

Kerala High Court

Prabhakaran vs Gangadharan on 7 March, 2006

Equivalent citations: 2006 CriLJ 1872, 2006 (2) KLT 122

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Bench: K Thankappan

ORDER K. Thankappan, J.

1. The petitioners are the accused in S.T.No. 1910 of 2003 on the file of the Judicial First Class Magistrate's Court, North Paravur. The petitioners seek to quash Annexure C complaint filed against them by the first respondent herein.

2. The first respondent-complainant filed Annexure C complaint before the court below stating that the written statement filed by the accused-defendants 1 and 3 in O.S.No. 481 of 2000 pending before the Sub Court, Ernakulam contained defamatory statements against him. According to the complainant, the suit was filed by his wife for partition and he is not a party to the suit. The plaintiffs and defendants are close relations. In paragraph 12 of the written statement, it is stated that the father of the first accused who is the brother of the plaintiff in the suit placing utmost faith in the plaintiff and her husband, the first respondent herein, who is a practicing lawyer at the Paravur Bar, affixed his signature wherever he was asked to sign by the first respondent and that the first respondent misusing the trust reposed on him created materials to appropriate the plaint schedule properties. Alleging that the petitioners made imputation against the complainant intending to harm his reputation, he filed the complaint against the petitioners for commission of offence punishable under Section 500 read with Section 34 I.P.C.

3. Learned Counsel appearing for the petitioners submitted that the statements contained in the written statement filed in O.S .No. 481 of 2000, in which the petitioners are defendants 1 and 3 are correct and that there was no malice in incorporating such statements in the written statement. Counsel further contended that any statement made in good faith will come under exception (8) to Section 499 I.P.C. To substantiate this contention, learned Counsel for the petitioners produced Annexure A plaint and Annexure B written statement in O.S.No. 481 of 2000. According to the learned Counsel, Annexure C complaint is an abuse of the process of the court and seeks to quash the same by invoking the jurisdiction of this Court under Section 482 Cr.P.C.

4. Learned Counsel appearing for the first respondent, on the other hand, submitted that since the complainant was not a party to the suit the statements contained in the written statement were made with the intention to harm his reputation and that the matter has to be considered on the basis of evidence. Counsel further contended that this Court will not be justified in interfering with the matter by invoking the jurisdiction under Section 482 Cr.P.C. To substantiate this contention, counsel relied on the unreported decision of the Apex Court in Appeal (Crl.) No. 596 of 2001 and also the decision of the Madhya Pradesh High Court in Trichinopoly Ramaswamy Ardhanani v. Kripa Shanker Bhargava 1990 Crl.LJ. 2616.

5. The question to be decided in this Crl. Miscellaneous Case is whether the statements contained in the written statement will amount to defamatory statements or whether.it will come under any of

the exceptions contained in Section 499 I.P.C.

6. Admittedly, the complainant was not a party to the proceedings in O.S.No. 481 of 2000. It is alleged in the written statement that the father of the first petitioner trusting the plaintiff- his sister and her husband, the complainant who was a practicing lawyer, affixed his signature wherever he was asked to sign which was misused by the complainant for creating materials to appropriate the plaint schedule properties. It can be seen that the complainant never conducted any case as alleged in the written statement filed in O.S.No. 481 of 2000. Annexure C complaint would show that the imputation now made against the complainant is susceptible to harm his reputation. The stand now taken by the petitioners is that the statements contained in the written statement can be justified by taking a defence as contemplated under the exceptions to Section 499 I.P.C. Once a statement has been 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 I.P.C. Without considering the evidence to be adduced and the defence to be set up, it is not possible to come to a finding whether the statements contained in the written statement are defamatory or not. On going through Annexure C complaint, this Court is not in a position to hold that Annexure C complaint does not constitute the ingredients under Section 500 I.P.C. Hence, this Court is not inclined to quash Annexure C complaint.

The Crl. Miscellaneous Case is accordingly dismissed.