

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2322/2006

Date of decision : 27th February, 2008

SUBHASH MOTWANI & ANR Petitioners
Through Mr. Ashok Gurnani, Mr. Ranjan Roy and Mr.
Rahul Pandey, Advocates.

versus

M/S FRANK FINN MANAGEMENT CONSULTANTS Respondent
Through Mr. Ajit Nair, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

1. Whether Reporters of local papers may be allowed to
see the order? Yes
2. To be referred to the reporter or not? Yes
3. Whether the order should be reported in the Digest? Yes

Dr. S. Muralidhar, J. (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of Criminal Complaint No. 297/1 of 2003 titled “*M/s Frank Finn Management Consultants v. Subhash Motwani & Another*” pending in the Court of the Metropolitan Magistrate (MM), Rohini Courts, Delhi under Section 500 IPC.

Background facts

2. The complaint by M/s Frank Finn Management Consultants (‘FFMC’) stated that it is a unit of Frank Finn Aviation Services Private Limited, and is engaged in basic cabin crew training and providing assistance to the trainees in finding jobs in

reputed international and domestic airlines. According to FFMC, Mr. Subhash Motwani Petitioner No.1 (arrayed as Accused No. 1 in the complaint) and Mr. S.S.Motwani, Petitioner No. 2 (arrayed as Accused No. 2 in the complaint), had around the year 2000-01 started a similar training course as that offered by FFMC. The Petitioner No.1 was described as a Director of the Institute of Hotel Cargo and Tourism Management. It was stated that Petitioner No.1 along with Petitioner No.2 were the Editors and publishers of a journal/magazine known as ***“Opportunities Today”***. It was stated that in the September 2001 issue of the said journal, which is also circulated in Delhi, an article under the title ***“Flights of Fancy: Crash Courses or Crashing Hopes!?”*** was published which made several incorrect statements about the complainant FFMC. The said article was also published on the Internet through a website of the accused. It was alleged that although the complainant was not named in the article, the suggestion in the article was clearly referred to it. It was stated that the article was defamatory and intended to harm the reputation of the complainant.

3. The complainant further stated that a legal notice had been issued on 9th October 2001 calling upon the accused to publish the correct position, tender an unconditional apology in the magazine and compensate the complainant in the sum of Rs. 25 lakhs. By its reply dated 29th October 2001 the accused denied the charges. Thereafter on 11th February 2002, the complainant filed Suit No. 367 of 2002 in this Court against the accused seeking damages in the sum of Rs. 25 lakhs for defamation. The petitioners here filed their written statement in the aforementioned suit on 28th August 2002. Issues were framed on 29th April 2004.

4. Prior to issues being framed, but subsequent to the written statement being filed,

the aforementioned criminal complaint was filed by the complainant FFMC against the petitioners in the Court of the learned MM on 2nd September 2003. The pre-summoning evidence of CW1 Arun Kumar, the Special Power of Attorney Holder of FFMC was recorded in part on 28th November 2003. On 29th November 2003, the evidence of CW2 Shri Mahinder Pal Singh who produced the original records of Suit No. 367 of 2002 was recorded. The further statement of CW1 was recorded on 3rd January 2004. On the basis of the complaint and the pre-summoning evidence, and the documents got marked through all these witnesses, the learned MM by an order dated 27th June 2005 came to the conclusion that a prima facie case for an offence of criminal defamation punishable under Section 500 IPC was made out against the accused. Accordingly summons was issued to the petitioners for facing trial for the aforementioned offence.

5. The present petition was filed on 21st April 2005 seeking quashing of the complaint. Notice was issued on 26th April 2006. However, no stay of the proceedings before the trial court was granted.

Submissions on behalf of the petitioner

6. Mr. Ashok Gurnani, the learned counsel, appearing for the Petitioner submits as under:

- (a) The civil suit pending in this Court on identical facts, having been filed on 11th February 2002 and written statement having been filed on 28th August 2002, the filing of the criminal complaint on 2nd September 2003 after knowing the defence of the accused as stated in the said written statement was a clear abuse of the process of law. Also, it would prejudice the right

of the accused to a fair trial enshrined under Article 21 of the Constitution. Relying on the judgment in *Inder Mohan Goswami v. State of Uttaranchal AIR 2008 SC 251*, it is submitted that the powers of this Court under Section 482 CrPC were wide enough to even quash the criminal proceedings holding them to be an abuse of the process of the court.

(b) The evidence of both the plaintiff FFMC and the defendants (the petitioners here) in the civil suit has already been recorded and the suit is listed for final arguments. In view of the civil suit having reached the last stage, there was no justification in allowing the criminal proceedings to continue.

(c) Referring to the judgment in *M.S. Sheriff v. State of Madras 1954 SCR 1144*, it is submitted that in the present case this Court ought to direct in the interests of justice that the criminal proceedings ought not to proceed till the conclusion of the civil suit.

Simultaneous proceedings not bad in law

7. This Court does not find any ground having been made out by the petitioner for interference by this Court with the criminal complaint in exercise of its powers under Section 482 CrPC. The facts which are not in dispute are that the allegedly defamatory article was published in the September 2001 issue of “Opportunities Today”. The suit was filed on 11th February 2002 and the written statement was

filed on 20th August 2002. The criminal complaint was filed on 2nd September

2003. On the date of the filing of the criminal complaint, therefore, no doubt the written statement had been filed. It is only thereafter that the issues were framed in the suit on 29th April 2004 and the evidence of the parties was led in the suit. Meanwhile the pre-summoning evidence of the complainant and another witness was being recorded in the Court of the learned MM between November 2003 and January 2004. Cognisance was taken and summons issued by the learned MM on 27th June 2005. The civil suit and the criminal complaint have therefore progressed simultaneously.

8. The filing of criminal proceedings on the same set of facts that would constitute a civil suit as well is not unknown. In fact, arising out of the same set of facts that might constitute defamation invariably a civil suit for damages would be filed and a criminal complaint can also be separately filed. The simultaneous progression of criminal proceedings with a civil suit on the same set of facts is, far from being exceptional, accepted as legitimate course available to an aggrieved person seeking to invoke criminal and civil remedies, which are separate and distinct. Also, there is no requirement in such instances for the criminal proceedings to await the conclusion of the civil disputes. This position has explained been recently reiterated by the Supreme Court in *Standard Chartered Bank v. Directorate of Enforcement 2006 [1] JCC 488=AIR 2006 SC 1301*. It is no doubt true that in *Inder Mohan Goswami*, the Supreme Court has stated that the criminal proceedings, should not be used as an instrument of vendetta in a case which is essentially of a civil nature. However, that determination will have to depend on the facts and circumstances of every case. As explained by a Division Bench of this Court in *Anuj Trading Co. v. Electrolux Kelvinator Ltd. II (2007) BC 107*

(DB), the mere pendency of a civil proceeding cannot preclude the criminal

proceedings on the same set of facts from progressing. In that view of the matter, it is not possible to hold that the mere filing of criminal complaint in the instant case after the filing of the civil suit would constitute an abuse of the process of law. This contention is accordingly rejected.

No prejudice to the right to a fair trial

9. Mr. Gurnani sought to raise the larger issue of the right to a fair trial under Article 21 of the Constitution. His contention was that the defence of the Petitioners as accused in the criminal complaint already stood disclosed by way of the written statement and the evidence led on their behalf as defendants in the civil suit. The disclosure of their defence even before the commencement of the trial would according to him prejudice the right of the petitioners to a fair trial. This Court is unable to agree with this submission. While it is true that the standard of proof in criminal proceedings is higher than that of civil proceedings, the right of the accused in the criminal trial to silence cannot be said to be taken away merely because his possible line of defence stands disclosed in the civil proceedings. In fact it is possible that he has additional statutory defences available to him in criminal proceedings which he may not be able to avail of in the civil suit. That apart, an accused cannot be said to be prejudiced because of what he may have stated on oath voluntarily before a civil court during the trial of the suit. In the present case, even when the petitioners deposed in the civil; suit they were aware of the pendency of the criminal complaint. If indeed what they have spoken on oath before the civil court is the truth then they should not be apprehensive about such statements prejudicing their defence in the criminal trial. By the very nature of these proceedings it would be inevitable that one of these proceedings, i.e., civil or criminal will progress faster than the other. As explained by the Supreme Court in

M.S. Sheriff it will depend on the facts and circumstances of every case whether one court should await the decision of the other in the similar set of facts. At the same time, as reminded by the Supreme Court in **Standard Chartered Bank**, the finding in the civil proceedings need not necessarily bind the criminal court which will have to independently decide the guilt or innocence of the accused on the basis of the evidence brought on record in those proceedings by of course applying the greater standard of proof. Also, consistent with the right of the accused to silence it will be for the complainant to establish his case beyond reasonable doubt. If the complainant as plaintiff has lost the civil suit the accused can certainly take advantage of that result except where in the criminal proceedings other independent evidence that can substantiate the guilt of the accused is produced. On the other hand, merely because the complainant has succeeded in the civil suit cannot result in the automatic conviction of the accused in the criminal proceedings. This is because the standard of proof in criminal proceedings is higher. Viewed from any angle, it cannot be said that the disclosure of the possible line of defence of the accused as can be gleaned for the written statement and evidence in the civil suit would prejudice the fundamental right of the accused under Article 21 of the Constitution to a fair trial in the criminal court. Even otherwise as regards the powers of this Court under Section 482 CrPC to quash the criminal proceedings, this Court finds that no grounds have been made out as far as the present case is concerned. As reminded by the Supreme Court in **M.N.Damani v. S.K.Sinha AIR 2001 SC 2037**, following the earlier decisions in **Sewakram Sobhani v. R.K.Karanjia AIR 1981 SC 1514** and **Shatrughna Prasad v. Rajbhau Surajmal Rathi (1996) 6 SCC 263**, the High Court should be slow in interfering in criminal complaints under Section 500 IPC at the pre-trial stage.

Should criminal proceedings await conclusion of the civil suit

10. As regards the submission that the civil proceedings are at the final stage and therefore the learned MM should await the completion of the civil proceeding, this Court would like to observe that under Section 309 (2) CrPC, the learned MM has sufficient powers to adjourn the proceedings for reasons to be stated in writing. The judgments cited by the learned counsel for the petitioner could well be placed before the learned MM in support of the request for an adjournment till such time the civil suit is decided by this Court. As and when such a request is made in terms of Section 309 (2) CrPC by the petitioner, the learned MM will pass appropriate orders in accordance with law.

11. For the aforementioned reasons, this Court does not find any reason to interfere in exercise of its powers under Section 482 CrPC. The petition is accordingly dismissed with no order as to costs. No observation made in this order is intended to influence the opinion to be formed by the trial court upon an independent assessment of the evidence that comes on record.

12. The trial court record be sent back immediately. A certified copy of this order will be delivered to the trial court concerned within one week from today. Order dasti to the parties.

S. MURALIDHAR, J.

FEBRUARY 27, 2008

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