
(2008) 03 MAD CK 0161

In the Madras High Court

Case No : Criminal O.P. (MD) No. 8228 and M.P. (MD) No. 1 of 2007

S. Ganeshan

APPELLANT

Vs

V. Devendran

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 03 MAD CK 0161

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : G. Marimuthu in Criminal O.P. No. 8228 of 2007 and Mr. P. Velmurugan in Criminal O.P. No. 8064 of 2007, for the Appellant; V.S. Balakrishnan for Respondent in CrI. O.P. No. 8228 of 2007 and for First Respondent in CrI. O.P. No. 8064 of 2007, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The petitioner in CrI. O.P.(MD) No. 8228 of 2007 is the first accused and the petitioner in CrI. O.P.(MD) No. 8064 of 2007 is the second accused in C.C. No. 311 of 2007 on the file of the learned Judicial Magistrate No. 2, Srivilliputtur.

2. The respondent, V. Devendran is the complainant. The offences said to have been committed by these petitioners are punishable under Sections 500 and 504 IPC. The petitioners have come forward with these petitions to quash the said proceedings.

3. The facts and circumstances of the case are as follows:

On 6.7.2007 in Dinamalar Daily news paper, the second accused, who is a practicing advocate in Srivilliputtur issued a general notice in which he has stated that there is some litigation in respect of the property belonging to the complainant in O.S. No. 188 of 2001 and he has further warned the public not to purchase the said property from the complainant and the notice further proceeds to say that if any one purchases the property from the complainant, he will be

doing at his own risk. The said notice was issued by the second accused/ advocate on the instructions of the first accused, who is his client.

4. According to the complainant/respondent, the civil suit was over long back and after that the complainant had no intention to sell the property at all but in the notice, it was stated as if the complainant was intending to sell the property. According to him, the said statement has lowered his reputation in the public.

5. In my considered opinion, an instruction by a party to a counsel is protected as a privileged communication u/s 126 of the Indian Evidence Act. The 2nd accused, who is a practicing advocate, has after all issued the public notice on the instructions of the party. At no stretch of imagination, it can be said that he has committed the act of defamation. Therefore, I have no hesitation at all to hold that the complaint as against the second accused is not at all maintainable and therefore, the impugned proceedings is liable to be quashed.

6. Insofar as the contents of the notice also, I do not find any material to make out even a prima facie case of defamation.

7. As I have stated above, the notice proceeds to state that the complainant intends to sell the property and if anybody purchases the same, he will be doing at his own risk. I do not find anything in the statement, which would have lowered the reputation of the complainant. Thus, absolutely, there is no case at all against any of the accused. Hence, I do not have any hesitation to quash the entire case against both the accused.

8. At this juncture, it is worthwhile to refer to the judgment of the Hon''ble Supreme Court in the State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Hon''ble Supreme Court has given illustrations where this Court should interfere u/s 482 Cr. P.C. to quash a private complaint. The present case squarely falls within the principles stated in the said judgment of the Hon''ble Supreme Court.

9. Hence, for all the reasons stated above, these petitions are allowed and the case in C.C. No. 311 of 2007 on the file of the learned Judicial Magistrate No. II, Srivilliputtur is hereby quashed.