

**N. Jothi Vs. Rajamani and Another**

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**Court :** Chennai

**Decided On :** Oct-31-1995

**Reported in :** 1996CriLJ2435; 1996(1)CTC187

**Judge :** C. Shivappa, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 499 and 500; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482

**Appeal No. :** Crl.O.P. No. 544 of 1991

**Appellant :** N. Jothi

**Respondent :** Rajamani and Another

**Advocate for Def. :** R. Nedumaran, Adv.

**Advocate for Pet/Ap. :** A. Raghunathan, Adv.

**Judgement :**

ORDER

1. The petitioner is seeking for quashing a private complaint preferred by respondent No. 1 on the file of the Chief Judicial Magistrate, Nagercoil, under Section 500 of Indian Penal Code.

2. The facts alleged are shortly these :-

The petitioner is a practising Advocate in this High Court. While discharging his professional duty he was approached by Respondent No. 2 to give reply to the notice issued by his wife. He issued a reply on the written instructions from his client, who appended his signature on each page of the reply. That respondent No. 1, herein is the father in law of respondent No. 2 who filed the complaint against the petitioner and respondent No. 2, herein for an offence under Section 500 of Indian Penal Code, alleging that the averments in the reply notice are made with intention to harm his reputation and that both the accused joined together published the same to lower his reputation and thus they are punishable for the offence under Section 500 of Indian Penal Code. The averments made in the reply notice reads thus : 'Your client hardly addressed him with any respect and used to call him only 'VADAA PODAA'. Your client used to often kick my client and given virtual blow to him. Your client's family members such as her father by name K. Rajamani is drunkard of extreme nature and her own younger brother by name R. S. V. S. Kumar (as shortly called) has got the reputation of being behind the bar for eve teasing. These things could easily illustrate the formation and background of your client. It is needless to say that though your client has got post graduate degree in academic curriculum she does not possess even elementary requirements of a wife. It only proves the education will not bring culture. She inherited the qualities of the family and started giving perennial trouble to my client.'

The averment that 'he never wanted to have abusive words from the drunkard father-in-law or to stand as surety to his brother-in-law who was detained on the charge of eve teasing.' which persuaded the complainant to prefer the complaint for an offence under Section 500 of Indian Penal Code.

3. That respondent No. 2 herein contended that his counsel acted on his instructions and reproduced the averments he had made already in the earlier petition M.M.O.P. No. 84 of 1989 filed for divorce, which was much earlier to the reply notice. He has further stated that in order to bring pressure upon him he has invoked the process of the Criminal Court to deter his advocate from discharging his professional duties towards his client and that the petitioner herein never acted with any alicie and he just discharged his professional duty and settled the reply on

his instructions and he has signed at every page of the reply notice.

4. The point for consideration is whether an advocate can be prosecuted for an offence under Section 500 of Indian Penal Code for the averments made in any pleadings including notices and reply notices on instruction of his client and would come under exception IX to Section 499 of the Indian Penal Code.

5. I have carefully gone through the complaint. The petitioner has issued the reply notice on instructions of his client, respondent No. 2 herein. Even prior to the filing of the complaint, there were exchange of notices between the parties and those averments referred to in the reply notice were there even in earlier proceedings. There are no averments in the complaint that the petitioner herein had any ill will, hatred or motive against respondent No. 1 herein in sending the reply notice and it has been stated in the reply notice that on instruction of his client, he has issued the reply notice, which is nothing but discharging his professional duty and he has personal animosity against respondent No. 1. In these circumstances it has to be seen whether the petitioner could be proceeded under Section 500 of Indian Penal Code in respect of a defamatory statement contained in the reply notice.

6. In the instant case, there is no specific averment against the petitioner that he had any motive or private malice to harm the reputation of the complaint. The uncontroverted allegations made in the complaint are that there are certain averments which are per se defamatory in the reply notice. So long the reply notice was on instructions of the client and he has signed in each page of the reply notice, the averments contained in the reply notice cannot be imputed that the petitioner herein had malice or intention to harm the reputation of Respondent No. 1 herein.

7. A similar situation came up for consideration before this Court in *Shyam Ayyangar v. Andal Ammal*, 1934 MWN 481, wherein a pleader was acting in the course of his professional duties, was charged for the offence of defamation punishable under Section 500 of Indian Penal Code, for putting certain questions which imputed immoral character to the witness in a criminal case. In that case *Bardwell, J.*, took the view that in the absence of motive or private malice, the pleader is entitled to the benefit of Exception IX to Section 499 of Indian Penal

Code and quashed the charge. In another instance, in *Mir Anwaruddin v. Fathim Sai Abidin*, 1927 Mad WN 164 ILR 50 Mad 667 : 1927 (28) Cri LJ 313. Wallace, J., has stated with reference to exception 9 to Section 499 of Indian Penal Code, as follows :-

'When a lawyer is acting to the course of his professional duties and is thus compelled subject to the disciplinary action of the Court, to put forward everything which may assist his client, good faith is to be presumed and bad faith is not to be assumed merely because the statement is *prima facie* defamatory, but there must be some independent allegation had proof from which, in the circumstances of the case, the Court considers itself justified in inferring that the statement was not made because it was in the interest of the client, but that the occasion was wantonly seized as an opportunity to vent private malice.'

In *Parameswar v. Krishna Pillai*, : AIR1966 Ker264 , it has been held that 'a Court may presume that counsel who has signed the pleading has acted *bona fide* and without malice and no counsel should be called upon to answer a complaint for defamation merely because he has signed a pleading which contains defamatory matter.' A division Bench of the Calcutta High Court in *Upendra Nath Bagchi v. Emperor*, 909 ILR 36 Cal 375, held that 'when a pleader is charged with defamation, in respect of words spoken or written, while performing his duty as a pleader, the Court ought to presume good faith, and not hold him criminally liable unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose.' In *Filomeno Pereira v. Foad Lourenco Femand* ES 1981 Cri LJ 117 Goa it has been held that 'if serious and baseless allegations are made against the oponent, a lawyer may make himself liable for prosecution but in that case it has been clearly established that he acted in bad faith or maliciously. A Court may presume that a lawer who has signed the pleadings has acted *bona fide* and without malice.' As Lord Kenyon said : 'In order to constitute a libel the mind must be in fault and show malicious intention to defame.' The imputation must be made or published by the accused. If a man voluntarily makes an incriminating statement, he must take the consequences for it. When the averments made in the previous proceedings were incorporated in the reply notice, it must be presumed to have been done under the instructions from his

client and in good faith. It is the settled principle in law that a lawyer conducting a case on behalf of his client enjoys certain privileges and latitudes and the presumption will be that he has acted in good faith unless the contrary is alleged or established. An advocate will come within the ninth exception to Section 499 of the Indian Penal Code and it will be presumed that he acted in good faith in the interest of the protection of his client unless the contrary is alleged or established.

8. The statement made in the performance of a duty is conditionally privileged if it is made in the performance of any legal or moral duty imposed upon the person making it, provided that the person to whom the statement is made has a corresponding interest or duty to receive it. This is not to say that both parties must have a duty, or both an interest. One may have an interest and the other a duty. A statement made in protection of an interest even when there is no duty to make the statement is nevertheless privileged if it is made in the protection of some lawful interest of the person making it. In order to show that the communication is privileged it has to be shown that he had a duty or interest in making the communication to the person or persons who had a corresponding duty or interest to receive it and that the communication was relevant or pertinent to the occasion.

9. The petitioner herein in his capacity as an advocate and in discharging his professional duties on the instructions of his client, incorporated the averments made in the earlier proceedings initiated for divorce and when he has acted on the instructions of his client, his acts are bona fide and he cannot be fastened with criminal liability and if the act of the counsel does not come within the Exception IX to Section 499 of the Indian Penal Code, then no counsel could possibly discharge his duty to his client.

10. The Supreme Court in several decisions has held that Section 482 Cr.P.C. need not be invoked to appreciate the genuineness or credit worthiness of the averments made in the complaint. But this is not one such case. This is a case, where there are no averments against the petitioner that he had any motive or private malice to harm the reputation of the complainant. The process of the Court cannot be invoked for any oblique purpose and that too, where in the opinion of the Court the chances of an ultimate conviction is bleak. In the instant case the

action of the petitioner in issuing the reply notice on instructions of his client viz., respondent No. 2 herein is bonafide and in good faith, come within the Exception IX to Section 499 I.P.C. Therefore the continuance of the criminal proceedings amounts to abuse of the process of the Court and in order to secure the ends of justice, the proceedings in so far as the petitioner herein is concerned is liable to be quashed and accordingly quashed and the proceedings shall continue in so far as the Respondent No. 2 is concerned. The petition is allowed. Parties to bear their own costs.

11. Petition allowed.

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