

Madras High Court

Thangavelu Chettiar vs Ponnammal on 1 November, 1965

Equivalent citations: AIR 1966 Mad 363, 1966 CriLJ 1149

Bench: Sadasivam

ORDER (1) Petitioner Thangavelu has been convicted under S. 500 I.P.C. and sentenced to a fine of Rs. 200 and out of the fine amount if realised Rs. 100 has been ordered to be paid to P.W. 1 as compensation under S. 545(1), Cr.P.C.

(2) The petitioner described the complainant Ponnammal as (concubine) of P.W. 2, Namasivaya Odayar in a plaint filed by him in S.C. No. 349 of 1963 on the file of the District Munsif Court, Tirukoilur. P.W. 1 (Ponnammal), complainant in this case, is an unmarried Brahmin woman aged thirty years and the statement of the petitioner in his plaint that she is the concubine of P.W. 2 is clearly defamatory. This is not disputed.

(3) The facts mentioned in ground No. 7 as reasonable grounds for the belief of the petitioner that P.W. 1 (Ponnammal) was the concubine of P.W. 2 Namasivaya Odayar were considered by the courts below which negated the contention of the petitioner. They found that P.W. 1 was an unmarried Brahmin girl and not a concubine of P.W. 2 (Namasivaya Odayar). It appears from the judgment of the Courts below that the petitioner relied on Exception 1 to Sec. 499 I.P.C. In fact, paragraph 12 of the appellate court's judgment shows that it was urged on behalf of the appellant (petitioner here) that it was sufficient if the accused had reason to believe that P.W. 1 was the concubine of P.W. 2. At the end of the paragraph, the appellate court has found that the appellant (petitioner here) had no reasonable reason to believe that P.W. 1 was the concubine of P.W. 2.

(4) The main ground urged by the learned advocate for the petitioner is that there was no publication as the copy of the plaint Ex.P. 1 was sent only to P.W. 1, Ponnammal. I am unable to accept this contention. It was not argued in either of the courts below or mentioned in the grounds of revision that there was no publication in this case. The learned advocate for the petitioner relied upon paragraph 14 of the appellate court's judgment in support of his contention that the plea had been taken, but a reading of that paragraph would show that the plea taken was that the allegation would not amount to defamation. It is clear from paragraph 4 of the complaint filed in this case that the defamation complained of in this case was with regard to the allegation in the plaint in S.C. 349 of 1963 on the file of the District Munsif Court, Tirukoilur, and in the same paragraph the complainant has referred to her having received a copy of the plaint Ex.P. 1. The filing of the plaint in the court has been spoken to by P.W. 3, Sri. P. R. Subramaniam, who filed the plaint on behalf of the petitioner. Thus there can be no doubt that the defamation contained in the plaint was published by the plaint being filed in the court. Further even assuming that the complainant referred to the allegation in Ex.P. 1, still there is publication. It is clear from a scrutiny of the copy of the plaint Ex.P. 1, that it was prepared by P.W. 3, and filed into court, and it bears the seal of the District Munsif's Court, Tirukoilur. The copy of the plaint should be compared with the original by the court before it is served on the defendant by registered post. The learned advocate for the petitioner relied on the decision in *G. G. Jeramiah v. F. S. Vas*, ILR 36 Mad 457, in support of his contention that there should be publication and that the fact that a certain copy of a paper appears to be printed and published by A is not proof of publication by him. It is clear from what I have stated that the

decision is hardly applicable to the facts of the present case. The decision refers to a publication in a paper and it should be proved that the accused was responsible for the publication. But in this case, the defamatory matter contained in the plaint was admittedly signed and filed by the petitioner. There can be no doubt that there was publication of the defamatory matter.

(5) The learned advocate for the petitioner relied on exception 9 to S. 499 I.P.C. It is clear from the judgments of the courts below that this was not urged in the courts below. Under S. 105 of the Evidence Act, the burden of proving the circumstances to show that the case of the accused comes within exception 9 to S. 499 I.P.C. is upon the petitioner and in the absence of such plea, it is open to a court to presume the absence of such circumstances. Good faith is defined in S. 52 of the Penal Code. Nothing, says S. 52 I.P.C., is said to be done or believed in good faith which is done or believed without due care and attention. In *Harbhajan Singh v. State of Punjab*, (Crl. App. 53 of 1961): the Supreme Court in paragraph 21 of its judgment has dealt with the relevant considerations to support the plea of good faith to invoke the benefit of Exception 9. It is clear from the said judgment that the plea of good faith would be a question to be considered on the facts and circumstances of each case. It is true that if the facts and circumstances proved in this case support the plea of good faith and other requirements of Exception 9 to S. 499 I.P.C. it is open to the accused to rely on the same and claim the benefit of the said Exception in spite of his not having pleaded it. The learned advocate for the petitioner relied on the several circumstances mentioned in ground No. 7 of the grounds of revision. I have already referred to the fact that the appellate Judge has considered these facts and found that there was no reason for the petitioner to believe that P.W. 1 was the concubine of P.W. 2. There can be no doubt that the petitioner has unnecessarily made the defamatory allegation in a suit for recovery of money and it shows lack of good faith.

(6) The conviction of the petitioner under S. 500, I.P.C. is fully justified on the facts of this case and there is absolutely no ground to interfere in revision. I do not find any justification of the appellate court to have reduced the fine from Rs. 500 to Rs. 200. There is no ground also to interfere with the sentence of fine. The criminal revision case is dismissed.

(7) Petition dismissed.