

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1749 OF 2008
[Arising out of SLP (Crl.) No. 237 of 2007]

M.A. Rumugam

...Appellant

Versus

Kittu @ Krishnamoorthy

...Respondent

J U D G M E N T

S.B. SINHA, J :

1. Leave granted.
2. Applicability of the provisions of Section 482 of the Code of Criminal Procedure for quashing of a complaint petition filed by the respondent herein against the appellant under Section 500 of the Indian Penal Code is in question in this appeal which arises out of a judgment and order dated 8.09.2006 passed by the High Court of Judicature at Madras in Criminal O.P. No. 10819 of 2006.

3. Appellant herein is a retired teacher. He is said to be the owner of a land admeasuring 0.83 acres in new survey No. 246/1B at Naluvedapathi Village. About 180 numbers of coconut tress are said to have been planted on the said land.

4. On 3.06.2003, when the appellant allegedly visited his land, he found that 9 coconut trees were dead. Upon enquiry, he allegedly came to know that one Namasivayam son of Rajagopal and Kaliappan son of Ramu of Naluvedapathi Village had damaged the said coconut trees by pouring acid mixed with kerosene thereon allegedly on the advice of the respondent herein.

5. On 4.06.2003, the appellant filed a complaint before the Sub-Inspector of Police, Thalaigayar Police Station, contending:

“...On 30.4.2003, the Panchayat Union Committee member and Panchayat Board President approached me and wanted land on south side of my coconut grove to lay road through the grove. I did not give consent for the proposal. In these circumstances when I visited the grove on 3.6.2003 about 9 coconut yielding trees on the south side were found slide down. When I enquired about this I came to know that Namasivayam son of Rajagopal and Kaliappan son

of Ramu of Naluvadapathi Village were standing on the south side of my coconut grove some time back with tins on their hands. Met them and told that they were responsible for the sliding of tender coconut trees as they were seen near the trees by some people of the village. They confessed that they on the advice of the Kittu alias Krishnamurthy son of Vedaiya Gounder of Naluvadapathi Village along with him poured acid mixed kerosene into the coconut trees and that they have done it since I did not give consent to lay road through my coconut grove.”

In the said complaint, the appellant requested the Sub-Inspector of Police to take action against those persons and sought protection for himself and his property.

6. On 5.06.2003, the appellant filed a suit before the learned District Munsif Court at Nagappattinam against the President, Union Council Member and other persons for grant of permanent injunction against the defendants restraining them from causing damage to the footpath in his property under the pretext of widening and laying road. In the said suit, an Advocate Commissioner was appointed to find out whether any coconut trees were found dead. The Advocate Commissioner submitted its report on 15.06.2003 stating:

“Adjacent to the path on east end 9 coconut trees were found dead with loss of chlorophyll. There were 10 bunches carrying 100 to 150 coconuts. There were in an average 20 branches in each tree. There were heap of coconut under the 9 trees.”

7. On 25.06.2003, a First Information Report was lodged on the basis of the complaint given by the appellant. In the said FIR, the names of the respondent herein and two others were mentioned in the column of ‘doubtful persons’ portion. As the police authorities neither filed any chargesheet within six months nor sought for extension of time for the purpose of conducting further investigation, the learned Magistrate ordered stopping of further investigation and consequently closure of the matter.

8. On 6.09.2005, the respondent herein filed a private complaint, which was marked as C.C. No. 179 of 2006, in the Court of the learned Judicial Magistrate, Tiruthuraipoondi against the appellant for commission of the offence of defamation under Section 500 of the Indian Penal Code.

Taking cognizance of the said complaint, the learned Magistrate issued summons to the appellant.

Aggrieved by and dissatisfied therewith, he filed a Crl. O.P. No. 10819 of 2006 before the High Court of Judicature at Madras praying to call for the records pertaining to the complaint petition filed by the respondent being C.C. No. 179 of 2006 and quashing the same.

9. Before the High Court, a contention was raised that the backdrop of events and the manner in which the complaint petition had to be filed by the appellant would clearly establish that the action on his part was not in good faith.

The said contention was negated by the High Court stating:

“5. The accusation have been made the accused (sic) and there are prima facie materials to proceed against the petitioner. When there are specific allegations made in the complaint against the accused, such allegation may have to be rebutted during the course of trial. In such circumstances by invoking the inherent powers under Section 482 Cr.P.C. the pending proceedings cannot be quashed at the threshold, I do not find any merit in the case, hence the petition is dismissed. Consequently connected Crl. M.Ps are closed. However, the petitioner is at liberty to establish that the statement has been made in good faith, during the course of trial.”

10. Mr. G. Sivabalamurugan, learned counsel appearing on behalf of the appellant, would submit that the complaint preferred by the appellant against the respondent and two others before the police authorities does not amount to 'defamation' as the ingredients of Section 499 of the Indian Penal Code are not satisfied.

The learned counsel would contend that from a perusal of the complaint petition filed by the appellant before the police authorities, it would be evident that he had taken due care and caution before filing the same. He, thus, acted bonafide and in good faith.

As the police authorities were authorised to entertain the said complaint, no case has been made out for proceeding against the appellant for alleged commission of an offence under Section 500 of the Indian Penal Code.

11. Mr. P. Somasundaram, learned counsel appearing on behalf of the respondent, on the other hand, would submit that the complaint was made by the appellant before the police authorities on a wholly false premise, as

much prior thereto, viz., on 27.05.2003, the respondent had left his village and in fact on 1.06.2003, he had left India for Malaysia and, thus, the question of his remaining at the place of occurrence on 3.06.2003 did not arise.

It was urged that the purported statement made by one of the co-accused in the earlier case, viz., one Namasivayam cannot be relied upon at this stage particularly when even therein they were represented by different counsel and furthermore his statement as a co-accused could not have been relied upon for the purpose of securing conviction of the respondent.

12. Section 499 of the Indian Penal Code reads, thus:

“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.”

Eight and Ninth Exceptions, to which reliance has been placed by the learned counsel, read as under:

“Eight Exception.--Accusation preferred in good faith to authorised person

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.--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.”

The word “good faith” has been defined in Section 52 of the Indian Penal Code to mean:

“52 - "Good faith"

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.”

13. The complaint petition filed by the respondent herein contained a statement that he was implicated allegedly on the basis of an information received by the appellant from one Namasivayam son of Rajagopal and Kaliappan son of Ramu of Naluvadapathi Village that they had damaged

nine coconut trees by pouring acid mixed kerosene on the respondent's advice.

The aforementioned allegation against the respondent was published in various newspapers, viz., Maalai Murusu, Maalai Malar, Dhina Boomi, Dhina Karan, Dhina Malar as well as in some weeklies.

On the aforementioned backdrop, he alleged to have been defamed as thereby, "false propaganda among the village people and implication his name in the complaint against the enemies Kakliappan and Namasivayam besides publishing the same in the dailies and weeklies" was made against him. It was furthermore stated:

"Since there was no basic evidence in the complaint, it was given with the sole intention of defaming the petitioner herein and the complainant did not cooperate for the investigation the case registered in Thalaignayiru police station in Crime No. 360/2003 could not be proceeded further and the charge sheet could not be filed. Therefore, the case on the file of the Judicial Magistrate Tiruthuraipoondi was closed on 7.4.2005. Because of the illegal activities of the respondent, the petitioner/ complainant herein is unable to make his foreign trips and suffered heavy financial loss and lost his status among his relatives and the people of the Village and suffered enormous mental agony."

14. Allegations made in the said complaint petition, thus, in our opinion, make out a case for proceeding against the appellant under Section 500 of the Indian Penal Code as thereby imputation concerning the respondent had been made intending to harm or knowing or having reason to believe that such imputation would harm his reputation.

15. For the purpose of bringing his case within the purview of the Eight and the Ninth Exception appended to Section 499 of the Indian Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good.

16. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellant alone.

17. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on

the part of the appellant in making the said complaint before the police authorities.

18. Respondent was furthermore discharged by the learned Magistrate in exercise of its jurisdiction under Section 167(5) of the Code of Criminal Procedure stating that the police authorities could not complete the investigation within a period of six months.

19. Strong reliance has been placed by Mr. Sivabalamurugan on a decision of this Court in Rajendra Kumar Sitaram Pande Etc. v. Uttam and Another [1999 (1) SCR 580]. Accusation against the accused therein related to the conduct on his part before the Treasury Officer. The learned Magistrate, when the complaint was filed, instead of issuing process called upon the Treasury Officer to hold an inquiry and submit a report in the court. Pursuant thereto and / or in furtherance thereof, a report was submitted. In the said report, the Treasury Officer clearly indicated that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been made and the complainant was found guilty. It was in the aforementioned situation, the Magistrate's order refusing to issue summons was upheld by this Court.

20. For the reasons aforementioned, we do not find any infirmity in the impugned judgment. Furthermore, the question, as to whether a totally false complaint has been made as against the respondent or not as he was not even in India prior to the date of occurrence, is required to be gone into by the learned Trial Judge.

21. Accordingly, the appeal is dismissed.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

New Delhi;
November 07, 2008