



CRP.No.2240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2240 of 2024
and C.M.P.No.11791 of 2024

S.Ramaswami

.. Petitioner

Versus

H.G.V.Subramaniam

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the affidavit and petition in I.A.No.1 of 2024 in O.S.No.10894 of 2009 on the file of the VI Assistant City Civil Court, Chennai.

For Petitioner : Mr.Avinash Wadhwani
and Mr.Ashwin Prasad

For Respondent : Mr.C.Seethapathy

ORDER

Challenge has been made to the order of the Trial Court issuing summons to the revision petitioner.

2. The respondent has filed a suit in O.S.No.10894 of 2009 on the file of VI Assistant Judge, City Civil Court at Chennai for mandatory



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injunction. The plaintiff is the nephew to the defendant. In respect of the house property, the relief has been claimed. The suit has been decreed in favour of the plaintiff vide decree and judgment dated 23.03.2018, in appeals, the decree and judgment was confirmed in A.S.No.374 of 2018 dated 20.10.2019 before the III Additional City Civil Court, Chennai and second appeal in S.A.No.574 of 2020 dated 02.11.2020 before this Court and before the Hon'ble Supreme Court in S.L.P.No.12426 of 2021 dated 16.08.2021. As far as the Civil Suit is concerned, the matter has reached finality. Now, the application has been filed by the plaintiff to prosecute the defendant under Section 193 & 199 of IPC read with Sections 195 and 340 of CrPC and 151 of CPC.

3. The reasons assigned in the application is that the defendant has filed an additional written statement in paragraph 6 alleging that he had paid, in equity, a sum of Rs.1,50,000 to the plaintiff's father the defendant's mother. The said averment is also repeated in proof affidavit which is also recorded in the judgments dated 23.03.2018 and 20.12.2019. Therefore, according to the respondent/plaintiff, those statement in the additional written statement is a false statement. Therefore, he sought an enquiry in



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this regard to prosecute the defendant. Based on the application, summons has been issued by the Trial Court which has been challenged in this revision.

4. The learned counsel for the petitioner would submit that complaint is absolutely an abuse of process of law. When there is no findings recorded by the Court such statement as false statement, as a matter of right proceedings for prosecution cannot be initiated.

5. The learned counsel for the respondent submitted that the statement contained in the additional written statement is absolutely false and only the Trial Court can go into that. Hence, he sought enquiry in that regard. Therefore, it is the contention that at this stage, this Court cannot interfere under Article 227 of the Constitution of India. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Garment Craft vs. Prakash Chand Goel* reported in (2022) 4 SCC 181 holding that High Court exercising supervisory jurisdiction under Article 227 of the Constitution of India does not act as a Court of first appeal to re-appreciate, reweigh evidence or facts upon which determination under challenge is



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based. Hence, seeks for dismissal of this revision.

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6. Heard both sides and perused the materials placed on record.

7. At the outset, this Court is of the view that the very object of the application to prosecute one of the party to the suit, that too, after the suit has reached finality is nothing but clear abuse of process of law. The reasons assigned for prosecution is that the defendant/petitioner herein has taken a defence to the effect that he had paid, in equity, a sum of Rs.1,50,000 to the plaintiff's father the defendant's mother. It is relevant to note that in suit, first appeal, second appeal up to the Special Leave Petition, there is no finding recorded by the Courts as such statement or defence is a false statement. Therefore, in the absence of any findings recorded in this regard, as a matter of right, the prosecution cannot be launched. As long as the Courts have not recorded any findings that such pleadings are false statement, as a matter of right, proceedings either under Sections 195 or 340 of the CrPC cannot be initiated. The very application filed in this regard before the VI Assistant City Civil Court, Chennai stands quashed. If such application is entertained by the Court in every plaint and



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written statement based on the vague allegations, anyone can be called upon before the Court unnecessarily.

8. Accordingly, this revision petition stands allowed. No costs.
Consequently, connected miscellaneous petition stands closed.

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dhk

Index : Yes/No

Internet : Yes/No

To,

The VI Assistant Judge
VI Assistant City Civil Court,
Chennai



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N.SATHISH KUMAR, J.,

dhk

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