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Crl.OP No.29977 of 2022 in Crl.A.SR 37395 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P. No.29977 of 2022 in
Crl.A.SR 37395 of 2022

D.Kuppammal

... Petitioner

Vs.

S.Premnath
Respondent

...

PRAYER: Criminal Original Petition filed under Section 378(4) of Cr.P.C. to grant leave to prefer Appeal against the judgment dated 21.12.2021 made in C.C.No.3362 of 2017 by the VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.D.Nandhagopal

ORDER

This petition has been filed to grant leave to the petitioner to prefer Criminal Appeal against the the judgment passed in C.C.No.3362 of 2017 dated 21.12.2021 by the learned VIII Metropolitan Magistrate, George Town, Chennai.



2. The petitioner herein filed a complaint under Section 200 of Cr.P.C. in C.C.No.3362 of 2017 before the VIII Metropolitan Magistrate, George Town, Chennai against the respondent herein for the offence punishable under Section 499 and 500 IPC.

3. The brief case of the petitioner is as follows.

The respondent/ accused had love affair with her daughter namely, Umadevi and subsequently, he married her, without the knowledge of the petitioner. Thereafter, at the instigation of his mother, the respondent/accused filed a divorce petition in O.P.No.3197/2011 before the III Additional Family Court. Pending OP, the daughter of the petitioner filed a petition to grant interim maintenance, and the Court granted maintenance of Rs.7,000/- per month. Getting annoyed over the above order, the respondent filed a petition in I.A.No.2116/2012 in O.P.No.3197/2011 to implead the petitioner herein as second respondent in that O.P., stating that the petitioner herein asked him to consummate with her, otherwise, she would not allow him to consummate with her daughter. The above petition was dismissed by the family Court. The above defamatory statements had insulted the conduct and character of the



petitioner and in view of the same, she got mental agony and hardship. Hence, she filed the above complaint in C.C.No.337/2017 before Trial Court.

3.1. During Trial, the petitioner and her daughter were examined as PW1 and PW2 and 8 documents were marked as Ex.P1 to Ex.P8 and the respondent examined himself as DW1 and three documents were marked as Ex.R1 to Ex.R3. After perusing the oral and documentary evidence, the Trial Court dismissed the above complaint and acquitted the respondent/accused from the offence under Section 500 IPC. Challenging the above order of acquittal, the petitioner filed the present Criminal Revision Case before this Court.

4. The learned counsel for the petitioner submitted that, the respondent/accused pleaded defamatory statements against the petitioner, only to degrade her conduct and character and in view of the above statements, the petitioner is put to severe mental agony and stress. Therefore, she filed the above complaint to punish the respondent/accused, however, the Trial Court dismissed the above complaint on the ground that the complaint is barred by



limitation. The learned counsel further submitted that the delay was properly explained before the Trial Court and the petitioner came to know about the defamatory statement made by the respondent/accused only on 12.04.2016, while she was cross examining before the Family Court. He also submitted that, the petitioner does not know the English and hence, she was not aware about the allegations made in the impleading petition, even at the time of filing counter affidavit by her counse. He further submitted that the offence committed by the respondent is against the modesty of woman and the Ex.P8 to Ex.P10 filed by the petitioner before the Trial Court clearly revealed that the respondent/accused committed continuous offence of defamation, however, the learned Magistrate failed to appreciate the evidence adduced by the petitioner in proper perspective and has erroneously acquitted the respondent/accused by dismissing the complaint. Hence, the above impugned order may be set aside and the petitioner may be granted leave to prefer the Criminal Appeal.

5. Heard the learned counsel for the petitioner and I have perused the materials on record.

6. A perusal of the records show that the respondent/accused married



the daughter of the petitioner and thereafter, he filed a divorce petition in O.P.No.3197/2011 before the III Additional Family Court, Chennai. Pending petition, he filed a petition I.A.No.2116/2012 to implead the petitioner herein as second respondent, stating defamatory statements against her, as she compelled him to have sexual relationship with her. The above petition was dismissed for non prosecution on 29.01.2014. According to the petitioner, due to the defamatory statements made against her by the respondent/ accused, she put to mental stress and agony and only in order to spoil her character and conduct, the respondent has made such a defamatory statements against her and hence, he is liable to be punished for the offence punishable under Sections 499 and 500 IPC. The above complaint was dismissed by the Trial Court, vide judgment dated 21.12.2021, since the complaint is barred by limitation. Challenging the above judgment, the petitioner is before this Court.

7. It is the contention of the petitioner that she came to know about the defamatory statement made by the respondent/accused only on 12.04.2016, while she was cross examining by the respondent/accused before the Family Court. In the affidavit of I.A.No.2116/2012 (impleading petition), which is



marked as Ex.R1 in C.C.No.3362/2017, the respondent/accused pleaded at

paragraph No.2 that the petitioner herein asked him to consummate with her, otherwise, she won't allow him to consummate with the daughter of the petitioner. The above said I.A.No.2116/2012 was filed on 29.05.2012. The counter affidavit filed by the petitioner herein to I.A.No.2116/2012 in O.P.No.3197/2011, was filed on 05.09.2012 and it was marked as Ex.R2 in C.C.No.3362/2017. Therefore, from the above said Ex.R1 and Ex.R2, it is clear that the petitioner was having knowledge about the above said defamatory statements as early as before 05.09.2012 and to reply the same, she filed the counter affidavit, denying the statements made by the respondent/accused. In such circumstances, the contention of the learned counsel for the petitioner that the petitioner does not know English and hence, at the time of filing counter affidavit itself, she did not know about the allegations and defamatory statements made against her, cannot be accepted. Therefore, the Trial Court has rightly observed in its judgment at paragraph No.8 that the petitioner had knowledge about the defamatory statements made by the respondent/accused before the date of 05.09.2012, however, she filed the complaint belatedly only on 06.09.2017 and hence, the Court has no



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jurisdiction to entertain the complaint. As such, the Trial Court, after perusing the documentary evidence has rightly dismissed the complaint and acquitted the respondent/accused and hence, this Court is of the view that the above finding of the Trial Court is legally sustainable and there is no reason to interfere with that acquittal order. Therefore, there is no prima facie case, to allow the petition and the same is liable to be dismissed, as it has no merits.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, the Criminal Appeal is also rejected at the SR stage itself.

20.02.2023

Index: Yes/No
Internet: Yes/No
mst

To:

1. The VIII Metropolitan Magistrate, George Town, Chennai.



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V.SIVAGNANAM, J.

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