

(1956) 07 MAD CK 0047

In the Madras High Court

Case No : Second Appeal No's. 1939 and 1940 of 1953

Thirumalirunjolaimalai Ayyangar

APPELLANT

Vs

K. Sarangapani Ayyangar and Another

RESPONDENT

Date of Decision : 27-07-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107

Citation : AIR 1957 Mad 756

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

**Advocate : A.V. Narayanaswami Iyer and R. Venkatachalam, for the Appellant;
V. Thyagarajan, N. Parthasarathy and K.V. Srinivasa Iyer, for the Respondent**

Final Decision : Dismissed

Judgement

Krishnaswami Nayudu, J.—In these two appeals a plea of absolute privilege is taken in defence to an action by the two plaintiffs (in Order S. Nos. 139 and 140 of 1947 on the file of the District Munsif of Madurai taluk at Madurai) who are brothers, in respect of certain defamatory statements alleged to have been made against the plaintiffs contained in a petition Ex. A. 1 dated 19-2-194" sent by the 2nd defendant along with several others to the Deputy Inspector-General of Police, Southern Range, Madurai. Copies of this petition were sent to the District Superintendent of Police, Madurai South and to the District Magistrate, Madurai.

The allegations were enquired into by the Circle Inspector of Police, Tirumangalam and on his report the District Superintendent of Police, Madurai South, made an endorsement on the petition that the allegations mentioned in the petition Ex. A. 1 were enquired into and found to be false and frivolous and the complainant, who is the 2nd defendant, was warned against sending such petitions in future. The courts below held that the allegations made Ex. A. 1 were per se defamatory and found against the plea of absolute privilege. They granted a decree for damages Rs. 260 in each of these suits.

2. In support of that contention, principle of law applicable to such cases has been referred to and the learned counsel for the appellant relied on the decisions in *Bapalal & Co. v. Krishnaswami Iyer*, ILR 1941 Mad 332; AIR 1941 Mad 26 (A), and *Vattappa Kone and Another Vs. Muthukaruppan Servai*, . In the earlier case the plaintiff (respondent), a medical practitioner, was charged with having taken some diamonds, by the appellants who sent a letter to the Inspector of Police. This letter, in a suit for damages for "defamation was claimed by the respondent to be defamatory as being equivalent to a charge against him of criminal breach of trust.

The appellants contended that the communication was privileged. It was held that the complaint to the police officer, being from its very nature a statement which the complainant was prepared later, if called upon to do so, to substantiate upon oath, was absolutely privileged. In that decision reliance was placed upon several decisions of this court and other High Courts where the principle of common law of England which grants an absolute privilege to all statements made in the witness box was held to be applicable in India and that privilege extended in England to the preliminary examination of witness, e.g., by a solicitor to find out what they can prove vide *Watson v. Mewan*, 1905 AC 480 (C). The other case referred to in that decision is *Sanjivi Reddi v. Koneri Reddi*, ILR 49 Mad 315: AIR 1926 Mad 521 (D), which dealt with a complaint to a Magistrate requesting him to take-action u/s 107 CrI. P. C., and to statements made by the complainant to a police officer investigating that complaint. Both " were held to be absolutely privileged.

3. The decision in *Vattappa Kone and Another Vs. Muthukaruppan Servai*, , followed the view taken by King J., in ILR 1941 Mad 332 AIR 1941 Mad 26 (A). In that case a verbal complaint was made by the defendant against the plaintiff to a village Magistrate charging the plaintiff with the offence of robbery. The village Magistrate sent a report on, the same day to the police and to the Stationary Magistrate. The Magistrate ordered, an enquiry by the police who subsequently made a report that the complaint was false. The plaintiff was not even summoned. The Magistrate thereupon declined to take any further action and the proceedings were dropped. Plaintiff then filed a suit for damages for malicious prosecution. It was held that as the plaintiff was not prosecuted and as the occasion was privileged, no action for defamation would lie.

4. The question for determination in these appeals is as to whether the statements contained in Ex. A. 1 are absolutely privileged. The statements made in the complaint had been examined seriatim by the learned Subordinate Judge who found that some statements would amount to offences which the police could take cognizance of and investigate and some which they could not have investigated. But, in any event, the matters covered by the allegations in Ex. A. 1 referred to some ancient history as to the affairs in, the village and the part which these plaintiffs took in the village matters and did not specify any definite or separate offence which had been committed calling upon the police to

investigate and take action. Therefore the allegations in Ex. A. 1 could not come within the scope of the statements which are absolutely privileged applying the principle of law laid down in 1905 AC 480 (CJ).

5. Mr. Narayanaswami Aiyar urged that the present petition, Ex. A. 1, was a request- on the basis of which the 2nd defendant prayed that security proceedings might be taken u/s 107 Crl. P. C. It may be mentioned that there is no reference in Ex. A. 1 to Section 107 Crl. P. C. or any action that was required to be taken u/s ,107; nor is there any whisper in the last paragraph of the petition that proceedings by way of security against breach of the peace should be taken against the plaintiffs. Section 107 Crl. P. C., provides :

"107 (1). Whenever, a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the First Class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity the Magistrate if in his opinion there is sufficient ground for proceeding may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix."

6. The decision in JLR 49 Mad 315: AIR 1926 Mad 521 (D), related strictly to statements made by the complainant to a Magistrate who was asked to take action u/s 107 Crl. P. C., and it was held by a Bench of this court that such statements are absolutely privileged and no civil action for defamation in respect of such statements is maintainable. I am in agreement with the view taken by the lower appellate court that on the allegations in the petition there was nothing on which the Magistrate could proceed; for taking security proceedings as there was no apprehended breach of the peace or disturbance of public tranquillity by any threatened wrongful act which has been complained of.

Mr. Narayanaswami Aiyar however relied upon paragraph 12 of Ex. A. 1 and urged that these plaintiffs along with others "are threatening respectable persons with bodily injury and also sending false petition against them with a view to lower them in the estimate of the public." There cannot be a more general accusation than this as against indefinite and imaginary class of persons. I am unable to see how this petition could be considered to be a petition where an action was sought to be taken u/s 107 Crl. P. C. The learned Subordinate Judge after an examination of the charges found that there was no basis for any belief by the 2nd defendant that he was making these statements with a view to repeat them on oath at a subsequent judicial proceeding to be taken by the Deputy Inspector General of Police or the District Superintendent of Police, Madurai, on his petition. In the absence of such basis, I am in entire agreement with the learned Subordinate Judge that the appellant in both the appeals is not free-from liability for damages. The plea of absolute privilege has been rightly found against .

7. The second appeals are dismissed with costs and one advocate's fee in S. A. 1939 of 1953 to be shared equally." No leave.