

A M.A. RUMUGAM
v.
KITTU @ KIRSHNAMOORTHY
(Criminal Appeal No. 1749 of 2008)

B NOVEMBER 7, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

C *Code of Criminal Procedure, 1973 – s. 482 – Complaint*
alleging defamation – Quashing of sought – Held: Allegation
made in the complaint petition make out a case for
proceeding against the accused u/s. 500 IPC – Accused is
required to prove that the act was done in good faith in order
to come within purview of Eighth and Ninth Exception to s.
499 IPC – In the facts of the case, it was premature for High
D *Court to arrive at a conclusion as to whether the act was in*
good faith – Penal Code, 1860 – s. 499 and 500.

E **Appellant was the owner of a piece of land whereon**
he had planted 180 coconut trees. One day, he found 9
of the trees dead. Upon enquiry, he came to know that
two persons had damaged them allegedly on the advice
of the respondent. Appellant filed a police complaint.
Respondent was ultimately discharged by the Magistrate
as the authorities could not complete the investigation
within a period of six months. He also filed a suit seeking
F **injunction against the defendants restraining them from**
causing damage to the footpath in his property. In the
suit, Advocate Commissioner was appointed, who in his
report stated that 9 coconut trees were found dead.

G **The respondent thereafter lodged a private complaint**
against the appellant alleging commission of offence of
defamation u/s. 500 IPC. He alleged that the publication
of the allegation against him in various newspapers, false
propaganda among the village people and implication of

his name in the police complaint has defamed him. Magistrate summoned the appellant. Appellant filed petition before High Court seeking quashing of the complaint filed by the respondent. The petition was dismissed by High Court. Hence the present appeal. A

Dismissing the appeal, the Court B

HELD: 1.1. Allegations made in the complaint petition, make out a case for proceeding against the appellant u/s. 500 I.P.C. 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. [Para 14] [650-D] C

1.2. For the purpose of bringing his case within the purview of the Eighth and the Ninth Exception appended to Section 499 IPC, 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. Those who plead exception must prove it. The burden of proof that his action was *bonafide* would, thus, be on the appellant alone. [Paras 15 and 16] [650-E, F, G] D E

1.3. At the stage of the present case, 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. [Para 17] [650-G, H] F

1.4. Respondent was furthermore discharged by the Magistrate in the Police case at the instance of the appellant, in exercise of its jurisdiction under Section 167(5) Cr.P.C. stating that the police authorities could not complete the investigation within a period of six months. [Para 18] [651-A] G H

- A **1.5. There is no 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 Trial Judge.**
 B **[Para 20] [651-E, F]**

Rajendra Kumar Sitaram Pande Etc. v. Uttam and Anr., 1999 (1) SCR 580, distinguished.

Case Law Reference

- C **1999 (1) SCR 580 Distinguished. Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1749 of 2008.

- D From the Judgment and Order dated 8.9.2006 of the High Court of Judicature at Madras in Crl. O.P. No. 10819 of 2006.

G. Sivabalamurugan, Y. Arunagiri and L.K. Pandey for the Appellant.

- E P. Somasundaram, S.J. Aristotle and M.A. Krishna Moorthy for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

- F **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.**
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- H **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 Naluvadapathi Village. About 180 numbers of**

coconut tress are said to have been planted on the said land. A

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 Naluvadapathi Village had damaged the said coconut trees by pouring acid mixed with kerosene thereon allegedly on the advice of the respondent herein. B

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

"...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." D E F G

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. H

A 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
B 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:

C "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."

D 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
E 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.

F 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.

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

H Aggrieved by and dissatisfied therewith, he filed a CrI. 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.

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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.

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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 Cri. 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.”

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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.

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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.

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As the police authorities were authorised to entertain the said complaint, no case has been made out for proceeding

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A against the appellant for alleged commission of an offence under Section 500 of the Indian Penal Code.

B 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.

C 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 D 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:

E "499 - Defamation

F 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."

G 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

H 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. A

Ninth Exception.--Imputation made in good faith by person for protection of his or other's interests B

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." C

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." D

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 Naluedapathi Village that they had damaged nine coconut trees by pouring acid mixed kerosene on the respondent's advice. E

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. F

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: G
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A "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 Thalaingayiru police
station in Crime No. 360/2003 could not be proceeded
B 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
C 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
D 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.

E 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
F 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.

G 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
H 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.

K.K.T.

Appeal dismissed.