

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH, GULBARGA

Dated the 14th day of August 2008

: B E F O R E :

THE HON'BLE MR.JUSTICE : V.JAGANNATHAN

CRIMINAL REVISION PETITION No. 390 / 2007

BETWEEN :

Dayanand Rao Rangadai,
Aged about 65 years,
Occ: Pensioner, R/o H.No.1-4-13/1,
Behind VIP Ice Factory,
Khuta Layout, Gulbarga.

... Petitioner

(By Sri Shivasharana Reddy, Advocate.)

A N D :

1. Suresh,
S/o Dattatraya Bulbule,
Aged about 54 years, Occ: Business,
C/o Bulbule Engineering Co.,
Kirana Bazar Main Asif Gunj,
Gulbarga.
2. Ramesh,
S/o Naganath Navale,
Aged about 44 years, Occ: Business,
R/o H.No. 2/909, Raghoji Layout,
Om Nagar Entrance, Sedam Road,
Gulbarga.
3. Srikanth,
S/o Vishnupanth Hanchate,

Aged about 55 years, Occ: Business,
R/o Gajanan Stone Polishing &
Sindgi Ambabai Temple Area,
New Jewargi Road, Gulbarga.

4. Vijayakumar,
S/o Tukaram Hanchate, Occ: Business,
R/o Vishwada Bungalow,
Sangameshwara Nagara,
Behind N.V.College, Gulbarga.

...Respondents

(By M/s Vagdevi Assts., Advocates - absent.)

Criminal Revision Petition filed under Section 397 of the Cr.F.C. praying to set aside the order dated 11.1.2007 in Cr.I.R.F. No. 118/2006 on the file of the Prl. District & S.J., Gulbarga, and the criminal proceedings initiated by the present petition before the J.M.F.C., Gulbarga, in C.C.No. 1097/2006 may kindly be ordered to continue.

This revision petition coming on for hearing this day, the court made the following :

ORDER

Heard the learned counsel Shri Shivasharana Reddy for the petitioner and none appears for the respondents and there is no representation either.




2. The petitioner calls in question the order passed by the lower appellate court allowing the revision petition filed by the respondents herein and setting aside the order of the trial court taking cognizance of the offences punishable under Sections 499 and 500 of the I.P.C. against the respondents.

3. The facts in brief are to the effect that the petitioner herein filed a private complaint under Section 200 of the Cr.P.C. complaining that the respondents herein made defamatory statement in the written statement filed by them in O.S.No. 331/2005 pending on the file of the V Addl. Civil Judge (Jr.Dn.), Gulbarga, and, therefore, as the contents of paragraph-10 at page 6 of the written statement are defamatory in nature, the petitioner, therefore, sought cognizance of the offences being taken by the trial court and to punish the respondents in accordance with law.

4. The trial court took cognizance based on the complaint so lodged by the petitioner but, as could be



seen from the proceedings of the trial court dated 29.7.2006, a mistake had been committed by oversight by the trial court at the time of taking cognizance and, instead of mentioning the Sections 499 and 500 of the I.P.C., the trial court had mentioned the offence under Section 138 of the Negotiable Instruments Act and, therefore, the learned judge of the trial court rectified the said mistake in mentioning the offences and directed the office to register the case after taking cognizance of the offences alleged in the complaint which are under Sections 499 and 500 of the I.P.C. This subsequent order of the trial court dated 29.7.2006 was called in question by the respondents herein before the lower appellate court and, in CrI.R.P.No. 118/2006, the lower appellate court allowed the revision filed by the respondents and set aside the order dated 27.5.2006. Aggrieved by the said order of the lower appellate court, the complainant has preferred this revision petition.



5. The learned counsel for the petitioner submitted that the lower appellate court had set aside the order of the trial court only on two grounds viz., the filing of a complaint or a written statement is not to be taken as a public document and secondly, when the original suit is pending in the civil court and the decision as to whether the statement made is defamatory or not is yet to be decided by the civil court, it is premature on the part of the petitioner herein to move the criminal court. The aforesaid reasons given by the lower appellate court are erroneous and contrary to law is the submission made by the learned counsel for the petitioner.

6. In this regard, the learned counsel for the petitioner submitted that the very fact of filing of the written statement by the respondents itself is sufficient to draw the inference that the said written statement filed in O.S.No. 331/2005 is a public document and secondly, merely because a civil suit is pending, there is no bar to prosecute the respondents



in respect of the offences under the I.P.C., dealing with defamation. In support of the above submissions, the learned counsel placed reliance on a decision of the Kerala High Court reported in 2006 Cr.L.J. 1872, of Madras High Court reported in 1992(2) Crimes 465 and AIR 1966 Madras 363.

7. In the light of the aforesaid submissions made and the rulings cited, the point for consideration is whether the order of the lower appellate court can be held to be sustainable in law.

8. In the case of *M.K.Prabhakaran Vs. T.C.Gangadharan*, reported in 2006 Cr.L.J. 1872, it has been held that once the statement is filed in a court of law, that statement can be taken as published and if such a statement amounts to per se defamatory, it is the duty of the accused to establish that they are justified in making such a statement under any of the exceptions to Section 499 of the I.P.C.



9. In the case of *Dr. Jai Sudershan Vs. R. Sankaran*, reported in 1992(2) Crimes 465, it has been held by a learned judge of the Madras High Court that the scope of the proceedings under the Criminal Procedure Code for the offence of defamation based on the averment made in the civil suit is entirely different from the proceedings in the civil suit and, therefore, as the scope of the two proceedings are entirely different, the prayer to quash the criminal prosecution till the civil suit is decided cannot be accepted at the initial stage.

10. In another decision of the Madras High Court in the case of *Thangavelu Chettiar Vs. Ponnammal*, reported in AIR 1966 Madras 363, it has been held that filing of a complaint amounts to publication and the court went on to hold on facts that the defamatory matter contained in the plaint was admittedly signed and filed by the petitioner and, therefore, there can be no doubt that there was publication of defamatory matter.



11. In the light of the aforesaid law laid down by the courts mentioned above, in the instant case, the lower appellate court was in error in observing that a written statement is not a public document. Likewise, the lower appellate court also erred in coming to the conclusion that, as the civil suit is pending, criminal proceedings could not have been initiated by the petitioner by filing the complaint. The said reasoning is also erroneous in law in view of the scope of the two proceedings viz., civil suit and the criminal proceedings being entirely different, the question of there being a bar to initiate criminal proceedings does not arise and the two proceedings are entirely different not only in regard to their scope but also in this regard the nature of the relief that could be given by the courts dealing with the respective proceedings.

12. For the aforementioned reasons, the view taken by the lower appellate court cannot be sustained and, as such, the impugned order of the lower appellate



court is set aside and that of the trial court, taking cognizance is restored and the trial court shall proceed with the matter before it in accordance with law.

Sd/-
Judge

ckc/-