
(1972) 07 MAD CK 0005

In the Madras High Court

Case No : Cal. Revision Case No. 456 of 1972 and Criminal Revision Petition No. of 1972

Dorairaj Thevar and Others

APPELLANT

Vs

Velu Naicker and Others

RESPONDENT

Date of Decision : 24-07-1972

Acts Referred:

Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1972) 07 MAD CK 0005

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Advocate : K. Ramamurthy and Mr. R. Santhanam, for the Appellant; K.N. Thyagarajan, M/s. G. Gopalaswami, M.K. Srinivasan, K. Rajagopalan for Accused and Mr. Suryaprakasam for Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

Gokulakrishnan, J.—This is a revision against an order passed by the Additional First Class Magistrate, Virudhunagar in M.C. No. 169 of

1972 declaring that B parties Nos. 29 to 42 and 45 to 58 are in possession of the disputed land. It is unnecessary for me to deal with the facts of

this case. Suffice it to say that the Additional First Class Magistrate referred the matter to the Sub-Court, Ramanathapuram at Madurai under S.

146 of the CrI. P. C. The Sub-Court transferred this matter to the District Munsif Court, Manamadurai. The District Munsif. Manamadurai, after

taking into consideration all the evidence placed before it, has given a finding which was later accepted by the additional First Class Magistrate,

Virudhunagar and the above said order was passed. The revision has been filed against the order of the Additional First Class Magistrate,

Virudhunagar against the finding of the District Munsif under Sec. 146 of the

Code of Criminal Procedure. According to S. 146-I. D, no appeal

shall lie from any finding of the Civil Court given on a reference made under S. 146, nor shall any review or revision of any such finding be allowed.

But, since the present revision was filed against the order passed by the Additional First Class Magistrate, under Sec. 145, Cr.P. C., I am of the

view that a revision will lie. But, as regards the points in the revision, the Court has to find out as to whether there is any illegality in the final order

passed by the Additional First Class Magistrate under S. 145 , Cr. P. C. In A.G.V. Subramania Iyer and Others Vs. Pudumadan and Others,

Sadasivam J. has clearly pointed out this distinction and has held:--

It is no doubt true that though the High Court can revise an order of the lower court under S. 145 of the Criminal Procedure Code, despite the fact

that a reference has been made to a civil Court under S. 146(1) of the Code, it will not go into the correctness or legality of the finding of the civil

court in a revision against an order under S. 145. But, an illegality in the final order under S. 145 could always be agitated in the Revision.

2. From the grounds of the revision petition, it is clear that the petitioner wants to agitate the finding of the District Munsif rather than agitating any

illegality in the order passed by the Additional First Class Magistrate under S. 145, Cr. P. C. Since the revision under

JUDGMENT

3. This is an appeal directed by Karuppasami, the complainant-appellant, against the order of the court of the Sub Divisional Magistrate(J),

Dindigul, acquitting 43 accused-respondents.

4. The accusation against the accused is that they are all opposed to the complainant on his being appointed as the village munsif of Kalvelipatti

and, in making such objections, they put in writing that the complainant was a rowdy and law-breaker and that he would give trouble to the public

and such allegations against the complainant constituted defamation punishable under S. 500, I.P.C.

5. The complainant-appellant is P. W. 1. Undoubtedly he is man of status in his village, owning properties worth Rs. two lakhs. All the accused also belong to the same village.

6. The first accused was the village munsif of that village and he was suspended. Therefore, the office of village munsif fell vacant. P. W. 1 applied

for appointment as village munsif on 1st June, 1970 to the Tahsildar, Nilakkottai.

7. P.W. 2, Revenue Inspector, was directed to go over to Kalvelipatti to hold enquiry on the petition of P. W. 1. He held enquiry in the village

chavadi. At about 10 a.m. about 30 persons were assembled at the chavadi. P. W. 2, the Revenue Inspector, questioned P. W. 1 after showing

the mahazar, Ex. P. 4 to P. W. 1. Ex. P. 4 contains the defamatory allegations made by the 48 villagers. Some of the accused were present in the

chavadi. P. W. 2, the Revenue Inspector, read the contents of Ex. P. 4. Ex. P. 4 contained the following allegations:--

8. P.W. 1. stated that he heard the contents of Ex. P. 4 and he claims that his feelings were wounded and that his reputation was damaged in the

estimation of the public including his witnesses. On further ascertaining the names of the signatories to Ex, P. 4, he gave lawyer's notice. According

to the evidence of P. W, 1, Ex., P. 4 contained signatures of accused 2 to 48. The first accused also signed Ex. P. 4. There has been some

litigation, past and present, between P. W. 1 and the first accused. P. W. 1 also filed a suit against the 8th accused. A few of the signatories

appear, to have made apology to P.W. 1. In regard to the enquiry conducted by P.W. 2, as spoken to by P. W. 1, P. W 2 corroborates P. W. 1.

9. The question that falls for determination is whether all these accused respondents defamed the complainant intending to harm, or knowing or

having reason to believe that such imputation will harm the reputation of the complainant.

10. The 9th accused is the father-in-law of P. W. 1. The daughter of the 9th accused is the wife of P. W. 1. The 9th accused and other accused in

the village honestly felt that P. W. 1 was not a suitable person to hold the post of village munsif. They gave the petition, Ex. P. 4, that P. W. 1

should not be appointed as village munsif. They have really given the petition bearing the public interest in mind, for public good. Even on an earlier

occasion, the villagers opposed the grant of gun licence to P. W. 1 before the Revenue Divisional Officer. It emerges from the entire recorded

evidence that at least On some occasions P. W. 1 was lending money on high rates of interest, not sanctioned by law. He has many enemies in the

village and he filed civil suits against at least some of the accused.

11. The learned trial Magistrate found that the allegations made in Ex. P. 4 fall

within the exceptions 1, 8 and 9 to S. 499, I.P.C. In the interests of public good, the accused-respondents represented that P. W. 1 should not be appointed as a village munsif. His own, brother-in-law is the 23rd accused, the son of the 9th accused P. W. 1 stated that his father-in-law and brother-in-law were mainly responsible for instigating the other accused-respondents to make defamatory allegations in Ex. P. 4 against the complainant. The 22nd accused is the husband of the elder sister of the complainant P. W. 1's closest relations expressed very strongly their objections against the appointment of the complainant as the village Munsif of the village. In my view, the complainant's relations like accused 9, 22 and 23 know the real character of the complainant and his antecedents, Little wonder there is they made such averments in Ex. P. 4 as would affect his chances of appointment as village munsif.

12. In regard to the scope of exception 9 to S. 499, the Supreme Court held in *Harbhajan Singh v. State of Punjab* (1)

The nature and scope of the onus of proof which the accused has to discharge in seeking the protection of exception 9 to S. 499 is as under:

(i) If it is shown that the accused has led evidence to show that he acted in good faith, and by the test of probabilities that evidence establishes his

case, he will be entitled to claim the benefit of Exception 9.

(ii) The proof of truth of the impugned statement is not an ingredient of the ninth exception as it is of the first; under the ninth exception it is not

necessary, and indeed it is immaterial, to consider whether the accused has strictly proved the truth of the allegations made by him.

(iii) It is true that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the ninth

exception. Simple belief or actual belief by itself is not enough. It must be shown that the belief in the impugned statement had a rational basis and

was not just a blind simple belief. That is where the element of the due care and attention plays an important role. If before making the statement

the accused did not show due care and attention (see S. 52), that would defeat his plea of good faith. But it must be remembered that good faith

does not require logical infallibility.

(iv) It is not possible to lay down any rigid rules or test for deeding whether an accused person acted in good faith under the ninth exception. The

question has to be considered on the facts and circumstances of each case, -- what is the nature of the imputations made, under what circumstance

did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said

imputation; was any enquiry made by him before he made it, or are there reasons to accept his story that he acted with due care and attention and

was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith under the ninth

exception.

(v) Absence of personal malice may be a relevant fact in dealing with the accused's plea of good faith, but its significance or importance cannot be

exaggerated. The accused will have to show that he acted with due care and attention, even in the absence of personal malice.

13. Mr. Santhanam has cited the following authorities but in view of the law, as laid down in the Supreme Court decision cited above, it is

unnecessary to deal with the other authorities on the basis of the proved facts of this case.

14. Chelliah v. Rajewari ((1968) L. W. Cri. 154), Haji Ahmad Husain Vs. State, Chandra-sekhara Pillai v Karthikeyan ((1965) M. L. J. Cri.

834).

15. Bearing in mind the above principles of law, and applying the same to the facts of this case and accepting the testimony of D. W. 1 who is

undoubtedly a respectable witness, I have no hesitation in finding that the averments have been made by the accused-respondents in good faith. All

the accused-respondents have acted in good faith for protecting the interests of the public in their objecting to the appointment of the complainant

as the village munsif. The accused-respondents are not saddled with the burden of proving the truth of the impugned statement in Ex. P-4. It is not

pertinent even to consider whether the accused-respondents have strictly proved the truth of the allegations made by them in Ex. P-4. In my view,

the accused-respondents have shown that their belief in the impugned statement had a rational basis and was not just a blind, simple belief and they

have subscribed to the impugned statements with due care and attention when the father-in-law and the two brothers-in-law (accused 9, 22 and

23) have made the said statements against the complainant. The accused-

respondents are rustic villagers and the law does not demand logical and stern infallibility from such villagers.

16. I uphold that the plea of good faith of the accused-respondents would avail them in view of the 9th exception to S. 499 I. P. C.

17. I confirm the order of the lower court acquitting the accused-respondents of the offence under S. 500 I. P. C.

18. The criminal appeal fails and is dismissed.