

IN THE XVIII ADDITIONAL CITY CIVIL COURT, CHENNAI.

**Present : Tmt. Dr. R.SATHYA
XVIII Additional Judge,**

Thursday, the 23rd day of January 2020

O.S.No.1243/2019

(C.S.No.127/2017)

Mr.Santhosh @ Sathiyam

...Plaintiff

VS

1. Ms.Priyanka

2. Mrs.Victoria @ Ammu

3. Inspector of Police,
G-5 Secretariat Colony Police Station,
Chennai - 10.

4. Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 7.

5. Home Secretary,
Government of Tamil nadu,
Fort St.George, Chennai - 9.

... Defendants

This suit coming on 18.12.2019 before me for final hearing in the presence of M/s.R.Rajamani, J.Deliban and A.Rita Counsel for the plaintiff and the defendants 1 to 5 and M/s.P.Pugalenthi, M.Ezhilarasu, S.Nadhiya and G.Jaya Johnson counsel for D1 and D2 and having

remained absent and defendants 1 to 5 being called absent and set exparte and upon hearing the plaintiff counsel and upon perusing the material documents on record and upon having stood over for consideration till this day, this court delivered the following:

JUDGMENT

This suit has been filed by the plaintiff under Order VII, Rule 1 CPC for directing the defendants jointly and severally to pay the plaintiff a sum of Rs.30,00,000/- as damages and for cost.

2. The brief averments made by the plaintiff in the plaint is as follows:-

The plaintiff belongs to a poor family and Hindu Schedule Caste and the defendants 1 and 2 have been residing in the street in which the plaintiff had also been residing and he is having an elder brother and aged parents who had been living along with the plaintiff in the same house and the plaintiff and defendants belong to the same community and in the beginning of 2009 the 1st defendant on her attaining puberty the mother of the plaintiff had presented seer to the 1st defendant with an intention that after sometime the 1st defendant would get married to the plaintiff and the defendants 1 and 2 also accepted it and thereafter the relationship between both families became closer and one Mr.Ravi the

close relative of the defendants 1 and 2 is an adjacent neighbour to the plaintiff and his family had intended to grab the house in which the plaintiff was residing had also committed violence on the mother of the plaintiff, abused her and also damaged the house and the mother of the plaintiff had lodged a report with the 3rd defendant and though the plaintiff was the actual victim in this occurrence instead of supporting the plaintiff the 2nd defendant had supported Mr.Ravi and his family members and because of such conduct the relationship between the family of the plaintiff and defendants 1 and 2 became strained and the plaintiff and his family members had left the house and shifted to Mogapair West and at that time the plaintiff had just joined B.Tech (IT) in SRR Engineering College, Padur, OMR, Chennai and in order to attend his college he had stayed in his uncle's house which was situated in Pulianthope, Chennai and in the later part of the year 2009, the 2nd defendant had along with Mrs.Leena, John Pa and Mani came to the house where the plaintiff was residing at that time and insisted the plaintiff and his mother to arrange the marriage with the plaintiff immediately by saying that the 1st defendant had become pregnant and the plaintiff was the cause of the pregnancy which was denied by the plaintiff as false one and the plaintiff

had really loved the 1st defendant and since the 1st defendant had got pregnant through some other person and levelled false allegations against the plaintiff, he also refused to marry the first defendant and thereafter the 2nd defendant had lodged a report with the 3rd defendant which was deliberately lodged with false information against the plaintiff and 3rd defendant registered FIR in Cr.No.874/2009 for an offence punishable under section 417, 376 IPC and the plaintiff was called upon by 3rd defendant for examination and since the 3rd defendant had not convinced with the version of the defendants 1 and 2 the plaintiff was not arrested and thereafter on 6.11.2009 the plaintiff was called by the 3rd defendant to the police station and was arrested on the same day on the same allegation and produced before the Metropolitan Magistrate No.14, Egmore, Chennai who had remanded the plaintiff to custody and was kept in Central Prison, Puzhal for 95 days and on 12.2.2010 he came out of prison on bail and the 1st defendant had delivered a baby by name Alka and after the birth of the child, the 3rd defendant got blood samples from the baby and also the plaintiff and sent the same for DNA analysis and a report bearing No.DNA/PAT/08/2012 dated 20.7.2012, the Director and Chemical Examiner to Government, Forensic Sciences Department,

Chennai - 4 had found that the plaintiff was not the father of the child Alka and when the scientific evidence was completely against the case of the defendants 1 and 2, the 3rd defendant should have conducted further investigation to ascertain the cause for such false implication of the plaintiff and also find out the real accused but the 3rd defendant did not make any investigation in this regard and in October 2012 the 3rd defendant filed a final report against the plaintiff before the Metropolitan Magistrate No.2, Chennai for an offence punishable under section 417, 376(ii) (g) IPC which was taken on file as PRC 284/2012 and was later on committed to the Hon'ble Mahila Court, Chennai and based on the materials submitted by the 3rd defendant the Hon'ble Mahila Court, Chennai had framed the charges against him and the plaintiff had faced trial and during the trial also the defendants 1 and 2 had reiterated the very same allegations and 1st defendant had stated that from the date of attaining puberty till delivery of child Alka the plaintiff had sex with the 1st defendant and the plaintiff had filed Crl.M.P.No.1407/2014 in which he had brought the result of DNA test to the knowledge of the court and also the public prosecutor and the petition was dismissed and the plaintiff had approached this court by filing Crl.R.C 595/2014 on 20.6.2014 before the

Mahila Court and plaintiff had proceeded with the trial and on completion of the prosecution side he had filed very same petition in CrI.M.p.4583/2015 with the same prayer which was also again resisted by the 3rd defendant by reiterating the same ground and again the said petition was dismissed and the plaintiff had preferred CrI.R.C before this court and this court had directed the taking of blood samples with more precaution and its analysis which was also done and the result of DNA test on this sample also reported that the plaintiff was not the father of the child and the said report was marked as defence document in the trial court and on 10.02.2016 the Mahila Court, Chennai was pleased to acquit the plaintiff and the defendants 1 and 2 had deliberately lodged and levelled false allegation of rape against the plaintiff which resulted in his confinement in prison for 95 days and thereafter for 7 years he had spent his time to face the trial and a sum of Rs.1,00,000/- as Advocate fees to come out on bail and thereafter to conduct the trial and approaching this court he had spent a further sum of Rs.1,00,000/- as legal expenses and the plaintiff had discontinued his B.Tech due to his arrest which has damaged his dream of becoming an engineer and now the plaintiff is working as an office assistant in a private company and earns a paltry

sum of Rs.9,000/- and in the year 2015 when the plaintiff had attempted to get badge for driving commercial vehicle because of the pendency of the case and the refusal of 3rd defendant to give NOC he could not get the badge and the case had caused so much mental agony to the plaintiff and his family members and it has acted as a black spot to his entire family members and it also prevented the brother of the plaintiff in getting a bride and the plaintiff and his family members could not occupy the house in Kilpauk and they have been living away in a rented house for the past 4 years by paying rent @ Rs.8000/- per month and it has not only damaged his reputation but also caused him extreme mental agony and the failure of the 3rd defendant in performing its statutory duty in a reasonable manner the plaintiff suffered as above and the defendants 1 and 2 are also equally liable for the claim of the plaintiff and the 4th and 5th defendants in their capacity as employer of the 3rd defendant are also vicariously liable to the negligence and failure of duty of the 3rd defendant and the plaintiff issued notice to the defendants on 16.7.2016 claiming compensation of Rs.50,00,000/- for malicious prosecution, defamation and the loss suffered by him which was received by the defendants 1 to 3 and 5 on 21.7.2016 and registered post sent to the 4th defendant was not

returned and on receiving the notices the defendants had not complied with the notice nor sent any reply and hence the suit.

3. The defendants have not appeared inspite of service of summons and had remained exparte.

4. On the side of the plaintiff, the plaintiff had examined himself as PW1 and through him Ex.A1 to A17 were marked.

5. The point for consideration is whether the suit can be decreed as prayed for with cost?

6. Point:

This suit has been filed by the plaintiff for directing the defendants jointly and severally to pay the plaintiff a sum of Rs.30,00,000/- as damages and for cost.

7. In order to prove the case of the plaintiff, the plaintiff had examined himself as PW1 and through him Ex.A1 to A17 were marked and on perusal of Ex.A1 is the Certified copy of complaint lodged by the 2nd defendant on 12.10.2009 before G5 secretariat colony police station and Ex.A2 is the Certified copy of FIR registered against the plaintiff on 12.10.2009 and Ex.A3 is the Certified copy of 161 statement of 1st defendant and Ex.A4 is the Certified copy of 161 statement of

Dr.Kamalakshmi Krishnamoorthy, Deputy Director and Asst.Chemical Exmainer to Govt.Forensic Science Department, Chennai and Ex.A5 is the Certified copy of DNA report dated 20.07.2012 and Ex.A6 is the Certified copy of Final Report filed by 3rd defendant against the plaintiff dated 1.10.2012 and Ex.A7 is the Certified copy of petition filed by the plaintiff in Crl.M.P.No.1407/2014 for further investigation and Ex.A8 is the certified copy of counter filed by the 3rd defendant in Crl.M.P.No.1407/2014 and Ex.A9 is the certified copy of deposition of 1st defendant recorded in S.C.No.279/2013 on the file of Mahila Court, Chennai dated 19.11.2013 and Ex.A10 is the certified copy of deposition of 2nd defendant recorded in S.C.No.279/2013 on the file of Mahila Court, Chennai dated 19.11.2013 and Ex.A11 is the certified copy of petition filed by the plaintiff in Crl.M.P.No.4583/2015 for further investigation and Ex.A12 is the certified copy of Order of the High Court, Madras in Crl.R.C.No.595/2014 dated 20.6.2014 and Ex.A13 is the certified copy of counter filed by the 3rd defendant in Crl.M.P.No.4583/2015 dated 4.7.2015 and Ex.A14 is the certified copy of DNA report given by Forensic Science Department dated 5.11.2015 and Ex.A15 is the certified copy of Judgment Passed in S.C.No.279/2013 dated 10.02.2016 and Ex.A16 is the Office copy

of Notice issued by the plaintiff to the defendants along with postal receipts issued by the postal department dated 16.7.2016 and Ex.A17 is the served original A/D cards. Admittedly the suit being one for damages the plaintiff has to prove that the defendants 1 and 2 had maliciously prosecuted the plaintiff and that he had suffered loss due to the defamation including monetary loss. On perusal of Ex.A1 to A4 namely the complaint, the FIR in Cr.No.874/2009 registered by the 3rd defendant and the 161 statement of the 1st and 2nd defendant it is evident that a complaint had been lodged by the 2nd defendant as against the plaintiff for the offence u/s.417 and 376 IPC and on perusal of Ex.A6 it is evident that the 3rd defendant had laid charge sheet as against the plaintiff for the offence u/s 417, 376 based on the complaint and statements obtained from the witnesses and based on the DNA report of the forensic science department. On perusal of Ex.A5 it is evident that as early as 20.07.2012 the forensic science department had examined the blood samples of the plaintiff and on a comprehensive analysis had found that the plaintiff is lacking an ALLELE which he ought to have contributed to the child Alka and the child Alka is lacking either of the Alleles present in the plaintiff and plaintiff is excluded from the paternity of the female child Alka. On

perusal of Ex.A7, A8 it is evident that the plaintiff had filed criminal M.P.No.1407/2014 before the Mahila Court under 173(8) Cr.P.C for further investigation in the crime No.874/09 in view of the DNA report received under Ex.A5. Further on perusal of Ex.A9 and Ex.A10 it is evident that the 1st and the 2nd defendant as list witness 1 and 2 had deposed as PW1 and PW2 in the Sessions Case 279/2013 and on perusal of Ex.A11 it is evident that the plaintiff had filed petition u/s 173(8) Cr.P.C for further investigation in respect of the differences between the result in the DNA test and the version of the victim girl. On perusal of Ex.A12 it is evident that the Honourable High Court in Crl.R.C.No.595/2014 filed as against the Order passed in Crl.M.P.1407/2014 had held that since the medical witness and forensic lab scientific officer were not examined on the date of the Crl.M.P. the petitioner can move application later on. On perusal of Ex.A14 it is the 2nd DNA report of the Forensic Science Department dated 5.11.2015 conducted on the direction of the Honourable High Court wherein also it had been concluded that from the DNA typing results of the samples it is found that the alleged father Mr.Shathyan is excluded from the paternity of the female child Alka @ Sarani. Further on perusal of Ex.A15 the Judgment passed by the Mahila Court in

S.C.279/2013 on 10.02.2016 the Honourable Mahila Court had held that the DNA test had turned negative and it is impossible to ignore the result and the test result almost exculpate the accused from the charges and the evidence of the prosecutrix does not inspire confidence and hence had acquitted the accused for the offences u/s 417, 376 IPC. On perusal of Ex.A16 and A17 it is evident that the plaintiff had issued notice to all the defendants claiming damages for the malicious prosecution and causing damage to his reputation as well as his family and the defendants had received the notice and had not sent any reply and records reveal that the 1st and the 2nd defendant had entered appearance through counsel on receipt of suit summons but subsequently had not filed written statement and had remained exparte. Further on perusal of Ex.A10 the evidence of the mother of the prosecutrix she had categorically stated in her cross examination that during the year 2009 there was no talking terms between her family and the plaintiff/accused family and during those period she had been compatible with one Ravi family and due to which there was no talking terms between the family of plaintiff/accused and her family and from the beginning of 2009 itself they would not go to the house of the plaintiff/accused and no one from plaintiff/accused used to

come to their house. Admittedly according to the prosecutrix two months prior to the date of complaint that is on 12.10.2009 the victim had been complaining of stomach pain and was not able to take food and on enquiry the victim had stated that 4 months prior the plaintiff/accused had illegally had sex with her which is contrary to the admission made by the complainant in her evidence during cross examination. Considering Ex.A1 to A17 and considering the report and evidences placed through material evidences by the plaintiff, this court is of the considered view that the 1st and 2nd defendant are only responsible for the malicious complaint levelled against the plaintiff and the plaintiff has proved that the 1st and 2nd defendant had made a false complaint and based upon which the 3rd defendant had prosecuted the plaintiff. The false complaint of the 1st and 2nd defendant having damaged the reputation of the plaintiff and the plaintiff having averred that he could not get a badge for driving commercial vehicle in view of the pendency of the false case and had suffered loss and had spent huge money on legal fees apart from confinement in prison for 95 days and facing trial in respect of the criminal case for nearly 7 years, this court is of the considered view that the plaintiff has proved the damage to his reputation and the pecuniary

loss through material evidence both oral and documentary and is entitled to damages. The 3rd to 5th defendants being Government Law Enforcement Missionary they cannot be held liable for the prosecution as against the plaintiff and the defendants 1 and 2 are liable to pay the damages to the plaintiff and the suit is decreed partly directing the defendants 1 and 2 to jointly and severally to pay the plaintiff the damages of Rs.15 lakhs to the plaintiff.

In the result the suit is decreed partly and the defendants 1 and 2 are directed jointly and severally to pay the damages of a sum of Rs.15 lakhs to the plaintiff with costs. The suit as against the defendants 3 to 5 is dismissed.

Dictated to the steno typist directly, computerized by her, corrected and pronounced by me in the open court this the 1st day of February 2020.

XVIII Additional Judge,
City Civil Court, Chennai.-1

Plaintiff side witnesses:-

PW1 - Tr.Santhosh @ Sathyan (plaintiff)

Plaintiff side Exhibits:-

Ex.A1 - Certified copy of complaint lodged by the 2nd defendant
on 12.10.2009 before G5 secretariat colony police station

- Ex.A2 - Certified copy of FIR registered against the plaintiff on 12.10.2009
- Ex.A3 - Certified copy of 161 statement of 1st defendant
- Ex.A4 - Certified copy of 161 statement of Dr.Kamalakshmi Krishnamoorthy, Deputy Director and Asst.Chemical Examiner to Govt.Forensic Science Department, Chennai
- Ex.A5 - Certified copy of DNA report dated 20.07.2012
- Ex.A6 - Certified copy of Final Report filed by 3rd defendant against the plaintiff dated 1.10.2012
- Ex.A7 - Certified copy of petition filed by the plaintiff in Crl.M.P.No.1407/2014 for further investigation
- Ex.A8 - Certified copy of counter filed by the 3rd defendant in Crl.M.P.No.1407/2014
- Ex.A9 - Certified copy of deposition of 1st defendant recorded in S.C.No.279/2013 on the file of Mahila Court, Chennai dated 19.11.2013
- Ex.A10 - Certified copy of deposition of 2nd defendant recorded in S.C.No.279/2013 on the file of Mahila Court, Chennai dated 19.11.2013

- Ex.A11 - Certified copy of petition filed by the plaintiff in
Crl.M.P.No.4583/2015 for further investigation
- Ex.A12 - Certified copy of Order of the High Court, Madras in
Crl.R.C.No.595/2014 dated 20.6.2014
- Ex.A13 - Certified copy of counter filed by the 3rd defendant in
Crl.M.P.No.4583/2015 dated 4.7.2015
- Ex.A14 - Certified copy of DNA report given by Forensic Science
Department dated 5.11.2015
- Ex.A15 - Certified copy of Judgment Passed in S.C.No.279/2013
dated 10.02.2016
- Ex.A16 - Office copy of Notice issued by the plaintiff to the
defendants along with postal receipts issued by the postal
department dated 16.7.2016
- Ex.A17 - Served original A/D cards.

XVIII Additional Judge,
City Civil Court, Chennai.-1