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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.A.No.181 of 2015

Dr.S.S.R.Ramadoss

... Appellant

vs.

1.K.Radhakrishnan

2.R.Rajamohan

... Respondents

PRAYER : Criminal Appeal is filed under Section 374(2) Cr.P.C. to call for the records and to set aside the judgment dated 11.09.2012 imposed in C.C.No.6836 of 2006 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

For Appellant

: Mr. S.Ilamvaludhi

For Respondents

: Mrs.A.L.Gandhimathi
Senior Counsel for
Mr.C.T.Murugappan

J U D G M E N T

This Criminal Appeal has been filed against the judgment and order passed by the Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.6836 of 2006, dated 11.09.2012, acquitting the respondents from offence under Section 500 of IPC.



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2.The appellant filed a private complaint against the respondents on the ground that the office bearers of Tamil Nadu Government Officers Union (TNGOU) approached the appellant in the year 2001 and requested him to purchase lands near Chennai for allotment of the same to the Members of the Association. Accordingly, the appellant agreed to take up the project. For this purpose, the appellant formed a partnership Firm in the name and style of Sai Hi Value Properties. The appellant started the process of identifying the lands to an extent of 300 acres near Kundrathur. Nearly 200 Members also paid full amount being the cost of one ground of plot and other members had made partial payments.

3.The further case of the appellant was that all these payments made by the members were deposited in ICICI Bank in a joint account of the appellant and one B.Subash Chandra Bose, who is an office bearer of TNGOU. The appellant was able to procure only 70 acres of lands out of the 300 acres and hence, some of the Members did not want to continue in the Scheme and they started asking for refund of the amount paid by them. According to the appellant, he had paid back to the tune of Rs.20,00,000/- (Rupees Twenty



Lakhs only) and the same is supported by receipts. For all those persons to whom the appellant has not repaid the amount back, individual agreements were entered into between the Firm and those persons, who had deposited the money and it was agreed that their amount will be repaid back with interest. Even for the 70 acres of land that was acquired by the appellant, he was not able to get the approval from the competent authority, since there was no access road for the layout. Hence, the entire project failed.

4. During the year 2004, one of the Member of TNGOU filed a criminal complaint against the appellant before the Crime Branch at Chennai. In the said complaint, apart from the appellant, one Sooryamoorthy (PW3) and the above said Subash Chandra Bose were also shown as accused persons. This complaint was inquired and it was closed. Yet another complaint was given in the year 2005 by some of the other Members of TNGOU before the Crime Branch, Chennai against the appellant and two others and this complaint also came to be closed after enquiry. The complaints were also given before the Consumer Forum by the Members of TNGOU and the appellant claims that he had also made payments to some of the Members to settle the issue.



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5.The grievance of the appellant is that the respondents/A1 and A2, who were not even the Members of the TNGOU and did not make any investment, started making false allegations against the appellant. They gave a publication in the newspaper stating that they are the office bearers of an Association called as “The Association of Aggrieved Persons of Sai Hi Value Properties” and that the Members of the Association have been cheated by the appellant and a complaint has also been given before the Crime Branch. Immediately after this publication came in the Daily Thanthi (EX.P1), the appellant gave a public notice through his counsel dated 22.07.2006 in the Daily Thanthi and explained that a false complaint has been given and based on the same, a publication has been made even without enquiry and hence, the appellant called upon the concerned newspaper to withdraw the publication and also expressed his intention to initiate appropriate proceedings against those persons, who gave the false news. Since, the publication was not withdrawn and the news that was published in newspaper was defamatory and had brought down the esteem of the appellant in the eyes of the general public, the private complaint was filed by the appellant against the respondents for the offence of defamation punishable under Section 500 of IPC.



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6.The appellant examined himself as PW1 and examined three other witnesses as PW2 to PW4. Ex.P1 to Ex.P5 were also marked on the side of the appellant. Ex.D1 to Ex.D16 were marked on the side of the respondents.

7.The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the publication was made against the appellant with a bonafide intention of safeguarding the interest of many persons, who had joined the scheme and paid various amounts and were not repaid back the same and hence, the Court below brought the case under eighth exception to Section 499 of IPC. Accordingly, the respondents were found not guilty for offence under Section 500 of IPC. Aggrieved by the same, complainant has filed the present Criminal Appeal.

8.Heard Mr.S.Ilamvaludhi, learned counsel appearing on behalf of the appellant and Mrs.A.L.Gandhimathi, learned Senior Counsel appearing on behalf of the respondents.



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9.The main ground that was urged before this Court by the learned counsel for the appellant is that the respondents had neither invested in the scheme nor are the Members of TNGOU and they have given the complaint and published the same in the newspaper only with a view to defame the appellant. It was urged that the earlier complaints that were given against the appellant and others on the very same ground were enquired and closed by the police and in spite of the same, the very same allegations were made against the appellant without any basis and hence, the allegations made by the respondents were out of malafide intention to bring down the esteem of the appellant in the eyes of the public.

10.Per contra, the learned Senior Counsel appearing on behalf of the respondents submitted that the Members belonging to the Association named as “Association of Aggrieved Persons of Sai Hi Value Properties” had invested money in the project and they were not repaid back the money and hence, they formed the Association and the respondents are only the office bearers of the Association. It was therefore submitted that the office bearers of the Association need not be persons, who had invested money in the project and that the respondents were only trying to help the Members by



prosecuting their case and helping them to get back the money. The learned Senior Counsel further submitted that the earlier complaints which were closed as mistake of fact were challenged by way of filing a protest petition and the same was also dismissed. Aggrieved by the same, the very same Association had filed CrI.RC.No.1146 of 2013 before this Court as against the appellant and others and this Criminal Revision Case was allowed by this Court by an order dated 23.11.2018 and a direction was given to reinvestigate the matter and file a fresh final report, within a period of six weeks. The learned Senior Counsel submitted that this order passed in the Criminal Revision case had revived the earlier complaints given against the appellant and others and hence, the reasoning given by the Court below that the case falls under eighth exception to Section 499 of IPC stands reiterated. Accordingly, the learned Senior Counsel sought for the dismissal of this Criminal Appeal.

11.In the instant case, the respondents claimed to be the office bearers of an Association called as “Association for the Welfare of Persons affected by Sai Hi Value Properties”. The respondents were ventilating the grievance of the Members of the Association, who had invested money in the project



and ultimately, the project failed and the Members were not repaid back the money which they invested. The said Association had been prosecuting the case and in fact, they had only filed the revision petition before this Court in Crl.R.C.No.1146 of 2013 as against the order passed by the learned Additional Chief Metropolitan Magistrate, rejecting the protest petition filed by the Association as against the closure report filed by the police. It is clear from the order passed by this Court in Crl.R.C.No.1146 of 2013 that the Association was represented by the second respondent in this appeal.

12.The Court below had acquitted the respondents from the offence of Section 500 of IPC on the ground that the Members of the Association had a genuine grievance that their money was not repaid back and that they were cheated. Therefore, the Court below had brought this case within the eighth exception to Section 499 of IPC on the ground that there was a bonafide grievance which was expressed by way of filing a complaint and publishing the same in the newspaper.

13.The order passed by this Court in Crl.R.C.No.1146 of 2013, dated 22.11.2018, in a way reiterates the finding given by the Court below. This



Court while disposing the Criminal Revision Case made the following observations and issued directions:

11. On a perusal of the records, the allegation levelled against the respondents 1 to 3 by the revision petitioner is that they have not acted as per the promise. There was no access to the land and despite knowing this fact well, they have cheated the investors and acquired huge amount. Further, they have misappropriated the funds. On a reading of the complaint filed by the petitioners and also the order passed by this Court in earlier occasions, it is not in dispute that most of the members are Government officers and they have invested the huge amount. Though the petitioners have got the sale deeds executed in their favour, they executed the Powers of Attorney jointly in order to get order of re-classification and approval of CMDA. According to the respondent 1 to 3 they have deposited the amount in the bank and they are ready and willing to return back the amount, as per Clause 14 of the agreement. The transaction is purely civil in nature.

12. Further the learned Magistrate has failed to appreciate the fact that the respondents 1 to 3 have withdrawn Rs.2 Crores from the accounts and there is no



records to show how it was utilised. There is no proper explanation for auditor report. Therefore the 4th respondent has not properly done investigation and simply they have referred to Clause 14 of the agreement and also the opinion of the Additional Public Prosecutor – Grade I, they have filed a different charge sheet. This Court is of the view that the 4th respondent has not done the investigation properly. The learned Magistrate has not properly appreciated the protest petition filed by the revision petitioners. Therefore, this Court finds that the protest petition deserves to be allowed. Therefore, under these circumstances, the revision petition is allowed and the order passed by the learned Magistrate is set aside and the 4th respondent is directed to re-investigate the matter and after completing the investigation, file a fresh final report within six months from the date of this judgment.

14.It is clear from the above that this Court found that there was material to investigate on the grievance that has been expressed by Members of the Association and in view of the same, this Court had ordered for reinvestigation and for filing a fresh final report. In view of this development, the publication that was made by the respondents cannot be said to be without bonafide intentions. Ultimately, the reinvestigation will bring out the



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entire truth. Apart from the reasoning given by the Court below to acquit the respondents from the offence under Section 500 of IPC, the subsequent order passed by this Court in CrI.R.C.No.1146 of 2013, dated 23.11.2018, only strengthens the grievance that was expressed by the Association and hence, this Court does not find any ground to interfere with the judgment and order passed by the Court below. The view that has been taken by the Court below is a “Possible View” and hence, this Court cannot exercise its appellate jurisdiction to interfere with such a possible view.

15.In the light of the above discussion, this Court does not find any merits in this appeal and accordingly, the same is dismissed.

15.03.2023

Index : Yes
Internet : Yes
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
SSR

To

1.The Chief Metropolitan Magistrate, Egmore, Chennai.



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N. ANAND VENKATESH, J.

SSR

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