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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 16.02.2022	Orders Pronounced On 01.03.2022
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Crl.O.P.No.29944 of 2018
& Crl.MP.No.17599 of 2018

Fatima Faridunnisa

... Petitioner/Accused

Vs.

M.O.H.Iqbal

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in STC.No.31 of 2017 on the file of the Judicial Magistrate, Puducherry.

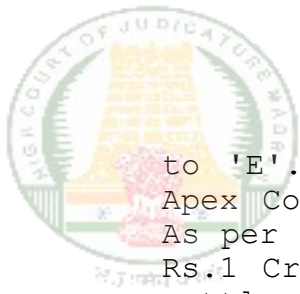
For Petitioner : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

For Respondent : Mr.R.Thiagarajan

ORDER

The petitioner, who is accused in S.T.C.No.31 of 2017 on the file of the learned Judicial Magistrate, Puducherry facing trial for the offence under Section 500 of IPC, filed this quash petition.

2.The gist of the private complaint filed by the respondent is that the respondent along with his three brothers were partners in a firm, M/s.M.O.Hasan Kuthoos Maricar. The petitioner is the wife of respondent's brother M.O.H.Aslam. Differences arose between M.O.H.Aslam on the one hand and other partners, which lead to filing of a suit in O.S.No.206 of 1978 on the file of the Sub Court, Puducherry, seeking relief of dissolution of partnership, rendition of accounts, etc. He also claimed certain properties which were set out in Schedules 'A'



to 'E'. The case ultimately ended in a compromise before the Apex Court in Civil Appeal Nos.4512-4513 of 1999 on 28.02.2006. As per the compromise, the respondent herein to pay a lumpsum of Rs.1 Crore including interest in full satisfaction and as final settlement of all the disputes/claims of petitioner's husband. The petitioner's husband acted as Power of Attorney for the petitioner and signed the compromise memo dated 21.02.2006. Since there was delay in execution of the release deed as per the compromise memo, the respondent filed a contempt petition in Contempt Petition Nos.270-271 of 2009 in Civil Appeal Nos.4512-4513 of 1999 before the Apex Court and thereupon, the release deed was executed.

3.The petitioner fully aware that Flat at No.15 of Marshall Road, Madras covered by Document No.4264 of 1980 stands in the name of Messers Uduman, Farooq and Iqbal and it figures as item No.1 in 'D' Schedule property in O.S.No.206 of 1978. This being the case, in order to bring down the reputation of the respondent in the eyes of others, the petitioner caused the offending paper publication dated 23.10.2014 in Dinamalar daily newspaper through her counsel Mr.H.D.Kumaravelu. Since her counsel constituted professional misconduct, the respondent moved the Bar Council of Tamil Nadu and Puducherry by lodging a complaint under Section 35 of Advocates Act, 1961, in which enquiry is pending. The respondent desired of disposing of some of his properties including the Flat at No.15, Marashall Road, Chennai, but he was unable to do so on account of the paper publication in Dinamalar dated 23.10.2014. The respondent and his brothers are man with reputation, one of the brother was the Former Chief Minister of Puducherry on three occasions, Ambassador of India in Saudi Arabi, Governor of Jharkhand and Kerala. The respondent's son-in-law was a MLA for two terms and a Minister for five years in the Cabinet of Union Territory of Puducherry. The respondent is carrying such a reputation and on the other hand, giving such public notice in Dinamalar with imputation caused defamation of the respondent's fame and name. One Thiruvengadam, who was dealing with the property scouting for prospective buyers, questioned the respondent about the publication and the prospective buyers made an allegation that suppressing the pendency of civil suit, the property was negotiated for sale, which caused damage to his name. The petitioner after giving up claim over the property by way of compromise memo filed before the Apex Court, which was effected with ill motive issued such public notice under the garb of property is subject matter in civil suit pending in O.S.No.286 of 1978, for dissolving M/s.Crystal Transport Private Limited wherein the respondent, his three brothers, wife of one of his brother and the petitioner are partners, made publication with dishonest and without any bonafide.



4.A decree was passed in the said civil suit O.S.No.286 of 1978 on 23.04.2004, against which, A.S.No.328 of 2005 was filed and other partners filed cross objections. The said appeal suit was pending before this Court. There is no justification for issuance of such public notice. The respondent caused a notice seeking apology on 24.11.2014, the said notice was returned as "unclaimed" on 18.12.2014 and thereafter, complaint was lodged. The Trial Court recorded the sworn statement of the respondent on 22.11.2016 and thereafter, recorded the evidence of witnesses. One Kumar, Manager of the respondent, as P.W.1., who came across the paper publication and informed the respondent about the same. One Thiruvengadam, was examined as P.W.2, who acted as broker for the Marshall road property, he negotiated with one Krishnamoorthy, who was interested in purchasing the property and thereafter, on seeing the paper publication questioned the genuineness and integrity of the respondent and withdrew from the negotiation. On recording these evidences, the Trial Court taken the case on file in Cr.M.P.No.4105 of 2016, summons were issued and S.T.C.No.31 of 2017 was assigned.

5.The contention of the learned senior counsel for the petitioner is that the petitioner had instituted the suit in O.S.No.286 of 1978 on the file of the learned Additional Sub Judge, Puducherry for dissolution of the partnership firm "M/s.Crystal Transport Private Limited" and rendition of accounts against the wife of the respondent, namely, Zeenath Unnisa and other partners. She further submitted that the properties are purchased in the name of family members out of the income derived from the business and hence, to safeguard the interest of herself, she caused the public notice in Dinamalar newspaper. Further, in the public notice, it was clearly mentioned about the civil suit and seeking to safeguard the interest of 24 properties and 22 business establishments and propositions, public notice was caused. Moreover, nowhere in the public notice the name of the respondent was mentioned and the public notice was primarily against the defendants in the suit. In the civil suit, a final decree was passed on 23.04.2004, aggrieved against the same, the petitioner filed an appeal in A.S.No.328 of 2005, the defendants therein filed Cross Objection No.10 of 2012 and various CMPs were also filed in the said proceedings. She further submitted that A.S.No.328 of 2005 which is a corollary to O.S.No.328 of 1978, this Court by judgment dated 19.11.2019 given direction that the income derived even after dissolution of partnership firm on 15.11.1978, the same to be calculated. Hence, the First Appeal and the Cross Objection were disposed of, remitting back the suit to the Trial Court with directions. He referred to paragraph No.24 of the judgment in A.S.No.328 of 2005 and made such submissions.



6.The learned senior counsel for the petitioner further submitted that the petitioner made a bonafide claim as against the defendants in the suit in O.S.No.286 of 1978 and the same to be adjudicated only by the Civil Court. She further submitted that none of the defendants in O.S.No.286 of 1978 raised any objections for the paper publication effected by the petitioner. Further, the petitioner got bonafide claim over the suit property since according to the petitioner, the same was acquired from and out of the income from the family business income and in order to caution the general public about the pendency of the litigation, the petitioner is taking claim in the suit property and public notice dated 23.10.2014 was issued. On a plain reading of the public notice, it is seen that there is no statement of imputation against the respondent. A mere claim over the property does not amount to defamation, at the most it might give rise to civil dispute which ought to be adjudicated by the Civil Court. She further submitted that the reason for the respondent to file this complaint is to compel the petitioner, who is a pardanashin lady to appear before the Court and to make her run from pillar to post and defame her. The respondent also gone to the extent of threatening the Advocate who gave the public notice. It is further submitted that the complaint is a motivated one and malafide with an intention to threaten the petitioner and her husband to abandon the litigation and they were fighting for the past 40 years [since 1978]. even though the petitioner and her husband were granted a preliminary decree in all the suits for dissolution, except the one before the Hon'ble Supreme Court, all other suits are still in the stage of final decree even after 40 years of having been declared as entitled to a share in the firm, the fruits of the decree remains only a mirage in the desert. Thus, prima facie no case was made out. He further submitted that the petitioner's name does not find place in the advertisement, hence, sought for exemption under Section 499(9) of IPC and for quashing of the complaint.

7.The learned counsel for the respondent, on the other hand, submitted that the respondent filed a complaint before the Trial Court, wherein sworn statement of the respondent recorded and thereafter, two witnesses were examined. P.W.1 is the Manager employed with the respondent, who purchased the Dinamalar newspaper in which the defamatory public notice was issued, handed over the newspaper to the respondent and questioned about the same. P.W.2 is the broker who was negotiating for the sale of property in Marshall Road, Chennai, in fact he found out a prospective buyer, namely, one Krishnamoorthy, the negotiation was half way through and thereafter, on seeing the paper publication, he questioned the intention and motive of the respondent having negotiated for sale of the property which is entangled in a civil suit in



O.S.No.286 of 1978. He further submitted that in the list of properties mentioned in the public notice, the first property is the flat at Marshall Road, Madras, in which the name of the respondent, Udhman, Farook, Iqbal was clearly mentioned. He further submitted that earlier there were proceedings in O.S.No.206 of 1978, in which Schedule of Properties 'A' to 'D' were listed and the said property was listed as Schedule 'D', thereafter, A.S.No.215 of 1988 was filed on the file of the learned Principal District Judge, Puducherry and finally, it reached the Apex Court in Civil Appeal Nos.4512-4513 of 1999. Before the Apex Court, the issue was compromised between the contesting parties, settlement arrived at, memo of compromise filed in the Court which was recorded on 28.02.2006 and it was recorded that the claim of the petitioner's husband M.O.H.Asam stands satisfied and disposed of the Civil Appeal by order dated 28.02.2006. He further submitted that the petitioner was represented by her husband, who signed the compromise memo. This being the case, the petitioner taking the shield under O.S.No.286 of 1978 and issuing public notice is improper. Further, he filed the typed set of papers listing the amended plaint in O.S.No.206 of 1978, order of the Apex Court in Civil Appeal Nos.4512-4513 of 1999, all arising out of paper publication, sworn statement of the respondent, deposition of P.W.1 and P.W.2 and the writ petition filed by the petitioner's Advocate Mr.H.D.Kurmaravelu challenging the disciplinary proceedings notification and other documents pertaining to disciplinary proceedings against him.

8.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that in the plaint in O.S.No.206 of 1978, in Schedule 'D', Item No.1 is the flat in the name of Udhuman, Farook, Iqbal [respondent herein], at No.15, Marshall Road, Chennai-Documents No.4264/80. The petitioner's suit in O.S.No.286 of 1978, in which the same flat was shown in schedule of properties in column No.1. The contention of the petitioner is that several properties were purchased out of the income from the family business, M/s.M.O.Hassan Kuthus Maricar Private Limited, in which, the petitioner's husband was a partner and since dispute arose, O.S.No.206 of 1978 was filed. The petitioner filed O.S.No.286 of 1978 with regard to the dispute in M/s.Crystal Transport Private Limited in which petitioner and her sisters in law were partners. The primary contention of the petitioner is that properties were purchased in the name of Company, Firm, individuals and other family members out of the income derived from M/s.Crystal Transport Private Limited also. The flat at Marshall Road, Chennai, according to the petitioner was purchased out of the income from the business, for which rendition of accounts was not so far finalized, now this Court in A.S.No.328 of 2005. by judgment dated 19.11.2019 remitted



back O.S.No.286 of 1978 to the Trial Court with direction to provide opportunities to both parties to adduce further evidence to sustain the statement of accounts projected by them respectively. In view of the same, it cannot be said that the properties listed in the public notice, more specifically, the first property at Marshall Road, Chennai-Documment No.4264/80, as improper. It is seen that none of the defendants in O.S.No.286 of 1978 had raised any objections for the public notice.

9. On a plain reading of the public notice, it is seen that the petitioner had issued the notice listing Sl.Nos.1 to 24 properties and 22 businesses and the public notice informs about the civil suit in O.S.No.286 of 1978 which is pending adjudication at the appellate side before the High Court. The public notice only cautioned the general public that till the disposal of the civil suit before the High Court, not to create any encumbrance and later claim that they were not put on notice. To safeguard her civil right, the petitioner issued the public notice. Admittedly, the appeal suit in A.S.No.328 of 2005 filed against the judgment and decree in O.S.No.286 of 2005, got disposed of much after the issuance of the public notice, as such on the date of issuance of public notice civil suits were pending and it is still pending. It cannot be straight away taken that by issuing public notice imputation was made and defamation caused to the respondent. Further, in the sworn statement filed by the respondent, he narrated the facts pertaining to O.S.No.206 of 1978, subsequently reaching the Apex Court and compromise memo filed. Though reference was made to public notice dated 23.10.2014 published in Dinamalar in the sworn statement, nowhere in sworn statement any mention about the pendency of A.S.No.328 of 2005 filed against the judgment and decree in O.S.No.286 of 1978. Further, in his statement he had not given the particulars about who all are the persons called him and what was the enquiry made though generally states various calls were received, except referring to one Thiruvengadam, who was examined as P.W.2. On going through the statement of Thiruvengadam, it is seen that he states that he negotiated for sale of the flat to one Krishnamoorthy and it was at the stage of negotiation and he states as "நான் பெரிய குடும்பம் என்று தான் நினைத்து வாங்க வந்தேன் ஆனால் இப்படி ஆகிவிட்டதே என்று பேச ஆரம்பித்தார்.". The said Krishnamoorthy was not examined to confirm the same. As regards P.W.1, Kumar, who is the Manager of the respondent, except informing respondent about the public notice, nothing more stated by him. Further, added to it, in the public notice, the address of the petitioner was given as Block No.2, Sunshine Apartment, Kathirolu Nagar, Saram, Puducherry but the notice which was produced in the complaint appears to be sent to Block-2, Ground Floor, Sunshine Apartments, Sunshine Nagar @ Sathya Nagar Extn., Puducherry, hence, notice was not sent to the address found in the public notice. On perusal of the memo



of compromise filed before the Apex Court in paragraph No.6, it is stated that Shri.M.O.H.Aslam and his wife [petitioner herein] have to give up all their claims in respect of the remaining properties/businesses mentioned in 'A', 'B', 'C', 'D' and 'E' of the suit schedule properties and execute all such documents for this purpose as may be required in law. Admittedly no such documents were executed with regard to Schedule 'D' properties, more particularly to Item No.1 Schedule 'D'.

10.A statement is prima facie defamatory when its natural, obvious and primary sense is defamatory; such a statement is actionable unless its defamatory significance is successfully explained away and the burden of such an explanation rests upon the respondent. A statement prima facie innocent, on the other hand, is not actionable, unless it has latent or secondary defamatory meaning which is sufficiently proved by the petitioner. Further, the expression "good faith" in criminal jurisprudence has a definite connotation. Good faith is defined in Section 52 of IPC.

11.In the present case, on perusal of the public notice, it is seen that there is no mention of imputation per se defamatory.

12.In the case of M/s.Zandu Pharmaceutical Works Ltd. and others vs. Mohd.Sharaful Haque and others reported in AIR 2005 SC 9, it was held that superior courts may examine the questions of fact when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

13.In the present case, it is seen that the imputation found either directly or indirectly no way affect the reputation of the respondent in the estimation of others. Hence, the burden to establish such imputation lowered the respondent in the estimation of others does not arise at all.

14.The Apex Court in the case of Pepsi Foods Limited and another vs. Special Judicial Magistrate and others reported in (1998) 5 SCC 749, held that arraying a person in criminal case cannot be done mechanically and it ought to be invoked with due care and caution.

15.Further, in the case of State of Haryana and others vs. Ch.Bhajan Lal and others reported in AIR 1992 SC 604, the Apex Court has framed certain guidelines and two such guidelines which are relevant for the present case are as follows:

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence



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or make out a case against the accused.

.... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16.The present case would squarely fall under Explanation 4 of Section 499 of IPC as Ninth Exception, the public notice is only a caution to the general public about the pendency of the civil suit and nothing more. The respondent failed to show that the petitioner/accused made any imputation concerning the respondent intending to harm or reason to believe that such imputation will harm the reputation of respondent. In view of the same, the proceedings in STC.No.31 of 2017 against the petitioner pending on the file of the learned Judicial Magistrate, Puducherry is hereby quashed. The petition is allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

cse

To

1.The Judicial Magistrate,
Puducherry

+1cc to Mr.R.Thiagarajan, Advocate SR.No.13500

+2cc to Mr.T.S.Baskaran, Advocate SR.No.13183

Cr1.O.P.No.29944 of 2018

NMI (CO)

GMV (07/03/2022)