

IN THE COURT OF THE ADDITIONAL SUB JUDGE-II OF THRISSUR

Present :-

SRI. BIJU V.G., ADDITIONAL SUB JUDGE-II

Wednesday, the 29th day of June, 2022/8th Jyeshtham, 1944 SE.

O.S.128/2019

Plaintiff:

Dileep Ganesh, aged 43 years, S/o. Late T.M.Ganesh,
Tharayil House, Kalamuri Desom,
P.O.Kaipamangalam, Kaipamangalam Village,
Kodungallur Taluk, Pin-680681.
By Adv.P.J.Jobi & Adv.Jisha Jobi.

Defendant:-

Patson Jose, aged 43 years, S/o.Late K.A.Jose, Kuthur
Vellattukara House, Mohana Vilas, Mylipadam
Thrissur, Pin-6800020 Now residing at Mohan Villa,
First stage, 2nd Phase, 9th Main Road, Gokul
Extentions,Mathikeara, Bangalore-560054.
Exparte.

The suit is coming on for hearing today, the court delivered the following.

J U D G M E N T

Suit for damages.

2. Case of the plaintiff, in brief, is as follows: - Plaintiff is hailing from a reputed family and he was working as sales manager abroad in reputed companies. The defendant is a childhood friend of the plaintiff and the relationship between plaintiff and defendant began to faint when the matrimonial relationship between the defendant and his wife strained due to the personal issues between them. The plaintiff intervened in the matter as a

well-wisher with a bonafide intention to resolve the dispute by advising the defendant to let go of his petty ego and reconcile with his wife. However the defendant went ahead with the decision to divorce his wife and filed OP.89/2017 raising false and baseless allegations of adultery against the plaintiff to make the process of divorce easier. The intention behind the petition is to force the defendant's wife to get divorce by resolving such cheap and down right tactics so that the lady would be subjugated to pressure of giving the defendant a divorce without any monetary claims. The allegations made against the plaintiff in paragraph Nos.6, 9, 12 and 13 of the divorce petition are baseless, false and highly defamatory to the plaintiff. After filing the divorce petition, the defendant had indulged in sadistic pleasure of circulating the copies of petition and creating plausible stories and gossip connecting the plaintiff and the defendant's wife in the circle of well wishers and friends of the plaintiff as well as that of his wife. The defendant was fully aware that there was no illicit relationship between his wife and plaintiff and he made false allegations to the plaintiff's wife, friends and family members and relatives and it resulted in a bruising harmonial relationship existing between the plaintiff and his wife. The plaintiff has been deeply hurt and affected by the acts of the defendant. When the divorce petition came up for evidence before the Family Court, Thrissur, the defendant had narrated the false stories in the open court on several occasions. When the case was

transferred to Family Court, Ernakulam, he continued those processes in that court also. When the defendant's pressure tactics ended in achieving his desired results, he withdrew the divorce petition from the Family Court, Ernakulam and filed a joint petition for divorce by mutual consent. Even after withdrawing the divorce petition, the defendant had made false allegations against the plaintiff directly and through phone calls to the plaintiff's friends and relatives on various dates. The defendant's false allegations both in printed form and verbal form are highly defamatory, malicious and were made with ulterior motive to lower the reputation in the minds of the people who know the plaintiff. The plaintiff had to resign his job abroad as sales manager due to the false allegations and he had suffered loss of reputation among the friends, relatives and family members. The matrimonial relationship between the plaintiff and wife became strained due to the impact of defamatory allegations made by the defendant. The acts of the defendant caused huge damage and affected the reputation and goodwill of the plaintiff and he had to undergone heavy torture and mental agony. The defendant made false allegations with the ulterior motive to defame the plaintiff. Though the acts of the defendants resulted in heavy loss to the plaintiff which could not be estimated in terms of money, for the sake of the litigation, the plaintiff estimates the damage to the tune of Rs.50,00,000/-. Hence the suit is filed for realisation of that amount from the defendant.

3. The defendant appeared through counsel and filed a written statement denying the averments in the plaint. According to the defendant, the facts stated in paragraph Nos.6, 9, 12 and 13 of OP.89/2017 are true facts and there is no defamation caused to the plaintiff. The plaintiff had an illicit relationship with the defendant's wife and there are documents to prove the same. When the defendant filed the divorce petition, as per the request of the wife, a joint petition was filed for divorce. The plaintiff has not sustained any loss as alleged in the plaint. Hence the defendant requests to dismiss the suit with costs.

4. On the basis of the above said pleadings and the documents produced by the parties, the following issues were raised for consideration:-

1. Are the averments made in paragraph Nos.6,9,12 and 13 of the petition filed by the defendant as OP.89/2017 before the family Court, Thrissur amount to libel of the plaintiff ?
2. Whether those averments are true facts and made in good faith and honestly as contended by the defendant?
3. Is the plaintiff entitled to get decree for Rs.50,00,000/- as damages for defamation?
4. What order as to costs ?

5. When the case was included in the special list for trial, the defendant opted to remain exparte. The plaintiff was examined as PW1 and Ext.A1 to A7 were marked on the side of the plaintiff. Heard counsel for the plaintiff.

6. The case of the plaintiff is that he is hailing from a reputed family and he was working as sales manager abroad in reputed companies. According to the plaintiff, the defendant is a childhood friend of the plaintiff and the relationship between plaintiff and defendant began to faint when the matrimonial relationship between the defendant and his wife strained due to the personal issues between them. The case of the plaintiff is that though he had intervened in the matter as a well-wisher with a bonafide intention to resolve the dispute, the defendant went ahead with decision to divorce his wife and filed OP.89/2017 raising false and baseless allegations of adultery against the plaintiff in paragraph Nos.6, 9, 12 and 13 of the petition to make process of divorce easier. Ext.A1 is the copy and Ext.A2 is the certified copy of the petition in OP.89/2017 filed by the defendant against his wife and the plaintiff before the Family Court, Thrissur. There are allegations in paragraph Nos. 6, 9, 12 and 13 of Ext.A1 petition that the plaintiff had an illicit relationship with the defendant's wife. If those allegations are false, those are highly defamatory, malicious and were made with ulterior motive to lower the reputation in the minds of the people who know him as contended by the

plaintiff. The defendant has taken the stand in the written statement that the statements contained in Ext.A1 are correct and true. The further case of the plaintiff is that the defendant had withdrawn the divorce petition and filed a joint petition for divorce by mutual consent. OP.89/2017 was transferred to the Family Court, Thrissur as OP.2936/2017. Ext.A3 shows that the petition was dismissed for nonappearance of the petitioner on 17.07.2018. According to the plaintiff, he had to resign his job abroad as sales manager due to this false allegations and he had suffered loss of reputation among the friends, relatives and family members, and the matrimonial relationship between the plaintiff and wife became strained due to the impact of defamatory allegations made by the defendant. Ext.A4 is the copy of the petition in OP.260/2022 filed for divorce by the plaintiff's wife against the plaintiff raising the allegation that the plaintiff had an illicit relationship with the defendant's wife. Ext.A5 is the copy of the petition in OP.1436/2021 filed by the plaintiff's wife and children for declaration that the documents executed by the plaintiff with respect to the petition schedule properties are fraudulent documents and for perpetual injunction. The case of the plaintiff is that the acts of the defendant caused huge damage and affected the reputation and goodwill of the plaintiff and he had to undergone heavy torture and mental agony. Hence the suit was filed for realisation of Rs.50,00,000/- as damages from the defendant. Ext.A6 is the copy of the lawyer notice issued by the plaintiff to the

defendant demanding compensation of Rs.50,00,000/-. Ext.A7 is the reply notice issued by the defendant. Subsequently, the claim was reduced to Rs.10,00,000/- by way of amendment.

7. PW1 filed an affidavit in lieu of examination in chief reiterating the averments in the plaint. Since the defendants remained ex-parte, the evidence adduced by PW1 remained unchallenged. I find no reason to disbelieve the testimony of PW1. The allegations levelled against the plaintiff in Ext.A1 petition are per se defamatory. Hence the burden is on the defendant to prove that those averments in Ext.A1 are true facts and made in good faith and honestly. Since the defendant opted to remain ex parte, no evidence was adduced to prove his only defence of justification by truth. Hence the defence plea of justification by truth has not been established. Considering the status of the plaintiff, his reputation in the society and loss of reputation caused on account of the impugned publication and also considering the mitigating circumstances, the compensation claim of Rs.10,00,000/- is a reasonable one. So, the plaintiff has proved his case by adducing cogent and reliable evidence. Hence the plaintiff is entitled to get a decree as prayed for.

In the result, the suit is decreed allowing the plaintiff to realise an amount of Rs.10,00,000/- (Rupees ten lakhs only) with interest at the rate of 6 % per annum from the date of suit till the date of realisation from the

defendant and his assets. The plaintiff is entitled to relaise the costs of the suit from the defendant.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open court on this the 29th day of June, 2022).

Sd/-

BIJU.V.G

ADDITIONAL SUB JUDGE-II

APPENDIX:

Plaintiff's Exhibits:-

A1		Copy of the petition OP 89/2017 before the family court Thrissur
A2	19.01.2017	Certified copy of the original petition in OP 89/2017 before the family court Thrissur.
A3	17.07.2018	Certified copy of order in OP 2296/2017 before the family court Ernakulam
A4	26.02.2022	Certified copy of the original petition in OP 260/2022 before the family court, Irinjalakuda
A5	09.12.2021	Certified copy of the original petition in OP 1436/2021 before the family court, Irinjalakkuda
A6		Copy of lawyer notice
A7		Reply notice

Plaintiff's Witness:-

PW1 22.06.2022 Dilip Ganesh

Id/-

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Copied by: Sini
Compared by: Anagha

JUDGMENT
in O.S.128/2019
Date: 29.06.2022