

Munithayamma and anr. Vs. Muddobalappa

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Court : Karnataka

Decided On : Jul-26-1955

Reported in : AIR1955Kant135; AIR1955Mys135; 1955CriLJ1512

Judge : Padmanabhiah, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 177, 200 and 435;
[Indian Penal Code \(IPC\), 1860](#) - Sections 499 and 500; Evidence Act - Sections 105

Appeal No. : Criminal Revn. Petn. No. 370 of 1954

Appellant : Munithayamma and anr.

Respondent : Muddobalappa

Advocate for Def. : B. Rangaswamy, Adv.

Advocate for Pet/Ap. : C.B. Srinivasa Rao, Adv.

Judgement :

ORDER

Padmanabhiah, J.

1. This is a Revision Petition filed by the Petitioners--Accused 1 and 2 praying that the charge framed against them under Section 500 I. P. C., in C. C. No. 2555 of

1953 on the file of the First Magistrate, Bangalore, may be quashed.

2. The petitioners are the accused and the respondent is the complainant in C. C. 2555 of 1953 on the file of the First Magistrate, Bangalore. The accused stand charged for an offence under Section 500-I. P. C. The case of the complainant is that in a suit filed by petitioner 1 in O. S. 348 of 1953 on the file of the Munsiff, Chickballapur against her brothers and others, she has made and published certain imputations concerning the respondent-complainant, that the said allegations are false and malicious and per se defamatory, that petitioner 2 is the Advocate who appeared for petitioner 1 and drafted the plaint for her, that there is ill will between the accused and the respondent, that the said imputations were made maliciously just to harass the respondent-complainant, that the respondent-complainant is a respectable person and that the petitioners are liable to be punished for an offence under Section 500, Penal Code.

3. From a perusal of the evidence adduced in the case, the learned Magistrate found that a prima facie case was made out against the petitioners and he accordingly framed a charge under Section 500, Penal Code. It is against that order this revision petition has been preferred.

4. The contentions urged on the side of the petitioners are that no prima facie case has been made out to warrant a charge being framed, that the charge is groundless, that the learned Magistrate has no jurisdiction to entertain the complaint and that the charge framed and the entire proceedings should be quashed.

5. The main point that arises for consideration is whether there are sufficient materials to allow this revision petition. There is no substance in the contention that the trial Magistrate has no jurisdiction to entertain this complaint, which is one filed under Section 500, I, P. C. The Court, within the jurisdiction of which the defamatory matter is published, will be competent to entertain a complaint of this kind. The case of the complainant, as set out already, is that the defamatory matter regarding him has been published by the petitioners in the plaint in O. S. No. 348 of 1953 on the file of the Munsiff of Chickballapur. That such a plaint was filed is not disputed. Exhibit P-2 is the original plaint filed in that case and Ex. P-1

is a copy thereof which was meant to be delivered to the defendants in that case. P.W. 3 was one of the defendants in that suit. He has sworn that Ex. P-1 was delivered to him when he was served with summons at Devanahalli. When Ex. P-1, the copy of the plaint, containing defamatory statements, was delivered to P. V. 3 at Devanahalli, that constituted publication of the defamatory matter in that place. Admittedly Devanahalli is within the jurisdiction of the First Magistrate's Court, Bangalore. The complaint could be filed either in the Magistrate's Court at Chickballapur where the defamatory matter was written and published or in the Court of the First Magistrate, Bangalore, within whose jurisdiction the said matter was again published. Therefore I hold that the learned First Magistrate, Bangalore, has jurisdiction to deal with this complaint.

6. Some doubt was expressed as to whether this Court had power to interfere at this stage of the proceedings in a pending case. Under Section 435, Criminal P. C., the High Court can call for and examine the record of any proceeding of an inferior Court not only to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order of such Court, but also as to the regularity of any proceedings of that Court. The section does not merely deal with the finding, sentence or order but with proceedings generally and the power of the High Court extends to calling for and examining the record of any proceedings to satisfy itself as to the regularity of such proceedings and for that purpose it had got every power to interfere at any stage of the proceedings- in a pending case. That this Court has got such a power has been recognised in two cases of this Court reported in 3 Mys L J 209 (A) and 22 Mys C. C. 317 (B).

7. Coming to the merits of the case, I am of opinion that this revision petition cannot be allowed. That Ex. P-2, the plaint in O. S. 348 of 1953, contains defamatory matter cannot be disputed. (Here his Lordship quoted the words contained in the regional language found in Exts. P-2 (a), P-2 (b) and P-2 (c) and observed that they) are, in my opinion, per se defamatory, and in support of these allegations the complainant P. W. 1 has sworn. The same is further corroborated by the other evidence in the case. Exhibit P-2 is signed by petitioner 1 as a party and petitioner 2 as her counsel. In view of the allegations made in the complaint petition and the evidence let in support of them, it cannot be said that no prima

facie case warranting the framing of a charge has been established.

8. There are two petitioners, of whom the second petitioner is an Advocate, and it was strenuously contended by the learned counsel for the petitioners that petitioner 2 stands on a different footing from that of petitioner 1 and that he is entitled as an Advocate to special protection at the hands of this Court. This leads us to the question as to what extent an Advocate or pleader is liable for defamatory statements made by him in the course of his duties as a counsel. The law in this country in this behalf appears to be different from what it is in England. According to common law, no action in England will lie against an Advocate for defamatory words spoken or written with reference to and in the course of an enquiry though such words are uttered or written by the concerned Advocate maliciously and without any kind of justification for making them. The law in that country in this matter is well settled and, in this connection, the case reported in-- 'Munster v. Lamle, (1883) 11 Q B D 588 (C) may be perused. That decision lays down the principle enunciated above. Thus it is seen that an Advocate in England has an absolute and unqualified privilege; but, as stated already, the law in this country is different to some extent.

9. The views of the various High Courts in India are not uniform. But the preponderant view prevailing in the Indian Union is that a member of the Bar in India has no absolute privilege and that the liability of an Advocate charged with defamation in respect of words spoken or written in the performance of his professional duties depends not on the common law of England but on the provisions of the statutory enactment in Section 499, Penal Code. In an unreported case of this Court viz., Cri. Revn. Petn. No. 260 of 1945-46 (Mys) (E) Venkata Banga Iyengar J. has referred to the view of the several High Courts of the Indian Union in this matter and has on a consideration of all the decisions, observed as follows :

'A review of the decisions referred to above shows that the preponderant View prevailing in British India is that a member of the Bar in India has no absolute privilege, that the liability of an Advocate charged with defamation in respect of words spoken or written in the performance of his profes-professional duty depends

not on the common law of England but on the provisions of the statutory enactment in Section 499, Penal Code, that, though strictly speaking, under Section 105, Evidence Act, the burden of proving that the case falls within the terms of Excpn. 9 to Section 499 would normally be upon the person relying on the exception, in practice the Courts have made an exception to that rule of evidence, on grounds of public policy, by holding that an Advocate is entitled to special protection and that, if he is called in question in respect of defamatory statement made by him in the course of his duties as an Advocate, Courtsought to presume that he acted in good faith and upon instructions and that a Magistrate should refuse to take cognizance of a complaint in such a case against an Advocate for defamation, unless there is some allegation in the complaint petition or in the sworn statement of the complainant recorded under Section 200, Criminal P. C., of malice, wantonness or improper motive on the part of the Advocate.'

It is clear from a perusal of the aforesaid decision that this Court has accepted the preponderant view prevailing in the Indian Union as sound and correct. Therefore, the second petitioner cannot claim absolute privilege for the defamatory statements made in the plaint Ex. P-2.

10. No doubt, as observed in the unreported decision of this Court cited above, there is always a presumption in favour of an Advocate of his having acted in good faith and under instructions for defamatory statements uttered or written by him and that no Court should take cognizance of a complaint in such a case against an Advocate. But this is subject to the other condition that there should be no allegation of malice or improper motive on the part of the Advocate in having made the defamatory statements imputed to him. What we have now to see is whether any malice has been attributed to the petitioner 2 by the respondent in respect of the defamatory statement made in Ex. P-2. In para 6 of the complaint petition, it is alleged that the petitioners bear ill will towards the respondent from about a year prior to the date of that petition. This is also sworn to by the complainant in the course of his evidence. The testimony of the other witnesses, P. Ws. 2, 4 and 5, is also to the same effect. Exhibit P-4 is a notice got issued by the respondent-complainant to the petitioners-accused before the complaint was actually filed. Therein also it is specifically alleged that petitioner 2 bears private malice (SIC)

towards the complainant and that the defamat(SIC) matter has been written and published wantonly (SIC) with a view to undermine his reputation. This (SIC) admittedly stands unreplied. Thus it is seen that (SIC) respondent-complainant has imputed strong ill (SIC) and malice and improper motive on the part (SIC) petitioner 2 in having made the defamatory (SIC) ments in Ex. P-2. On a consideration of the allegations made in the complaint petition and the Evidence (SIC) adduced in support thereof, I am of opinion that (SIC) charge framed against the petitioners is not (SIC) less but that there is prima facie evidence to (SIC) it. There are limits to the privilege of an (SIC) when the person against whom the imputations (SIC) made is neither a party nor a witness. The (SIC) complainant herein was neither a party nor a witness (SIC) O. S. No. 318 of 1953. I find no reason to (SIC) with the charge framed against the petitioners.

11. In the result, this revision petition fails (SIC) the same stands dismissed.

12. Revision dismissed.

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