

Madhavan Embranthiri Vs. Thomas

Madhavan Embranthiri Vs. Thomas

SooperKanoon Citation : sooperkanoon.com/728072

Court : Kerala

Decided On : May-27-2004

Reported in : 2005(1)KLT91

Judge : K.A. Abdul Gafoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 499 and 500

Appeal No. : Crl. A. No. 405 of 1998

Appellant : Madhavan Embranthiri

Respondent : Thomas

Advocate for Def. : Kodoth Sreedharan and K. Kesavankutty, Advs.;

Advocate for Pet/Ap. : V. Tekchand and; Siji Antony, Advs.

Disposition : Appeal allowed

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant is the complainant in C.C. No. 58/1994 on the file of the Judicial Magistrate of the 1st Class-II, Hosdurg. A complaint filed by him alleging an offence punishable Under Section 500 I.P.C. against the respondents did not succeed and they were acquitted. Hence this appeal.

2. The respondents are Printer and Publisher of an Evening Daily named 'Jenmadeshom'. In its issue dated 22.12.1993, a news item that the appellant/complainant, a teacher in an aided school, has been transferred as he had misbehaved to a girl student of 7th standard was published. According to the appellant, this is defamatory and belittled him among the students and his colleagues. Therefore, the respondents committed an offence punishable Under Section 500 IPC.

3. The complaint was contested by the 2nd respondent who admitted before the Court below that he was the Editor-in-Charge of Jenmadeshom Evening Daily and that he had published Ext. P1 issue dated 22.12.93 of the said daily. It has also come out in evidence that Ext.P1(a) is the relevant news item in Ext. P1 Daily. It was to the effect that the appellant, Sri. K.C. Madhavan Embranthiri, a teacher in Nileshtar Raja's High School, has been transferred to another school and that the reason for the said transfer was his misbehaviour to a girl student studying in the 7th standard. It was also stated in the ultimate paragraph that the incident occurred on the Thursday last while the class was going on in the 7th standard. Ext.P1 is of a Wednesday on 22.12.1993, then the last Thursday was 16.12.1993, when the misbehaviour on the part of the complainant as alleged in the said report has occurred. It has also been proved and found by the Court below that the news item in question would harm the reputation of the complainant.

4. But the Court below found that Ext.P1(a) news item was published in good faith. Therefore, the respondents accused did have the protection under Exception 9 to Section 499 of the IPC. So they were not liable to be convicted.

5. To arrive at such a conclusion, the Court below relied on the evidence of DW1 and Exts. D1 to D4. PW-1 was the Headmaster of the school. According to him there was complaint that the appellant was not behaving properly to the students. Ext.D1 is a complaint dated 25.1.93. There was a specific complaint of the parent of a girl student named 'Sumitha'. It is Ext.D2 dated 2.2.93. It was not in respect of misbehaviour to a particular student. But the complaint was that the teacher was not using proper language while taking classes, that too in 6th standard. A memo,

Ext.D3 was issued on the Teacher. Ext.D1 and D2 complaints and D3 are far earlier than the date of Ext.P1 or the alleged misbehaviour which had occurred on the previous Thursday to the publication of Ext.P1. Therefore the benefit of good faith for Ext.P1(a) report cannot be supported on the strength of Exts.D1, D2 and D3 which are of general nature and are of far earlier dates and not on the date mentioned in the defamatory statement contained in Ext.P1(a). Even the memo stated to be issued to the appellant/complainant was also of a date far earlier. The teacher made mention of in Ext.D2 is also not the complainant. There is a difference in the name.

6. 'Good faith', as defined in Section 52 is as follows: 'Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention'.

7. The allegation in Ext.P1 (a) is that the appellant has been transferred because of his misbehaviour towards a girl student studying in 7th standard. From the report it is discernible that the incident was on 16.12.93. It was because of that he was transferred the report says.

8. The transfer order has been produced as Ext.P3. It reads as follows:

'In the staff fixation for the year one U.P.S. A. post is reduced for want of strength in the Rajah's High School, Nileshtar.

Under the circumstances Sri. E.C. Madhavan Embrandiri, U.P.S.A. Rajah's High School. Nileshtar is transferred to Rajah's A.U.P. School, Achanthuruthi under the same management with effect from the forenoon of 14.12.1993.

The services of Sri. M.V. Balakrishnan, Junior-most teacher of the Rajah's A.U.P. School, Achanthuruthi is terminated with effect from the A.N. of 13.12.1993'.

Hence, it is clear that the appellant was transferred not on account of misbehaviour to students. On the other hand, there was specific allegation in Ext.P1(a) that he has been transferred because of misbehaviour towards a girl student studying in 7th standard and the misbehaviour was just a week ago.

9. If the accused has to take shelter under 'good faith' mentioned in Exception 9 to Section 499, he ought to have verified the transfer order. The allegation in Ext. P1(a) is that the appellant has been transferred because of misbehaviour. Had he verified the transfer order, there would not have been an occasion for him to publish such a news item especially when DW1 did not have a case that there was misbehaviour as alleged in Ext.P1 on 16.12.93. Therefore he cannot take shelter under 'good faith' mentioned in Exception 9 to Section 499 IPC.

10. Even in the decision of the Apex Court relied on in the judgment of the learned Magistrate, it has been made clear that what has to be enquired into before seeking such protection is whether 'did he make any enquiry before he made it are there reasons to accept his story that he acted with due care and attention'. When I read Ext.P2, it was clear that the respondents/accused had not ventured to make an enquiry before publishing the story in Ext.P1(a). Thus it is a case where the respondents are not at all entitled to the protection of Exception 9 to Section 499 IPC. It cannot be stated that the report has been made in good faith. They have also no case that they had made it for the protection of their own interest or any other person. Necessarily, the finding of the Court below, that they are entitled for protection as mentioned above, has to be set aside.

11. The Court below has already found that the statement in Ext. P1 is defamatory. Consequent to the finding that Ext. P1 is defamatory to the appellant, this appeal has to be allowed setting aside the acquittal and convicting the respondents.

12. Accordingly, I convict the respondents for the offence punishable Under Section 500 IPC. Taking into account the efflux of time, and the fact that the appellant was successful in the civil litigation to obtain damage to the extent of Rs. 25,000/- as it has been found that the statement made by the respondents/accused was defamatory to the appellant, I am of the view that a nominal fine of Rs. 500/- will meet the ends of justice.

13. Accordingly, I sentence each of the respondents to pay a fine of Rs. 500/-. In default of payment thereof, they have to undergo simple imprisonment for a period of two weeks each. The appeal is allowed as above, The Court below shall issue

warrant to execute the sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com