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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 14.08.2018

CM(M) 931/2018 & CM APPL. 32738-32739/2018

RAKESH BHARDWAJ

..... Petitioner

Through Mr. B.P. Singh, Mr. Ankur
Madav, Mr. Anubhav Gupta,
Mr. Vikas Poonia, Mr. Amit
Singh, Advs.

versus

JAI GUPTA

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

% **14.08.2018**

ANU MALHOTRA, J.

1. Vide the present petition, the petitioner assails the impugned order dated 24.04.2018 of the ADJ-05, South, Saket, New Delhi in CS No. 9190/16 whereby an application under Order VII Rule 11 CPC filed by the applicant herein as defendant thereof was declined, it having been observed *inter alia* to the effect that for deciding the said application in the CS No. 9190/16, the plaintiff has specifically averred that the allegations made against him are defamatory *per se*. It was also observed vide the said impugned order that the plaint

disclosed a cause of action on the basis of contents therein and that it was to be proved by the defendant i.e. the applicant / petitioner during the trial that the plaint did not give rise to a cause of action and that the plaint could not be summarily rejected.

2. Copy of the petition that has been filed by the respondent to the present petition to whom so far no notice has been issued the said suit filed by the respondents to the present petition, arrayed as the plaintiff, to the suit in CS No. 9190/16 indicates that itself seeks damages of Rs.20 lakhs alongwith future interest @ 12% per annum apart from costs.

3. According to the averments made in the said plaint, the defendant i.e. the present petitioner herein was appointed as the President of an illegally formed / unregistered and sham RWA named “Sheikh Sarai, Phase-I, MIG Flats Owners Association” which was neither registered nor registered under the Societies Registration Act and was a non-entity.

4. The averments made in the plaint *inter alia* indicate disputes between the parties pursuant to which there was FIR No. 325/14 under Sections 506/509 of the Indian Penal Code, 1860 also registered against the plaintiff on the complaint made by the defendant i.e. the present petitioner herein to the effect that the same was on the basis of the concocted allegations made by the defendant to the said suit through a false and concocted complaint of a resident of the locality. The averments made in the plaint indicate vide para 17 thereof that subsequently a compromise agreement was executed on 19.01.2015

between the plaintiff, arrayed as the respondent to the present petition and the defendant i.e. the petitioner of the present petition and the other residents of the colony vide which the plaintiff had agreed to withdraw seven different cases filed by the plaintiff and had agreed to the withdrawal of the FIR No. 325/14 under Sections 506/509 of the Indian Penal Code, 1860 by the plaintiff. The said plaint however indicates that after the matter had been settled, the matter was referred to mediation and after the said matters were settled in mediation all the cases between the parties were withdrawn in the Trial Court in March-April, 2015 and thereafter a meeting was called on 08.02.2015 by the defendant i.e. the petitioner herein to which all residents of the colony were invited. The submissions made in the plaint however indicate to the effect that the plaintiff i.e. the respondent on the request of the residents of the colony had been deprived of Rs.1,000/- by the defendant on the pretext of collecting funds for regularization of the unauthorized two room structure being used by the defendant as the office of the non-existent RWA on 27.07.2015 filed a complaint for extortion, cheating and intimidation against the defendant which was registered as DD No. 62B with the PS Malviya Nagar.

5. The complaint of the said suit i.e. the respondent to the present petition alongwith other office bearers of the registered RWA i.e. Sh. Joseph, Sh. Jai Gupta, Sh. Somnath Ramphal, Sh. Dilip Krishnan are stated to have received summons for appearance on 05.10.2015 in a proceedings u/s 107/150 Cr.P.C. from the Court of the ACP, South District, Vasant Vihar, New Delhi and that on appearing before the

Court of the ACP, South District, the plaintiff of the said suit for the first time after having knowledge that the defendant had compromised and withdrawn all the cases in January, 2015 and had chosen to make seven handwritten complaints in his own handwriting to the SHO PS Malviya Nagar against the members of the new RWA including the plaintiff i.e. the respondent herein in which he had made specific defamatory accusations / imputations against the plaintiff with the criminal intent to further tarnish his character, image and reputation so as to defame him and that the said complaints had been made with the sole malafide intent to lower his image, reputation, standing and character in the eyes of the society at large and more particularly in the eyes of the residents of the colony in which the plaintiff has been residing since 1979 and the contents of the said complaints are depicted in the plaint by the plaintiff of the said suit, arrayed as the respondent to the present petition as paragraphs A to H to the effect : -

“A. That in the complaint dated 17 May, 2015 addressed to Sh. Vijay Singh Chandel, SHO, PS Malviya Nagar, Defendant the Defendant further wrote in his own handwriting on page No. 1 (para No. 1) that :

“Aap ko phela bhi avgat karaya gaya hain ki nimnvarnit vyaktiyo dwara bar bar humari colony main utejnatmak aashantikarak vatavaran banana ke pryash kiya ja aha hai in vyaktiyo ke am or paate nimn varnit hai : - Mr. P.T. Joseph, Flat No. 24-A, Ms. Nirupuma Dutta, Flat No. 45-C, Mr. Jai Gupta, Flat No. 15-C, MIG, Mr. S. Rampal, Flat No. 24-B”. (Defendant have been informed earlier that the following persons are attempting to create in atmosphere of incitement and disturb the peace. The name of the persons are as given below : - Mr. P.T. Joseph, Flat No. 24-A, Ms. Nirupuma Dutta, Flat No. 45-

C, Mr. Jai Gupta, Flat No. 15-C, MIG, Mr. S. Rampal, Flat No. 24-B”.)

B. That in the compliant dated 20th May, 2015 addressed to Sh. Vijay Singh Chandel, SHO PS Malviya Nagar, Defendant the Defendant further wrote in his own handwriting on page no. 1 (para No. 1) that:

“Kuch anadhikarit vyaktiyo : - Mr. P.T. Joseph, Flat No. 24-A, Ms. Nirupuma Dutta, Flat No. 45-C, Mr. Jai Gupta, Flat No. 15-C, MIG, Mr. S. Rampal, Flat No. 24-B” dwara humari colony ke mukhiya gateon per pant kern eke bhane se ukt gateon, board per apna kabja banana ka avadh kariya aarambh ker diya hai.” (some unauthorised persons :- Mr. P.T. Joseph, Flat No. 24-A, Ms. Nirupuma Dutta, Flat No. 45-C, Mr. Jai Gupta, Flat No. 15-C, MIG, Mr. S. Rampal, Flat No. 24-B” have commenced the illegal work of taking possession of the gates and boards of our colony on the pretext of getting the same painted).

C. That in the complaint dated 5th June, 2015 addressed to Sh. Vijay Singh Chandel, SHO, PS Malviya Nagar, Defendant the Defendant further wrote in his own handwriting on page No. 1(subject) that:

“mahila ko aage / aad mai jhuthe cason (mahila utpidan aadi se sambandhit) mai shadyantr karke humari r.w.a. ke padadhakari ko fashane ka bar bar prayash – dwara Nirumuma Dutta (mahila) r/o Flat No. 45-C, M.I.G. DDA Flats, Sheikh Sarai, Phase-I, New Delhi – 17 aav sathijan; Jai Gupta r/o Flat No. 15-C, M.I.G. DDA Flats, Sheikh Sarai, Phase-I, New Delhi – 17”. (repeated attempts are being made by bringing in front under the cover of a woman to lodge false cases (connected with harassment of woman) by conspiring a trap the office bearers of R.W.A. by Ms. Nirupuma Dutta and associate Jai Gupta.

D. That in the complaint 5th June, 2015 addressed to Sh. Vijay Singh Chandel, SHO PS Malviya Nagar, the Defendant further wrote in his own handwriting on Page No. 1-2 that ;

“Shriman ji, uprkt Gamhir wishya mein aapko avgat karana hai ki uprukth vyaktiyon “Nirupama” Ve “Jai Gupta” ne mere ko, Rakesh Bhardwaj r/o 18-D, MIG, DDA Flats, Sheikh Sarai, Ph-I, N.D-110017 ko jo ki lagbhag 11 varshon (varsh 2004 se) sa uprukth varnit “Residents Welfare Association” kaa adhyaksh padh par Aasin ho kar samaj sawa karya mein rat hoon par Mali prakar se purvabhayas karte hue shadyantra gambhir roop se rachne ka sakriya prayas prarambh kar diya hai”. (Sir, in respect of the above subject I wish to inform Defendant that the above mentioned persons Nirupama Dutta and Jai Gupta have started seriously conspiring against me as I have been the President of the RWA for the last 11 years and have been involved in the welfare of the society).

E. That besides the above reproduced para of the complaint of the Defendant dated 5th June, 2015 addressed to Sh. Vijay Singh Chandel, SHO, PS Malviya Nagar, Para No. 2 of the said letter are not being reproduced here for the sake of brevity but the contents of the para No. 2-5 are highly defamatory in their entirety and are loaded with defamatory imputations / institutions / allegations against the Plaintiff which have been intentionally been made/levelled by the Defendant with the intention to damage and harm the standing and reputation of the plaintiff.

F. That further in the last para of the complaint dated 05/06/2015 on page 3 the Defendant in order to further defame the Plaintiff wrote in his own handwriting that “Sath-Sath hi ukt Ashantikarak Vyaktiyon ka charitara ki bhi jaanch karviye jaye” (That the character of the above said persons should also be investigated).

G. That in last long complaint consisting of 11 Pages dated 12th July, 2015 addressed to Sh. Vijay Singh Chandel, SHO, PS Malviya Nagar, the Defendant with mala fide and criminal intent to further character assassinate the Plaintiff and to slander his character finally wrote in his own handwriting on Page No. 10 under the heading “SABHI VYAKTIYON KE CHARITRIK JAANCH KA NIVEDAN” that;

“Jai Gupta Ji, P.T. Joseph Ji, Somnath Rampal Ji and Dilip Krishnan Ji ki bhi ukth jach ko Nirupuma Ji ki jach ke hi samay kaal varsh 1994 se aaja hate” (the character inquiry / investigation in respect of Jai Gupta Ji, P. T. Joseph Ji, Somnath Rampal Ji and Dilip Krishnan Ji be done from 1994 onwards also along with the enquiry in respect of Nirupuma Ji)

H. That in last long complaint consisting of 11 Pages dated 12th July, 2015 addressed to Sh. Vijay Singh Chandel, SHO, PS Malviya Nagar, the Defendant with mala fide and criminal intent to further character assassinate the Plaintiff and to slander his character finally wrote in his own handwriting on Page No. 7 that;

“Jai Gupta Ji, ne varsh 2007 se apna chanda nahi diya o ki Rupees 30,000 banta hai, ukth vyaktiyo ko chokidar 24 ghante humari R.W.A. dwara unke makano v Karon ki dekhbhal/raksha heu diye jate gaye hai unke apne koi chokidar vyaktitavrup se bhi nahi hai” (Jai Gupta has since 2007 not paid his subscription amounting to Rs.30,000/-. They have been provided with 24 Hrs. Chokidar by our R.W.A. to protect their home and cars. They do not have their own chokidar).”

6. It has been submitted through the said plaint by the plaintiff of the said suit i.e. the respondent arrayed to the present petition that the said complaints which were seven handwritten complaints would be published in some judicial proceedings or the other and would on

further publication certainly bring disrepute to the plaintiff and defame him.

7. It has been thus submitted on behalf of the present petitioner that the Kalandras u/s 107/150 Cr.P.C. having been filed in relation to the said complaints filed by the respondent, are yet to be adjudicated upon and thus it cannot be held that there were defamatory remarks made in the said complaint.

8. Reliance has also been placed on behalf of the petitioner on a catena of verdicts to contend that the application under Order VII Rule 11 CPC ought to have been allowed by the Trial Court and reliance in relation thereto has been placed on behalf of the petitioner on the verdict of the High Court of Bombay at Goa in Second Appeal No. 07 of 2005 decided on 23.05.2012 titled as *Shri Laxman Jairam Malvankar Major, resident of Narva, Bicholim Goa, Indian National, Occupation – Service Vs. Smt. Reshma Ramesh Narvekar of major age, resident of Narva, Bicholim, Goa and Editor “Tarun Bharat” Daily having its office at Belgaum – Karnataka*, on the verdict of the Hon’ble Supreme Court in Crl. A. No. 637/1995 decided on 11.02.1999 titled as *Rajendra Kumar Sitaram Pandey & Etc. Vs. Uttam & Another* AIR 1999 SC 1028, on the verdict of the High Court of Karnataka in Second Appeal No. 334 of 1971 decided on 02.12.1974 titled as *V. Narayana Bhat Vs. E. Subhanna Bhat* AIR 1975 Kant 162, to contend that the statement made to police officer in the complaint was absolutely privileged and did not amount defamation.

9. Reliance was also placed on behalf of the petitioner on the verdict of this Court in CM (M) 687/2017 decided on 10.07.2017 titled as ***Mahadev I. Todale Vs. Frankfinn Aviation Services Pvt. Ltd. and Ors.*** 242 (2107) DLT 273, to contend that merely on the basis of the complaint made allegedly by the petitioner herein to the SHO concerned, no cause of action accrued to file a suit against the petitioner herein by the plaintiff of the said suit i.e. the respondent to the present petition on the ground of malicious prosecution.

10. It is essential to observe that the verdict relied upon on behalf of the petitioner in ***Shri Laxman Jairam Malvankar Major, resident of Narva, Bicholim Goa, Indian National, Occupation – Service Vs. Smt. Reshma Ramesh Narvekar of major age, resident of Narva, Bicholim, Goa and Editor “Tarun Bharat” Daily having its office at Belgaum – Karnataka (supra)*** is on the basis of the evidence led between the parties and qua the premise that for consideration of the application under Order VII Rule 11 CPC it is the contents of the plaint are those which are to be looked into by the Court.

11. It is essential to observe also that in the case relied upon in ***Rajendra Kumar Sitaram Pandey & Etc. Vs. Uttam & Another*** AIR 1999 SC 1028, it is observed categorically to the effect that on a perusal of the allegations made in the complaint, the Hon’ble Supreme Court was satisfied that no case of defamation apparently had been made out and thus the conduct was on the basis of the contents that had been made and the facts and circumstances of the instant case are apparently different.

12. Reliance was placed on behalf of the petitioner on the verdict in ***V. Narayana Bhat Vs. E. Subhanna Bhat*** AIR 1975 Kant 162 in relation to the aspect that allegations made to the police personnel are wholly privileged in the event if the complaint to police resulted in an unsuccessful prosecution, then the person defamed could only claim damages for malicious prosecution and not for defamation and that in case the complaint to police does not result in a prosecution, then also the persons defamed have no remedy in respect of defamatory statements made in such a complaint to the police but if a false complaint is made to the police, the person who makes such a false complaint would be punishable either under Section 182 or Section 211 IPC and that accordingly the persons against whom allegations were made in the complaint to the police goes scot-free and that it was thus held pursuant to the submissions made by the defendant in the complaint to the police officers were absolutely privileged.

13. The factum however that seven complaints had been made to the police officials concerned in question with alleged defamatory allegations *per se* cannot be overlooked and thus the facts of the instant case are not in *pari materia* with the cases relied upon on behalf of the petitioner for as observed vide the impugned order in one of the complaints dated 12.07.2015, contents of which are reiterated in point-G of para-24, the defendant i.e. the petitioner herein had sought an investigation into the character of the plaintiff without any specific allegations against his character.

14. In the facts and circumstances, there is no merit in the petition, which is declined.

ANU MALHOTRA, J

AUGUST 14, 2018/MK

