



Crl.O.P.No.2704 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2023

PRONOUNCED ON : 14.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.2704 of 2023

T.Vijayakumar

...

Petitioner

Vs.

P.Jawahar

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order in Crl.R.C.No.10 of 2021 dated 21.07.2022 passed by the Principal District and Sessions Judge, Chengalpattu confirming the order passed by the Judicial Magistrate No.1, Chengalpattu in Crl.M.P.No.8798 of 2021 dated 26.10.2021.

For Petitioner : Mr.S.Sridevi

ORDER

This Criminal Original Petition has been filed to set aside the order in Crl.R.C.No.10 of 2021, dated 21.07.2022, passed by the Principal District and Sessions Judge, Chengalpattu, confirming the order passed by the Judicial Magistrate No.1, Chengalpattu, in Crl.M.P.No.8798 of 2021, dated 26.10.2021.

2.The learned counsel for the petitioner submitted that respondent is a



Crl.O.P.No.2704 of 2023

promoter carrying on his business in the name and style of M/s.Vasantham promoters in Chennai. Respondent developed a layout in S.Nos.434/1A part, 438/1A part, 438/2, 439/2, 440 part, 441/1, 442, 443, 444/3 part, 444/4, 445/1C, 445/4B, 446, 447/1, 477/2, 448, 499 in the form of residential plots from numbers 1 to 197. Respondent also executed a gift deed in favour of the Village Administrative Officer, vide document No.5296/2012, with respect to 78732.5 sq.ft. Petitioner purchased plot No.79 in S.Nos.447/2 and 448, measuring 1500 sq.ft. on 01.06.2012. The boundaries of the plots are, on the North – 21 feet broad 5th cross street, South – Park, East – common road which leads to south part of Mamandur, West – plot No.80. After purchasing the property and taking possession, petitioner came to know that the boundaries are not as per the documents. He purchased the property mainly for the reason that the Southern boundary is a Park, in reality, there was no Park. Respondent had been doing certain acts contrary to the documents, by creating new plots in the Park and surrounding areas. Therefore, petitioner gave a complaint to the Joint Director on 07.01.2021. The Joint Director sought an explanation from respondent. On behalf of respondent, one P.Jawahar sent a reply dated 20.04.2021 making defamatory allegations against petitioner. Therefore, petitioner filed a private complaint under Section



Crl.O.P.No.2704 of 2023

200 Cr.P.C. for the offences under Sections 500 & 501 IPC in C.M.P.No.8798 of 2021. However, the Judicial Magistrate - I Chengalpattu, dismissed the petition under Section 203 Cr.P.C. Aggrieved over the dismissal of C.M.P.No.8798 of 2021, petitioner filed a criminal revision petition in Crl.R.C.No.10 of 2021 before the Principal District and Sessions Judge, Chengalpattu and the same also came to be dismissed.

3.It is the submission of the learned counsel for the petitioner that the complaint allegations clearly make out a case of defamation against respondent. The learned Judge, without properly understanding the definition of Section 499 IPC in proper perspective, dismissed the complaint on the reason that there was no publication of defamatory allegations. Therefore, challenging the said orders, this petition is filed.

4.Considered the submissions and perused the records.

5.It is seen from the complaint allegations in C.M.P.No.8798 of 2021 and the sworn statement of petitioner that petitioner purchased the property in plot No.79 for the reason that it was sold by stating that there is a Park on the



Crl.O.P.No.2704 of 2023

southern side of the plot. Respondent gave trouble to petitioner stating that petitioner had encroached the Park on the southern side. He already gave a complaint against respondent for making an attempt to commit murder and a case in C.C.No.24 of 2021 is pending in this regard. He also made allegations against respondent alleging alteration of documents and gave a complaint.

6.To the complaint of the petitioner, a reply dated 20.04.2021 was sent by respondent to the Deputy Director, DTCP, Chengalpattu. It is seen from the reply that,

(i) in the permission granted by the Panchayat, there is no reference made that there is a Park to the south of plot No.79.

(ii) Vijayakumar had altered the Gift deed document No.5296 of 2012. There is no mention about Park near plot No.79, but only the reserve side was shown.

(iii) In the sale deed of petitioner, southern and eastern boundaries were shown mistakenly.

(iv) Petitioner had fabricated the document No.5296 of 2012 with a view to encroach the land near plot No.79.

(v) Petitioner had also encroached the channel near plot No.79 and



constructed the building.

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7. Aggrieved by the allegations made in the reply that petitioner had altered/fabricated the documents and that he encroached the nearby land of plot No.79, the complaint is filed stating that these allegations are defamatory in nature. The question here is whether the allegations made against the petitioner in the reply sent in pursuance to the complaint of petitioner dated 07.01.2021 can constitute defamatory allegations entitling the petitioner to prosecute the respondent under Section 500 IPC.

8. Section 499 IPC reads as follows:

499.Defamation.- *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

Explanation 1.—It may amount to defamation to



impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

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

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

9.The necessary ingredients for making out an offence of defamation are
that,

(i) Making imputation concerning any person intending to harm the



reputation of that person by words either spoken or intended to be read, or by signs or by visible representations.

(ii) Making or publishing the said imputation.

10. In the case before hand, petitioner and respondent trade allegations against each other. Petitioner by his complaint dated 07.01.2021 made allegations against respondent. Respondent, in turn, in reply to the allegations made against it, also made allegations against petitioner. As per the above definition, making or publishing the imputation concerning any person intending to harm his reputation is one of the essential ingredients to constitute the offence of defamation. In the case before hand, in the light of the mutual charges levelled against each other in the communication addressed to the Deputy Director, DTCP, Chengalpattu, on the face of the allegations, the allegations cannot be construed as defamatory allegations for the reason that if the allegations made against the petitioner are true, truth is a defence in defamation case and therefore, the offence of defamation cannot be made out. The allegations in the respondent's reply are in the nature of answer to the allegations made against the respondent in the petitioner's complaint. That apart, there is no material to show that the alleged defamatory allegations



against petitioner in the respondent's reply was in anyway published so that the third parties came to know about the allegations, thereby petitioner lost his reputation in the eyes of third parties.

11. In the case on hand, the alleged defamatory statement was made in reply to the complaint made to the Joint director. To answer the issue as to whether the above statement would amount to publication under S. 499 IPC, it would be apt to refer to the judgement of this Hon'ble Court in ***P. Ramaswami Mudaliar, In re, reported in 1937 SCC OnLine Mad 280***. This is a case where a statement made by the witness to police was alleged to be defamatory in nature. Quashing the charges against the petitioner therein, the Court held as follows:-

“ The statements made by the petitioner relating to the respondent were made in response to the requisition made under S. 161 and these were therefore made on a privileged occasion. ...Prima facie, therefore, the statements having been made on a privileged occasion under S. 161 of the Criminal Procedure Code, they would certainly come within the exception 9 of S. 499 of the Penal Code, 1860.”



12. Ninth Exception under Section 499 IPC reads as follows:-

“Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.”

13. Further, the Hon’ble Apex Court in **Joseph M. Puthussery vs. T.S. John and Ors. (01.12.2010 - SC) & State of M.P. and Anr. etc. etc. v. Ram Raghubir Prasad Agarwal and Ors. (1979) 4 SCC 686** observed the meaning of the term “Publication” as follows:-

“The first and foremost ingredient of publishing is making information known to the public in general. Publication is an act by which some information is exhibited, displayed, disclosed or revealed before the public. By publication, the necessary information is made accessible for public scrutiny. It is an act of making known of something to the public in general for a purpose.”

14. Therefore, it is clear from the above discussion that the alleged defamatory statement in reply to a complaint, would neither amount to



Crl.O.P.No.2704 of 2023

publication nor would attract the offence of defamation.

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15. Thus, this Court is of the view that from the materials produced, petitioner has not made out a case for prosecuting respondent for the offences of defamation under Section 500 IPC and the Courts below have rightly decided the issue and dismissed the complaint. This Court finds no reason to interfere with the order of the learned Judge, therefore, this Criminal Original Petition is dismissed.

16. Accordingly, this Criminal Original Petition is dismissed.

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14.03.2023

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Principal District and Sessions Court,
Chengalpattu.

2. The Judicial Magistrate Court No.1,
Chengalpattu.

3. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.2704 of 2023

G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
Crl.O.P.No.2704 of 2023

14.03.2023