



C.R.P.No.986 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 16.07.2024  
PRONOUNCED ON : 20.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**C.R.P.No.986 of 2023**

E.Durai ... Petitioner

Vs.

1.A.P.Kumar  
2.K.Nirmaladevi  
3.K.Sanjay  
4.Sumitra

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order in I.A.No.1/2022 in O.S.No.744 of 2019, dated 26.10.2022, on the file of the XVIII Additional City Civil Court, Chennai, by allowing the present Civil Revision Petition.

For Petitioner : Mr.S.R.Rajagopal  
Sr.Counsel  
For Mr.K.V.Subramanian

For Respondents : Mr.M.Senthil Kumar

**ORDER**

Challenging the order order, dated 26.10.2022, passed in I.A.No.1/2022 in O.S.No.744 of 2019, by the learned XVIII Additional City Civil Court, Chennai, the petitioner is before this Court with the present Civil Revision Petition.



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2. Mr.S.R.Rajagopal, the learned Senior Counsel appearing for the petitioner would submit that the respondent having know well that the petitioner was the tenant with his erstwhile owner/ Landlord Mr. Shanmugam from the year 2000. But with an intention to harass petitioner and to cause damage to his reputation and goodwill in the market, respondent lodged a false and fabricated complaint with the Inspector of Police, C-1, Flower Bazaar, Police Station, Chennai, on 07.03.2018 stating that the respondent purchased the property bearing No. 25/13, Badrai Street, Chennai-600 001 during the year 2005 and since then he is in possession and enjoyment of the entire property including the petitioner's shop portion. The respondent narrated self created story in his complaint stating that on 07.03.2018, at 10.00 a.m. when the respondent was cleaning the shop portion, the petitioner and his son indulged in scuffle with the respondent and thereby, restrained respondent from unlocking the door and later by brandishing knife threatened him with dire consequences and obtained CSR No. No. 174/2018 dated 07/03/2018. Even respondent lodged complaint against petitioner, at no moment of time the petitioner called for investigation. Again, the respondent, with a view to drag and land the petitioner in trouble, based upon



earlier complaint and C.S.R, again lodged a false complaint in writing before the learned VIII Metropolitan Magistrate, Chennai in CrI.M.P. No.821/2018. Subsequently, a case registered against the petitioner Crime No.335 of 2018, for the offence under section 447 and 506(ii) of IPC., on 26.4.2018.

3. The learned Senior Counsel would further submit that the petitioner is well reputed person in the Society. He is known for his good qualities, he is peace loving person and always prefers to solve dispute by resolvment and never resorts to violent and unlawful means. But, as per the direction of Magistrate, complaint registered against the petitioner and in regard to alleged complaint, when police stepped inside his premises, petitioner suffered mental trauma, his self earned goodwill, reputation in the market and society got damaged because of alleged act of respondent. Thereafter, the respondent caused legal notice dated 21.05.2018 to the petitioner, calling upon him to pay the alleged arrears of rent by arraying the petitioner as his tenant. Petitioner paid a sum of Rs.1,00,000/- as advance and paying the rent of Rs. 12,000 /- per month. The said notice is prima facie evidence of tenant and landlord relationship subsists between petitioner and respondent, and the petitioner is not



a trespasser. Subsequently, the Petitioner issued legal notice, dated 26.06.2018 to respondent thereby calling upon him to pay the damages of Rs. 20,00,000/- for the loss of his respect, good will, mental stress and strain due to deliberate action of lodging false complaint. Since, no reply from the respondent, the petitioner filed the Suit in O.S.No.744 of 2019 before the file of the XVIII Additional City Civil Court, Chennai, against the respondent / defendant, seeking Rs.20,00,000/-, as compensation for the defamation committed. During pendency of the Suit, the respondent / defendant died on 17.05.2021, due to Covid-19. For impleading the legal heirs of the deceased 1<sup>st</sup> respondent, viz., Wife / 2<sup>nd</sup> respondent; Son/ 3<sup>rd</sup> respondent and Daughter / 4<sup>th</sup> respondent, the petitioner filed an application in I.A.No.1/2022 in O.S.No.744 of 2019, and the same was dismissed. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

4. It is the contention of the learned Senior Counsel that the Courts below failed to recognize the established position of law that in case of death of respondent/defendant, his legal heirs to be brought on record to defend the petition. The court below erroneously failed to recognize the liability of legal heirs of deceased respondent



/defendant. The court below failed to consider the fact that because of false allegations, complaints an F.I.R made against petitioner, petitioner suffered mental trauma and as well as his entire business of flower went in loss.

5. Mr.M.Senthil Kumar, the learned counsel appearing for the respondents would submit that the respondent / defendant died on 17.05.2021 due to covid-19. The petitioner cannot implead legal heir in defamation suit as cause of action for defamation continue on the death of the respondent/defendant during pendency of the suit and the legal representatives cannot be brought on record in the respondent/defendant's place. Adding further, the learned counsel submitted that the trial Court rightly dismissed the application filed by the petitioner for impleading the legal heirs in the defamation case and no interference is required in the well reasoned order of the trial Court. Hence, the learned counsel prayed for dismissal of the Civil Revision Petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.



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7. On perusal of the records it is seen that petitioner is in the business of buying and selling of various flowers under the name and style of “M/s S.K.F Flower shop” in the shop owned by one Mr. Shanmugam, from the year 2000. On 07.03.2018 at about 10.00 am., there was a quarrel between the petitioner and the respondent, when the respondent cleaning the shop portion. Hence, the respondent lodged a complaint against the petitioner before C-1, Inspector of Police, Flower Bazaar, Chennai and a case in Crime No.335 of 2018 registered for the offence under Sections 447 and 506(ii) IPC. The petitioner filed a Suit in O.S.No.744 of 2019, before the learned XVIII Additional City Civil Court, Chennai, against the respondent / defendant, seeking Rs.20,00,000/- as compensation for the defamation committed. During pendency of the Suit, the respondent / defendant died on 17.05.2021, due to Covid-19. For impleading the legal heirs of the deceased 1<sup>st</sup> respondent, viz., Wife / 2<sup>nd</sup> respondent; Son/ 3<sup>rd</sup> respondent and Daughter / 4<sup>th</sup> respondent, the petitioner filed an application in I.A.No.1/2022 in O.S.No.744 of 2019, and the same was dismissed. Aggrieved over the same, the petitioner is before this Court with the present Revision.



8. At this juncture it is relevant to refer Section 306 of the Indian Succession Act, 1926, which reads as follows:-

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.

All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defalcation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

9. A bare reading of Section 306 would clear that if the respondent / defendant died during the pendency of the suit, the suit would have abated and the legal representatives acquired no right in law to be brought on the record in his place. Cause of action for defamation does not survive on the death of the defendant during pendency of the suit and his legal representatives / legal heirs has no right to be brought on record in the respondent / defendant's place. The right to sue for damages dies with the respondent / defendant's death and the suit automatically abates on the death of respondent / defendant.



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10. The Hon'ble Apex Court in the judgment in Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, reported in AIR 1986 SCC 411, held that “the suits which are filed for defamation can be divided in two categories. In the first category are those class of suits where in the suits no decree has been passed decreeing the suit for damages. The second class is of suits where decree of damages is passed but the other side/defendant against whom the decree has been passed has gone up in appeal. The Supreme Court held in the first class where in suits no decree has been passed, the right to sue does not survive and the suit abates in view of [Section 306](#) of the Indian Succession Act, 1925. In the second class where a decree of damages is passed, the Supreme Court has observed that the decree becomes part of the estate of the deceased plaintiff and therefore death of the plaintiff during the pendency of an appeal filed by the defendant against whom the suit is decreed will not result in abatement.

11. The position, therefore, is that if the Appellant died during the pendency of the suit, the suit would have abated. In the case on hand, admittedly, the husband of the 1<sup>st</sup> respondent died during



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pendency of the suit and therefore, the suit is abated. In view of the settled position of law, I do not find any error in the order passed by the trial Court, in dismissing the petition filed by the petitioner. Accordingly, the Civil Revision Petition stands dismissed. However, there shall be no order as to the costs.

**20.12.2024**

Speaking Order/Non Speaking Order  
Index : Yes/No  
Internet : Yes  
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To

1.The XVIII Additional City Civil Court,  
Chennai.



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**M.NIRMAL KUMAR, J.**

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**PRE-DELIVERY ORDER**  
**IN**  
**C.R.P.No.1940 of 2024**

**20.12.2024**