in probate, etc., jurisdiction.-A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or



insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.”

19. Section 42 with illustration reads thus:

“42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.—Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.”

20. Thereafter, Section 43 in terms provides that judgments, orders or decrees, other than those mentioned in Sections 40, 41, 42 are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some provisions of the Act.

21. The final judgment, order or decree of a competent court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction would be relevant if it confers upon or takes away



from any person any legal character or it declares any person to be entitled to any such character or to be entitled to any specific thing, not as against any specified person but absolutely. It further specifically provides that such judgment or decree is conclusive proof of what is provided therein such as legal character etc. As against this under Section 42, the relevancy of the judgments, orders and the decrees in previous proceedings is limited if they relate to matters of public nature relevant to the enquiry and such judgments, orders or decrees are not conclusive proof of that which they state. Illustration to Section 42 makes the position clear.

22. In the facts of the present case, Section 42 would have some bearing and the judgment and decree passed in a civil court would be relevant if it relates to a matter of public nature relevant to the enquiry but such judgment and decree is not a conclusive proof of that which it states."

14. Thus, it may be seen that Section 40 of Indian Evidence Act is not relevant to the issue on hand as it will be applicable only between civil suits or criminal trials, that is, Section 11 of C.P.C for the second suit, Section 300 of Cr.P.C., for the second trial. In Section 41 of Indian Evidence Act, the Judgments of the Civil Court in Probate, Matrimonial, Admiralty and Insolvency Jurisdictions and such other declarations which are in the nature of Judgments in rem are to be conclusive proof for the declarations made therein and would be binding on the Criminal Courts. The Judgment in hand, is a dismissal of suit for defamation, which would not fall within Section 42 of Indian Evidence Act.

15. The only question therefore, is whether it is a Judgment/Decree relating to matter of a Public Nature, so as to be relevant, though not conclusive proof, as per Section 41 of the Evidence Act. If not, as per Section 43 of Indian Evidence Act, the same is irrelevant. The phrase 'public nature' is not defined under the Act. The word 'Public', if one considers the popular dictionaries, if used as noun, shall mean people in general or a set of people sharing common interest etc., and if used as an Adjective, shall mean things relating to or done by State to its people or a place to which people shall have free access, or any activity supported by state funding or even group of persons.

16. The meaning of the phrase "relate to matter of a public nature" came up for consideration in Tula and Others Vs. Sadh



and Others³ and a Learned Judge held in paragraph 9 that it is wide enough to mean any judgment in which large section of public is interested and held that a judgment, relating to grazing rights involving three villages, as relevant under Section 42 of the Evidence Act. In Sundarabai Kom Hanumantrao Kulkarni and Another Vs. Hanmanth Bin Gurnath Kulkarni and Another⁴, an earlier judgment declaring a custom relating to marriage in a particular community is admissible under Section 42 of the Evidence Act.

17. Recently, the Allahabad High Court in Dr.Tazeen Fathima & Others Vs. State of U.P.⁵ held that a judgment in the Election Petition relating to the same matter, is relevant under Section 42 of the Evidence Act. Therefore, it is clear that while Section 41 of Indian Evidence Act enumerates the Judgments in rem, Section 42 of the Evidence Act makes relevant the judgments in matters of public nature, which would mean the other judgments though not in rem, but deal with questions which are strictly not inter parties but facts of public notoriety, impacting larger public like, whether a trust is private or public in nature, whether there was grazing rights, whether there was a custom prevailing in a particular community etc. Therefore, this Judgment inter parties, deciding whether the petitioner/accused are liable to pay compensation for defamation based on a fact finding that there was no evidence to connect the defendants with the handbill, does not in any manner deal with any larger question of public notoriety or involving larger public or public authorities/documents etc. Therefore, it cannot be relevant under Section 42 of the Act.

18. As early as in the year 1931, a division bench of this Court, in Padmanabhani Ramanamma Vs. Golusu Appalanarasayya⁶, wherein under similar circumstances, in a prosecution for robbery and defamation, where there was a Civil Court Judgment and Decree in favour of the accused, held as follows:-

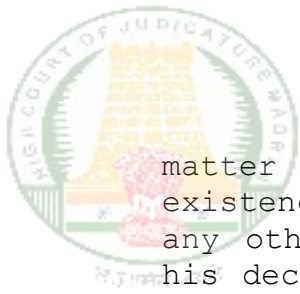
"The matter, it seems to us, is governed by Sections 40 to 43 of the Evidence Act and, if a judgment is not admissible under any of those sections, it must be left out of consideration altogether. The judgment in question was not one to which Section 40 applied; for it was not a bar to the prosecution. Nor was it a judgment in rem under Sect.41. It did not relate to a

³ AIR 1962 HP 28

⁴ AIR 1932 Bom 398

⁵ Crl.M.P. No.15385 of 2020, Order dated 13/10/2020

⁶ 1932 Vol.25 LW page 32



matter of a public nature as required by Sect.42. Nor was its existence a fact in issue in the prosecution or relevant under any other section of the Evidence Act-Sect.43. Heaton, J., put his decision on a quite different ground - the ground of public policy. "We cannot" he said " have Criminal Courts trying over again matters which have been thoroughly dealt with and finally decided by a Civil Court of competent jurisdiction." It is not easy to see how such a rule is to be enforced, unless the judgment of the Civil Court is, in law, a bar to or conclusive against the prosecution. And what of cases in which the Criminal Court has decided the controversy first and convicted ? Can we not have the Civil Court trying over again a matter which has been decided by a Court of Competent jurisdiction and coming to a different conclusion ? The truth is that, although the civil suit and the prosecution may be based on exactly the same cause of action, the parties are, strictly speaking, not the same, the burden of proof is differently placed and different considerations may come in. The result may therefore be a conflict in decision."

Therefore, I answer the question that the Judgment of the civil court, inter-parties though in the same matter of defamation, is not relevant as it does not fall either under Section 41 or 42 and therefore not relevant as per Section 43 of the Evidence Act and I answer the question accordingly.

G. Question No. 2:

19. Before proceeding to answer this question, it is essential to consider the submission of the Learned Counsel for the petitioners that since the matter was also published in Tamilan Express magazine, it cannot be attributed to Ex.P-2 hand bill alone and hence the prosecution is fallacious. I have gone through the article in the Magazine, marked as Ex.P-5, which is not the reproduction of the contents of Ex.P-2, but, contains the whole story about the tussle between the complainant and others. Therefore, the contention of the Learned Counsel is factually incorrect. Now, considering the question, whether the complainant has proved that Ex.P-2 handbill was printed and distributed by petitioners/accused, firstly, the handbill clearly contains the names of the four petitioners/accused as the authors of the handbill (along with the names of four different political parties to which they belong), in the end of the handbill, printed prominently with the prefix ",','dk;". Secondly, PW-2, has clearly spoken about the fact that second accused Gani, distributed the pamphlet to him. Thirdly, when the respondent complainant issued Ex.P-3 legal notice to the



petitioners/accused, the petitioners/accused caused Ex.P-4 reply notice. It is by considering the reply notice, the Trial Court and the first Appellate Court found that there tacit admission by the petitioners/accused.

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20. According to the learned Counsel for the petitioners, the reply notice in the first paragraph clearly denies that the petitioners/accused printed or distributed the handbill. Therefore, the findings of the Courts below are incorrect. But Ex.P-4, was not a mere denial of the notice. It opens up with the sentence that the offending caption, will not amount to calling a person as a person of unsound mind. In paragraph 2, it is stated that on account of the behaviour of the complainant in not maintaining cordiality with other councilors, raised a doubt about his mental balance. Paragraph 3 further alleges that complainant behaved in a moody fashion raising a doubt on many occasions as to his mental balance. It further states in paragraph 4,

"So, the behaviour of your client on various occasions has prompted my clients to doubt the mental balance of your client.The pamphlet alleged to have been issued by me client by no stretch of imagination be defamatory. They are informative.."

21. It is a trite proposition that if a document contains contradictory and different statements making it ambiguous, then the Court should read the document as whole and ascertain its correct meaning. A proper and wholesome reading of Ex.P-4 would clearly convey the tacit admission of the petitioners/accused that it is they who printed and distributed the Ex.P-2. The complainant has produced and marked the document. The petitioners/accused did not disown Ex.P-4, on the other hand that it is the admitted case that they had issued the reply. Therefore, I hold that the complainant has proved beyond doubt that Ex.P-2 handbill is printed and distributed by the petitioners/accused.

H. Question No.3:

22. The contention of the petitioners/accused in this regard is twin-fold. First, the offensive heading complained, will not amount to defamation at all as contained in Section 499 of Indian Penal Code as it is not an imputation which can be said to harm the reputation of the respondent/complainant. Second, it would fall under Exceptions 3 and 9. The Learned Counsel for the respondent/complainant submitted that apart from the heading, there were other statements in Ex.P-2 handbill even alleging corruption against the respondent complainant.



Therefore, according to him the entire Ex-P2 is defamatory. But a reading of the complaint, in page 2 as well as page 3 of the complaint, only the heading of the handbill is complained as being defamatory.

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23. In this regard, in Balraj Khanna Vs. Moti Ram⁷, the Hon'ble Supreme Court of India, after considering the various decisions on the point, had held as follows even in respect of a verbal defamation:-

"25. After a consideration of the various decisions referred to above, we are of the opinion that the propositions laid down in English decisions dealing with libel that the actual words alleged to be used must be stated in the indictment cannot be applied on all force when dealing with the cases of defamation by spoken words under Section 499 IPC. It will be highly desirable no doubt if the actual words stated to have been used by an accused and which are alleged to be defamatory are reproduced by the complainant. The actual words used or the statements made may be reproduced verbatim by the complainant if the words are few and the statement is very brief. But in cases where the words spoken are too many or the statements made are too long, in our opinion, it will be the height of technicality to insist that the actual words and the entire statements should be reproduced verbatim. The object of having, if possible, the actual words or the statements before the Court is to enable it to consider whether those words or the statements are defamatory in nature. That purpose or object will be served if the complainant is able to reproduce in his complaint or evidence in a substantial measure the words of imputation alleged to have been uttered. If the statements or the words placed before the Court by the complainant are held to be not defamatory, it will mean that the complainant will have to lose. Therefore, it is to his interest to get a proper adjudication from the Court that as far as possible the words spoken or the statements actually made and which he alleges to be defamatory are before the Court. But a complaint cannot be thrown out on the mere ground that the actual words spoken or the statements made have not been stated in the complaint. From the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be so stated as to enable them to know the nature of the allegations that they have to meet."

Therefore, in a case of written defamation, it can be concluded that what is specifically mentioned in the complaint as the offending matter alone can be taken into consideration, as the accused are put to answer the same and therefore, in this



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case, the complainant having omitted to specifically mention about the other portions of the handbill which he deemed as defamatory, cannot now rely upon the same and thus we are concerned only about the aforementioned caption of the handbill, specifically mentioned in the complaint.

24. I am unable to accept the contention of the Learned Counsel for the Petitioners/accused that the caption as such does not relate to harming the character or reputation. It is an innuendo suggesting a disparaging remark about the character of the respondent/complainant. In this regard, Explanation 3 to Section 499 reads as follows:-

"Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation."

25. It is useful to extract the observations of the the Kerala High Court in Subair Vs. Sudhakaran⁸ with regard to defamation by innuendos:

"4. Relying on Raman Namboodiri v. Govindan (1962 K.L.T. 538), counsel for petitioner contends that the identity of the complainant should be established. The proposition is beyond reproach. But, it is not always necessary to name the person. If the description and attendant circumstances suggest with fair certainty the identity of the person intended, that is sufficient to attract the offence. Explanation 3 to S. 499 states that an imputation in the form of an alternative or expressed ironically, may also amount to defamation. Defamation by innuendo is well known. Hicks' case is illustrative in this regard. Gatley on Libel and Slander- 8th Edition (para 281) states:

"To succeed in an action of defamation it must not only be proved that the defendant published the words and that they are defamatory: He must also identify himself as the person defamed. No writing whatsoever, is to be esteemed a libel unless it reflects upon some particular person. It is not necessary that the words should refer by name".

5. The reference need not be explicit. If the description is such that a reasonable person in the context in which it is made, will understand it as a reference to a particular person, it would suffice. It is not always that a libellous statement is made with directness, nor, does it mean that as long as it is not by specific reference, so long it is not libel. A degree of indirectness or innuendo is noticed in such attempts, and is to be expected. To defame is an offence, and it is reasonable to think that he who defames is not anxious to invite legal consequences. Satire or lampoons are instances of reference by

⁸ 1987 SCC OnLine Ker 192



innuendo. Limericks also sometimes make veiled references, not altogether complementary. To a point, they may justify themselves. But, transgression beyond, would attract penal consequences. The thin twilight zone is often the subject of controversy. But, it can be said with assurance that even without specific or explicit reference, by innuendo, defamation can arise. Gatley has noticed cases, where libel was found by reference to initial letters, by asterisks or even blanks, and reference to fictitious or fanciful names, even where there was 'no peg or pointer for identification in the words complained of. 6. In *Morgan v. Odhams Press Ltd.* ((1972) 1 W.L.R. 1239 (H.L.)) it is stated:

"It is the circumstances in which a statement is made which give it colour, meaning and thrust: they may combine to make a statement, seemingly innocuous in itself, an infamous defamation of a person who is caught and pointed to by those circumstances". 7. Thus viewed, it must be held that the complainant would be identified, as the doctor in *Chokli* in Ext. P 1 (a), by those who knew of Nabeesu's complaint and of his rendering free medical aid. ..."

Thus, when there is no truth which is pleaded about the mental condition of the respondent/complainant, it is clear that the offending caption is an oblique and disparaging remark touching his character and reputation and thus the first limb of the submission stands rejected.

26. Now, coming to the alternative submissions, as far as Exception-3 is concerned, it reads as follows :

"Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration: It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested. "

27. Thus, it may be seen that "good faith" is the key element in respect of Exception-3. The Hon'ble Supreme Court of India, in *Chaman Lal Vs. State of Punjab*⁹, held as follows:

⁹ (1970) 1 SCC 590



"In order to establish good faith and bona fide it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution, and finally, whether there is preponderance of probability that the appellant acted in good faith."

28. The further contention that the innuendo would fall within the Exception-9 is also untenable. The Hon'ble Supreme Court of India in Sukra Mahto Vs. Basdeo Kumar Mahto¹⁰, held as follows:-

"The ingredients of the Ninth Exception are first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a question of fact. This Court in Harbhajan Singh v. State of Punjab [AIR 1966 SC 97 : (1965) 3 SCR 235 : 1966 Cri LJ 82] in dealing with the Ninth Exception to Section 499 of the Penal Code, 1860 said that it would have to be found out whether a person acted with due care and attention. This Court said there "Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to Section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true. The accent is on the enquiry, care and objective and not subjective satisfaction."

29. Here in this case, it is categorically on record from the oral evidence of PW-1 to PW-6, the offending Ex.P-2, the legal notice and the reply notices and the article in the magazine Ex.P-6, that there was an expose of various illegalities by the respondent/complainant and only as a counter

10 (1971) 1 SCC 885



blast Ex.P-2 is published. The wordings of the handbill itself makes it clear that while he makes accusations about others, all is not well with him. There is absolutely no good faith and therefore, the petitioners/accused cannot take umbrage under Exception-3 or Exception-9.

30. It is one thing to contend that in a democracy, in keeping up with the best traditions, people in public life should refrain from prosecuting as observed by the Hon'ble Supreme Court of India in Kartar Singh Vs. State of Punjab¹¹, as follows:-

"...So far as these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. "Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time" (Per Cock-burn, C.J. in Seymour v. Battenworth [(1862) 3 F & F 372, 376, 377 : 176 ER 166, 168, 169] and see the dicta of the Judges in R. v. Sir R. Carden [(1879) 5 QBD 1] . "Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office" (Per Bramwell, B., in Kelly v. Sherlock [(1866) LR 1 QB 686, 689] . Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give importance to the same by prosecuting the persons responsible for the same."

And to expect the complainant to be philosophically high to understand that in these times, the irregularities, corruption and nepotism have become so common and deep rooted that if any office bearer of a local body who is not maintaining 'cordiality' with other councilors will only be called as "Mentally unstable" cannot be as a matter of legal contention. After all, the complainant has come before the Court, crying that apart from being the Chairman of the Municipality, he is an eye surgeon by profession and the innuendo has harmed his reputation even professionally. Especially, when all the four accused by their name, coming from politically opposite four different political parties have joined hands and print and distribute the abusive material. Therefore, the complainant as an ordinary reasonable man has preferred the complaint and in this case, the argument about 'thick skin' is without any

11 1956 SCR 476 : AIR 1956 SC 541 : 1956 Cri LJ 945 12



substance. I, therefore, answer the question against the petitioners/accused and find that the Trial Court and the first Appellate Court have rightly convicted the petitioners/accused.

I. The Sentence & The Result:

31. Now, coming to the aspect of sentence, the petitioners/accused are sentenced to undergo a Simple Imprisonment of 6 months each and also a fine of Rs.750/- each for both the offenses. In this case, I find one mitigating factor, not to impose imprisonment and stop with fine alone, because, the respondent/complainant while protesting against the petitioners/accused and other office bearers/staff, even while in his office, has apart from taking official action, has also resorted to printing of handbills and distributing. In that view of the matter, I am inclined to modify the sentence imposed on the petitioners/accused. The sentence of imprisonment for a period of 6 months is set aside. The punishment of fine alone is confirmed. Of the fine amount paid by the accused, a sum of Rs.2000/- is ordered to be paid as compensation to the respondent complainant.

32. The Criminal Revisions are partly allowed accordingly.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

grs

To

- 1.The III Additional District Cum Sessions Judge,
Cuddalore sitting at Virudhachalam.
- 2.The Chief Judicial Magistrate,
Cuddalore. (for Information)
- 3.The Judicial Magistrate No.I,
Virudhachalam.
- 4.The Public Prosecutor,
High Court, Madras.



Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Palaninathan, Advocate Sr.9616

Crl.R.C.Nos.971 and 938 of 2014

pmk[co]
srg 04/03/2022