

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.930 OF 2026
WITH
INTERIM APPLICATION (STAMP) NO.26392 OF 2026

Glenmark Pharmaceuticals Limited, B/2,
Mahalaxmi Chambers, 22, Bhulabhai Desai Road,
Mumbai-400026 through Authorized Representative
Mr.Dinkar Nigam

Appellant

versus

1. Mahalakshmi Enterprises,
Survey No.351/1, Ground Floor, Corporation Door No.2
By-pass road, Avaniyapuram, Madurai-625012.
2. S.Arun Muhukumar,
partner of Mahalakshmi Enterprises,
2A, Bharat Villa, Jawahar 1st Street,
SS Colony, Madurai-625016.
3. S.Sairam, partner of Mahalakshmi Enterprises,
B4, Block-II, Leo Taurus,
33, Panchayat Main Road, Perungudi,
Chennai-600096.
4. S.Lakshmi, partner of Mahalakshmi Enterprises,
3/1, Navel Nagar, SS Colony, 3rd street,
Madurai-625010.

Respondents

Mr.Janak Dwarkadas, Senior Advocate, with Mr.Pradeep Sancheti, Senior Advocate, with Mr.Vivek Kantawala, Mr.Ajit N.Makhijani, Ms.Namrata Vinod and Mr.Rajat Jain i/by MM Legal Associates for Appellant.

Mr.Manoj Shirsat with Mr.Aayush Modi, Mr.Ashray Dave, Ms.Hritika Shroff, Mr.Siddhant Trivedi for Respondent no.1.

Ms.Aayu Saxena for Respondent nos.2 to 4.

CORAM : AARTI SATHE, J.

DATE : 11th September 2026

P.C.

1. This Appeal from Order has been filed under Order XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 (CPC) taking

exception to the order dated 4th September 2026 passed by the learned Judge, Bombay City Civil Court (hereinafter referred to as the “Trial Court”) in Notice of Motion No. 2480 of 2026 in Suit No. 1090 of 2026 (hereinafter referred to as the “impugned order”), *inter-alia* rejecting the aforesaid Notice of Motion filed by the Appellants and rejecting the interim reliefs as sought by the Appellants in the said Notice of Motion.

2. Briefly, the facts are as follows:-

i. The Appellant is a limited company incorporated under the provisions of the Companies Act 1956, engaged in the business of research and development and in the manufacturing, marketing, sale and distribution of a wide range of pharmaceutical formulations, medical preparations, nutraceuticals, and cosmetic products (hereinafter referred to as the “said products”) in India and other markets throughout the world. Respondent No. 1 is a partnership firm engaged in the business of distribution and sale of pharmaceutical formulations, medicinal preparations, nutraceuticals, and cosmetic products, and Respondent Nos. 2, 3, and 4 are partners of Respondent No.1-Firm. It is the Appellant’s contention that Respondent No.1-Firm was carrying on business with the Appellant for the past 15 years.

ii. On 27th December 2021, the Appellant and the Respondents entered into a Distribution Agreement (DA) of even date, appointing Respondent No.1-Firm as its distributor. By way of the aforesaid DA entered into between both the parties, the Respondents were to distribute the products of the Appellant in the territory as more particularly set out in the said DA.

iii. On 8th November 2023, a sanction letter was issued in favour of the Appellant of an amount of Rs. 200,00,00,000/- by the Union Bank of India (hereinafter referred to as “UBI”). It was a channel finance-dealer finance facility. On 4th July 2024, the Appellant sent a recommendation letter to UBI, recommending to grant to the Respondents a sanction limit of Rs. 15,00,00,000/-. On 20th July 2024, net worth certificate was submitted by the Respondents. Pursuant to the aforesaid recommendation, a sanction letter dated 24th September 2024 was issued by UBI, granting the Respondents a credit limit of Rs. 15,00,00,000/-. It is the Respondents’ contention that the Appellant’s finance team allegedly instructed UBI to project artificial growth in financial figures. It is further the Respondents’ contention that the sanction loan funds were credited directly into the Appellant’s Bank of India account instead of the Respondents’ account. It is therefore their contention that over the next three months, funds were transferred to the Appellant’s account on its instructions rather than the UBI loan accounts.

iv. It is the Respondents’ contention that, on 14th November 2024, the Appellant emailed its distributors, including the Respondents, acknowledging that the October 2024 invoices had been omitted inadvertently and instructing them to insert the same into backdated purchase orders.

v. Thereafter, on 27th November 2024, due to irregularities in initial repayment by the Respondents and the failure of the Respondents to make subsequent payments to UBI, the Appellant issued a demand notice to the Respondents, calling upon them to pay the outstanding amount and also

suspending business with the Respondents and issuing a stock retrieval letter, demanding the outstanding commercial dues.

vi. The Respondents on 7th December 2024 responded to the demand notice issued by the Appellant through their authorised representative. It is the Appellant's contention that the Respondents in the said letter admitted that there were outstanding dues payable to the Appellant, and further sought time to repay the same.

vii. On 9th December 2024, UBI addressed a notice of even date to the Appellant that the failure of the Respondents to repay their outstanding dues would affect the creditworthiness, reputation, and the CIBIL score of the Appellant. UBI also informed the Appellant that it would withdraw the Channel Financing of Rs. 200,00,00,000/-.

viii. On 7th February 2025, on account of refusal of the Respondents for inspection and audit of their records, the Appellant filed S.C. Suit No. 495 of 2025 before the Trial Court, seeking audit of the Respondents' records, and obtained an *ex parte*, ad-interim order under Order XXXIX Rules 1 and 2 of the CPC against the Respondents.

ix. On 11th February 2025, the Trial Court passed an order of even date directing audit of Respondents' accounts and granting leave under Order II Rule 2 of the CPC.

x. Between 17th February 2025 and 5th March 2025, the Trial Court ordered audit was conducted by Aneja Associates CA at Madurai and Chennai. In the said audit, the parties contended that it was clear that the Respondents had

paid Rs. 18,51,00,000/- to the Appellant, and further that the Appellant paid Rs. 15,18,50,297/- to UBI.

xi. Despite the credit facility sanctioned in favour of the Respondents being structured as a “without recourse” facility, on 21st February 2025 the Appellant was compelled to discharge the outstanding liabilities of the Respondents to UBI in order to safeguard its commercial standing and for continuation of its financing arrangements. Thereafter, on 21st May 2025, the Appellant lodged a police complaint before the Andheri Police Station against the Respondents, but the same was subsequently withdrawn due to the concerned disputed amount being more than Rs. 10,00,00,000/-.

xii. On 9th May 2025 the Respondents filed their written statement in Suit No. 495 of 2025, detailing financial manipulation and channel financing diversion, and also filed Notice of Motion No. 4675 of 2025. The Trial Court allowed Notice of Motion No. 4675 of 2025 and allowed the Appellant to unconditionally withdraw Suit No. 495 of 2025, with liberty to approach a Court of the competent pecuniary jurisdiction.

xiii. Between 1st December 2025 to 26th March 2026, pre-institution mediation was initiated by the Appellant under the Commercial Courts Act, 2015, wherein Respondent No.1-Firm declined participation for want of ledger reconciliation.

xiv. Thereafter, on 6th January 2026, the Respondents addressed personal WhatsApp messages to various personnel of the Senior Management of the Appellant, attaching a file titled “Complaint under SEBI” (draft complaint to

SEBI). It is the Appellant's contention that at the end of these messages there was a question that whether the Appellant wanted the Respondents to circulate the aforesaid complaints.

xv. The Appellant thereafter addressed a legal notice dated 7th January 2026 to the Respondents, calling upon them to cease and desist from circulating the draft complaint to the Securities and Exchange Board of India (SEBI) and making unsubstantiated allegations.

xvi. On 12th January 2026, the Respondents filed a complaint against the Appellant before SEBI on its SCORES portal, reiterating the allegations levelled against the Appellant in the draft complaint to SEBI.

xvii. On 16th January 2026, in response to the complaint before SEBI dated 12th January 2026, the Appellant addressed a letter of even date to SEBI contending that SEBI under the SCORES portal did not have the jurisdiction to adjudicate upon the claims made in the complaint dated 12th January 2026, as there was suppression of information by the Respondents.

xviii. On 1st February 2026, the Respondents sent a letter of even date to the Appellant in response to the legal notice dated 7th January 2026, along with an Independent Forensic Analysis Report issued by Mr. P.S. Sivasankaran (Ex-IRS, Senior Partner, Guardian Legal), confirming irregular transactions and diversion of channel finance funds by the Appellant.

xix. Between 10th April 2026 and 21st April 2026, the Respondents submitted detailed complaints to various statutory regulators, including the Competition Commission of India (CCI) on 10th April 2026, the Ministry of

Corporate Affairs (MCA) on 15th April 2026, the Income Tax Department, and the SEBI Market Intelligence Portal. The Respondents had further, on 18th April 2026, emailed the statutory auditors of the Appellant for initiating action against the Appellant.

xx. On 23rd April 2026, the Appellant instituted S.C. Suit No. 1090 of 2026 before the Trial Court, alleging defamation and commercial harm and preferred Notice of Motion No. 2480 of 2026 therein for urgent injunction.

xxi. On 29th April 2026 the Trial Court passed an *ex-parte* ad-interim order restraining the Respondents from filing “false complaints” and from “defaming, harassing, and threatening” the Appellant, till they appeared before the Trial Court and filed their reply.

xxii. The Respondents thereafter filed a detailed affidavit dated 15th June 2026 before the Trial Court in Notice of Motion No. 2480 of 2026, contending qualified privilege and truth for bona fide complaints to statutory authorities, and sought dismissal of Notice of Motion No. 2480 of 2026 and vacation of the *ex parte* ad-interim order dated 29th April 2026.

xxiii. The Trial Court by way of the impugned order dated 4th September 2026 dismissed Notice of Motion No. 2480 of 2026, refusing to grant an injunction to the Appellant and vacating the *ex parte* ad-interim order dated 29th April 2026.

xxiv. It is being aggrieved by this impugned order that the Appellants have filed the present Appeal from Order and Interim Application, seeking stay of the impugned order dated 4th September 2026 and restoration of the *ex parte* ad-

interim order dated 29th April 2026.

3. Learned Senior counsel Mr. Janak Dwarkadas, along with Senior Counsel Mr. Pradeep Sancheti, Mr. Vivek Kantawala, Mr. Ajit Makhijani, Ms. Namrata Vinod, and Mr. Rajat Jain instructed by MM Legal Associates appeared on behalf of the Appellant. Mr. Manoj Shirsat, Mr. Ayush Modi, Mr. Ashray Dave, Ms. Hritika Shroff, and Mr. Siddhant Trivedi appeared on behalf of the Respondent No. 1 and Ms. Aayu Saxena appeared on behalf of Respondents Nos. 2, 3, and 4.

4. I have heard learned counsel for the parties, and I have perused the impugned order and the proceedings with their assistance. I therefore proceed to decide the present Appeal from Order.

5. The primary contention of learned Senior Counsel Mr. Janak Dwarkadas on behalf of the Appellant is that the impugned order is bad in law and has been passed by the Trial Court without any application of mind and without taking cognizance of the facts, pleadings, and the legal position regarding the law on defamation. It is further his vehement submission that in the facts of the present case, a contractual dispute which had arisen between the Appellant and the Respondents has been used to primarily harass and defame the Appellant by resorting to tactics which almost border on blackmail. He has further submitted that the Trial Court failed to appreciate that the refusal of interim protection would expose the Appellant to continuing injury, and further that the complaints which were made to various regulatory bodies have caused irreparable injury to the Appellant, considering that the Appellant is a listed company. The fact that the Appellant is a listed company and that baseless complaints have been made to the

regulatory authorities, including emails to the ex-auditors of the Appellant and also to Senior Management of the Appellant, the same has definitely harmed the reputation and business, insofar as, the Appellant is concerned. He has further submitted that the repeated publication and dissemination of false information to regulators, investors, bankers, and auditors may cause irreparable and reputational harm, which cannot be suffered by a listed company like the Appellant.

6. He further submitted that the Trial Court failed to appreciate that the interim relief which was sought by the Appellant did not seek to interfere with the complaints already filed by the Respondents with the adjudicatory/regulatory authorities, but the real apprehension of the Appellant was that the non-grant of injunction would give a handle to the Respondents to make further filings or disseminate further false, frivolous, malicious, and defamatory allegations on the same subject-matter before multiple authorities, forums, or third parties. He also submitted that the Trial Court failed to appreciate that even on a *prima facie* examination of the complaints which are sought to be made, there was no real substance insofar as the allegations as made out by the Respondents were concerned. He submitted that the only reason why the Respondents are seeking to bring about these allegations is because of the fact that they are unable to fulfil and honour their contractual obligations, and in fact, there are considerable amounts of money which are due and payable by the Respondents to the Appellant.

7. Learned counsel on behalf of the Appellant has further vehemently submitted that the Respondents by no stretch of imagination can be whistleblowers in the facts of the present case. As whistleblowers, there was

nothing that the Respondents were doing in furtherance of bona fide public interest, and in fact, this was only a tactic which was being employed by the Respondents to settle scores with the Appellant on account of a contractual relationship gone sour. He therefore submitted that the Respondents' belated claim of being whistleblowers cannot by itself legitimize their otherwise actionable conduct, particularly when the Respondents raised no grievances during more than 15 years of their commercial relationship with the Appellant and continued to participate in and benefit from the various financial arrangements, which they have subsequently sought to challenge. He submitted that the decisions which were made to canvass the proposition, that to be considered a whistleblower, an action in the bona fide public interest has to be established, have been completely ignored by the Trial Court in the present case.

8. He further submitted that the Respondents are in fact blowing hot and cold at the same time inasmuch as, when the channel credit financing was made available to them on the recommendation of the Appellant, the Respondents did not cry foul and in fact availed of that credit facility. However, it was only when the dispute arose between the Appellant and the Respondents regarding monetary and commercial matters and the Appellant asserted its legitimate claims against the Respondents that the Respondents as a counterblast sought to disguise themselves as bona fide whistleblowers and thereafter raised the various allegations before statutory and regulatory authorities.

9. Learned Senior Counsel on behalf of the Appellant also submitted that the Trial Court had failed to appreciate the true and correct ratio of the High Court of

Telangana in the case of **NSL Sugars Limited v. Bala Srinivasa Rao Namburi**¹, wherein the grant of injunction was not predicated upon the Respondent therein being a former CFO or upon internal proceedings having been initiated against him, and where those circumstances which were merely relevant to assessing motive and bona fides. The decision recognized the right of a company to seek protection against false, frivolous, defamatory and derogatory allegations where the circumstances disclosed a real apprehension of reputation. The injunction was granted therein was qualified so as to not prevent the Respondent from pursuing legitimate criminal or statutory remedies or furnishing evidence before competent authorities and thereby clearly distinguishing lawful recourse from false and defamatory allegations. He submitted that the Trial Court by not applying the decision of **NSL Sugars Limited** (supra) by only relying on factual differences insofar as, that primarily in the case of **NSL Sugars Limited** (supra) dealt with an employer-employee relationship, and the present one being a contractual dispute, has completely erred in ignoring the aforesaid decision. He has also submitted that Special Leave to Appeal (C) Nos. 16407-16408 of 2021 preferred against the aforesaid decision has been rejected by the Supreme Court, thereby affirming that a company can seek injunction against false and frivolous defamatory derogatory allegations where circumstances disclose a real apprehension of repetition of the same. In the facts of the present case, it is submitted by learned Senior Counsel on behalf of the Appellant that considering that the Respondents have gone hammer and tongs about the fact that there has been fraud, tax evasion, and other financial

¹ CMA No. 141 of 2021

irregularities which have allegedly been made by the Appellant, it is a real apprehension on the part of the Appellant which drove them to seek the injunction against the Respondents, which the Trial Court has erroneously refused.

10. He further submitted that the Trial Court failed also to take into consideration that the Respondents themselves had admitted that they were to make payment of certain dues of approximately of Rs. 15,00,00,000/- to the Appellant. He submitted that the Respondent's threatening WhatsApp messages to the Appellant and successive complaints before SEBI, RBI, CCI and MCA raising the same allegations arising from the same cause of action, and the complaints and communication addressed to the Appellant's past and present auditors and bankers cumulatively demonstrated a continuing course of pressure and harassment which ceased only upon the Appellant obtaining interim injunctive relief. He further submitted that the Appellant, after considering these multiple sequences, had approached the Trial Court and established the Respondents' malafide motives, and likelihood of repetition and threatened injury. The Trial Court, without considering all these circumstances, and the overall probabilities emerging from the record overlooked the distinction between a bona fide exercise of liberty and a continuing course of conduct intended to pressurize and prejudice the Appellant.

11. Learned Senior Counsel on behalf of the Appellant also sought to place reliance on the decision of this Court in **Khanjan Jagdish Kumar Thakker vs.**

Vahid Ali Khan and Ors² to contend that the law of granting injunction in defamation proceedings differs in India as opposed to the United Kingdom. He submitted that though justification by truth is a well-accepted defense and is an answer which is available to an action against defamation, and also is a defense to an action of libel/slander, it is important that the person making the defamatory statements makes clear the particulars of justification and is also in a position to justify the veracity of the allegations sought to be leveled against the person defamed. He submitted that in the case of **Khanjan Jagdishkumar Thakker** (supra) this Court has categorically taken a view that it is a trite position of law in India that a mere plea of justification would not be sufficient for denial of interim relief, and the Defendant therein apart from it will have to show that the statements were made bona fide and in public interest, and that reasonable precaution was taken to ascertain the truth, and that the statements were based on sufficient material which could be tested for its veracity. In such circumstances, in India even at the interlocutory stage, the Courts are entitled to look at the material which is alleged to be defamatory in nature and grant injunctive relief. However, in the United Kingdom this position is at variance with the Indian law, inasmuch as where once a Defendant in a suit for defamation raises a plea for justification at the interim stage, the Plaintiff is not entitled for an interlocutory injunction. It was therefore his submission that the Trial Court has erred in not applying the aforesaid principles on law of defamation in India in the facts of the present case and has erroneously refused injunction against the Respondents. It was further his

2 2024 SCC OnLine Bom 1079

submission that the Trial Court did not examine the contents of the statements/complaints made to the regulatory authorities and also to the ex-employees, bankers and statutory auditors of the Appellant before rejecting the injunctive relief as sought for by the Appellant. It was therefore his vehement submission that the Appellant had suffered considerable reputational harm which affected the business of the Appellant, which is a listed company, and there was real and perceived apprehension that the Respondents would disseminate false and accusatory information against the Appellant, which the Trial Court had completely failed to appreciate and passed the impugned order.

12. *Per contra*, learned counsel on behalf of Respondent No.1-Firm submitted that the impugned order was a well-reasoned order and the Trial Court had not erred in refusing the grant of injunction against the Respondents. It was his primary submission that the Appellant was trying to mislead this Court by portraying the present dispute as a simple commercial dispute, and then went on to make submissions that the Respondents were defaming the Appellant without admitting that there were actual serious financial frauds and coercive practices which the Appellant was indulging in. It was his submission that the Appellant was indulging in the financial misreporting and corporate misconduct, which was very serious in nature, and the same was being sought to be flagged by the Respondents to the relevant regulatory authorities. The broad nature of wrongdoings perpetrated by the Appellant as alleged by Respondents is as follows—

- i. Systematic channel stuffing of stock up to nine times the

Respondents' average sales volume;

- ii. Coercive collection of quarterly advance payments escalating from Rs. 1 crore in 2018 to Rs. 7 crores in 2024, generating approximately Rs. 450 crores per quarter from all distributors combined and misclassified as regular sales collections;
- iii. Misclassification of interest reimbursements under the head "Special Distribution Charges" with incorrect HSN codes and wrongful 18% Goods and Services Tax (GST) without proper TDS;
- iv. Circular "Bill-to/Ship-to" loops artificially resetting the 180-day GST payment cycle under Section 16(2) of the Central Goods and Services Tax Act, 2017;
- v. Illegal inflation of sales to manipulate the financial records and deceive the Investors.
- vi. Coercive Channel Financing Scheme compelling the Respondents to avail Rs. 15 crore facility from UBI;
- vii. Instructions by senior officials to raise anti-dated and fabricated purchase orders; and
- viii. Unlawful suspension of the Respondents' access to the Appellants' proprietary IBIS system on 27th November 2024.

13. He therefore submitted that on account of these fraudulent financial practices, misrepresentation of accounts, and coercive channel financing, the Respondents being the distributors and whistleblowers sought to make the regulatory authorities aware of the aforesaid irregularities of the Appellant. He therefore submitted that the communications made to competent regulatory authorities detailing financial irregularities and corporate misconduct are protected as qualified privilege in law, and the Appellant cannot seek to restrain the Respondents by way of the Trial Court's injunction. He further submitted that the

complaints made to the statutory authorities and the communications made to the Appellant's statutory auditors or even employees/senior management of the Appellant cannot be termed as defamation, and hence the injunction was rightly denied by the Trial Court. It was further his submission that all the financial irregularities and the discrepancies in the account which were flagged by the Respondents to the statutory authorities were backed by contemporaneous records including emails from Appellant's own senior officials, ledger extracts, debtor confirmations, bank sanction letters, ante-dated purchase order instructions, and a forensic analysis report prepared by a former Commissioner of Income Tax. He therefore submitted that there was full credibility in the complaints made by the Respondents to the statutory authorities, and the same did not amount to dissemination of information to the public at large, inasmuch as, the Respondents were aggrieved by the financial malpractices of the Appellant and hence in public interest, they had bona fide complained of the same to the regulators. He also sought to place reliance upon the decision of the Delhi High Court in the case of **Rohan Book Co. (P) Ltd. v. Sachin Tyagi**³ to contend that communications made to lawful authorities in the course of raising grievances ordinarily fall within the ambit of qualified privilege, unless specific malice was pleaded. The mere fact that complaints were made to public authorities cannot by itself give rise to a cause of action for defamation. It was therefore his submission that in the facts of the present case, no malice was pleaded by the Appellant and considering that the Respondents had raised lawful grievances to public authorities, the same would

3 2026 SCC OnLine Del 1225

not amount to defamation.

ANALYSIS AND FINDINGS

14. I have heard learned counsel on behalf of the parties. I have given my anxious consideration to the rival submissions, and I am of the view that considering the present facts of the case it would be relevant to reproduce the definition of defamation as given in Section 356 of Bharatiya Nyaya Sanction, 2023:

356. (1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Exception 1.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Exception 2.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Exception 3.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Exception 4.—It is not defamation to publish substantially true report of the proceedings of a Court, or of the result of any such proceedings.

Explanation.—A Magistrate or other officer holding an inquiry in open Court preliminary to a trial in a Court, is a Court within the meaning of the above section.

Exception 5.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Exception 6.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Exception 7.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Exception 8.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Exception 9.— It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Exception 10.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

(2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.

(3) Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(4) Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

15. It is therefore clear on a plain reading of the aforesaid section that the manner in which the words are either spoken, or intended to be read, or signs or visible representations, or publications are in such a manner that they would harm or knowingly harm a person's reputation, except in the cases as given in Exceptions 1 to 9 of the aforesaid section, would amount to defamation. Explanation 2 to the section specifically specifies that a thing may amount to defamation if an imputation is concerning a company or an association or collections of persons. The real intent of the section therefore is that harm should be caused to a person through defamation, and the said harm should be in such a nature that it has a direct impact on the reputation of the said company or person.

The section nowhere contemplates that if a person is aggrieved by certain irregularities/decisions of a company, the said aggrieved person cannot make a grievance to the authorities for the purpose of redressal of their grievance and that such a grievance would harm the reputation of the Company. In the facts of the present case the irregularities/allegations which the Respondents sought to flag, and which are reproduced in paragraph no. 12 above, do not to my mind impute any reputational harm to the Appellant, and are, however, more in the nature of alleged financial irregularities or tax evasions, which are alleged to be made by the Appellant. The allegations, though serious in nature, especially with regards to tax evasion, etc., do not amount to defamation, and hence the Trial Court to my mind has not erred in not granting injunction to the Appellant against the Respondents. It is therefore not a case where any reputational harm has been caused to the Appellant, and further the Appellant has not shown as to how their business has got affected on account of the allegations that the Respondents have made against the Appellant. The allegations at best could be construed as arm twisting tactics or pressurizing tactics used by the Respondents to settle the contractual dispute between the Appellant and the Respondents. In the facts of the present case, it is an admitted position that the Appellant and Respondents had a long-standing commercial relationship which had gone sour, and it is the Appellant's contention that the Respondents owed an amount in excess of approximately Rs. 15,00,00,000/- to the Appellant. It is also the Appellant's contention that it is only when the Appellant sought to recover this amount from the Respondents that the Respondents resorted to the tactics of complaining to various statutory authorities.

However, this to my mind would not still amount to defamation of the Appellant, and it is well within the rights of the Respondents to raise their grievances with the statutory authorities. It is further not the case of the Appellant that they have sought injunction against the Respondents from making complaints to the regulatory authorities, however, it is the apprehension of the Appellant that the continuance of these complaints would have an adverse effect on the business of the Appellant, and which the Appellant seek to injunct. In fact, the Appellant themselves have submitted that they do not seek to interfere with or restrain the complaints filed by the Respondents with the statutory authorities, and the same could be pursued and adjudicated in accordance with law.

16. It is in these circumstances that I am of the view that the Trial Court has on the basis of appreciation of facts and the evidence led before it come to the conclusion that the injunction could not be granted to the Appellant. I however, disagree with the view taken by the Trial Court that the Respondents' legal right to act as a whistleblower could not be decided at the *prima facie* stage, inasmuch as, in the facts of the present case it is crystal clear that the Respondents were not acting publicly in bona fide interest but were only trying to raise their grievances with the statutory authorities. The Respondents to my mind are definitely not whistleblowers, and therefore, this finding of the Trial Court is erroneous and requires to be set aside. This however does not take away the fact that considering that the ingredients of defamation have not been satisfied in the present case, the Trial Court has rightly denied injunction to the Appellant, and to that extent no fault can be found in the approach of the Trial Court. I am therefore in agreement

with the submissions as made by learned counsel on behalf of the Respondents that raising grievances before the statutory authorities and flagging certain corporate governance issues/financial irregularities would not amount to defamation warranting an injunction. I am also in agreement with the submission made on behalf of learned counsel on behalf of the Respondents that in a suit for defamation, publication is an essential ingredient. The statutory authorities before which complaints have been lodged are independent quasi-judicial bodies, having requisite jurisdiction to adjudicate the complaints without the intervention of a civil court, and the complaints/grievances made by the Respondents to the aforesaid authorities would be adjudicated by them independently, and the mere pendency of the complaints could not therefore be construed as defamation. I am therefore of the view that the reliance placed by learned counsel on behalf of the Respondents on the decision of the Delhi High Court in **Rohan Book Co. (P) Ltd** (supra) is apposite to the facts of the present case, wherein it has been held that the communication made to lawful authorities in the course of raising grievances ordinarily fall within the ambit of qualified privilege. The relevant paragraphs of the aforesaid decision are reproduced below:

49. The Appellant has relied upon the Legal Notice dated 5-12-2020, the Reply dated 14-12-2020, the email dated 2-12-2020 and the alleged Complaints addressed to public authorities. *However, no specific statement, imputation, or words alleged to be defamatory have been set out or reproduced, either in the plaint or in any of the aforementioned documents.*

50. The Legal Notice dated 5-12-2020 sets out the allegations of the Appellant and cannot, by itself, establish any defamatory communication by the Respondent.

51. Likewise, the alleged complaints addressed to the District Magistrate, Chief Judicial Magistrate and Labour Authorities, have neither been reproduced nor particularised in the plaint. The defendant/Respondent, on the other hand, has annexed the same, but they cannot be looked into at this stage in view of Order VII Rule 11 CPC. In any event, communications made to lawful authorities in the course of raising grievances, ordinarily fall within the ambit of qualified privilege, unless specific malice is pleaded. The Plaint, however, does not contain any pleading of

malice nor does it disclose how such Complaints would per se, constitute defamatory imputations. The mere fact that Complaints were made to public authorities cannot, by itself, give rise to a cause of action for defamation.

52. The Appellant alleges that the Respondent spoke to employees of the Company with the intent to mislead and influence them, approached certain clients and made complaints to authorities. Yet, the plaint *does not reproduce the contents of any such email, complaint or communication*. No specific clients are named and no date-wise defamatory statements, are extracted. In the absence of precise statements and particulars of their publication, the essential ingredients of defamation are not disclosed from the pleadings. Though certain individuals have been named, the plaint does not set out or reproduce what was allegedly communicated to them, nor are any such statements annexed. A bare assertion that “*defamatory and derogatory statements*” were made, without specifying the words used or showing how they were conveyed to a third party, is insufficient in law to sustain a cause of action for defamation.

53. Furthermore, the reliance placed by the Appellant on *Kamala* (supra) and *Liverpool & London S.P.* (supra), does not advance its case. While those decisions reiterate that the averments in the plaint must be taken as correct at the stage of Order VII Rule 11 CPC, they equally require that the plaint must nonetheless, disclose a cause of action. In the present case, even assuming the averments in the Plaint to be true, the essential ingredients of defamation are not made out.

54. The reliance placed by the Appellant on the order dated 2-3-2023 passed in CS (Comm.) No. 94/2021, is also misconceived. The said Order merely directed return of the Plaint on the ground that the Commercial Court lacked jurisdiction to entertain the Suit. Any observation made therein regarding the subsistence of a cause of action, was only incidental to the issue of jurisdiction and was not a conclusive determination that the Plaint disclosed a legally sustainable claim for defamation. The observations made *vide* order dated 2-3-2023, were *neither final nor determinative of the existence of a legally sustainable cause of action*, and were made only in the context of deciding the issue of jurisdiction.

55. *To sum up*, apart from the bald assertion of reputational injury, no particulars are provided regarding loss of clients, cancellation of contracts, revenue decline, or any specific financial injury suffered by the Appellant. In *cases alleging injury to corporate reputation*, ordinarily at least some factual foundation demonstrating reputational or commercial harm, must be disclosed.

56. Upon a meaningful reading of the plaint, along with the documents relied upon therein, this Court finds that the allegations are *vague and general in nature* and devoid of the necessary particulars required to constitute a cause of action for defamation. The plaint neither discloses the *precise defamatory statements* allegedly made by the Respondent, nor how such statements were allegedly published, or the manner in which the reputation of the Appellant was harmed.

57. *The pleadings oscillate between allegations of misconduct and assertions of defamation, but never descend into the concrete particulars required to sustain a cause of action in law.*

(emphasis supplied)

17. In the case of **Govind Shantaram Walavalkar v. Pandharinath Shivram Rege**⁴, wherein this Court considered the defense of privilege in an action for

⁴ 1984 SCC OnLine Bom 299

defamation arising out of a report made to the police. This Court held that privilege is not a universal defense in matters of defamation and that its availability depends upon the nature of the occasion and the position of the person making the communication. This Court further held that, while qualified privilege may protect defamatory statements made on an occasion attracting such privilege, the protection is lost where malice or an improper motive is established. In the facts of the present case as held above there was no malice which was pleaded in the plaint by the Appellant and further the complaints were made to statutory authorities which were investigative bodies and hence the same could not be defamation in the strict sense and would attract the benefit of qualified privilege. Though in the case of **Govind Shantaram Walavalkar** (supra) this Court declined to extend absolute privilege however it would be beneficial to reproduce certain paragraphs which deal with the concept of qualified privilege :

13. Conceptually; privilege is a matter of defence permitted on the ground of public policy and public convenience so as to assure everyone that he would be free from responsibility for the publication of defamatory words, provided there exists an occasion for making the same. Absolute privilege is restricted to certain recognised occasions. It is not generally available. Even with regard to qualified privilege, occasion does play an important part. The law with regard to absolute privilege extending to the enumeration of occasions is not covered by any strait-jacket formula, but is ever in the process of evolution. By reason of the necessity to protect persons from actions in tort, juridically such occasions have been identified for affording protection. These are classified in several ways, but can be broadly stated to be one concerning judicial proceedings, *quasi-judicial* proceedings, official communications by one officer of the state to another, proceedings of the legislative bodies, fair and accurate publication of reports of judicial and parliamentary proceedings, communications between persons concerned in judicial proceedings, like client and lawyer or client and solicitor. With regard to the extension of absolute privilege in these matters and upon these occasions, the underlying principle that attracts the privilege is the necessity on the ground of public policy and convenience to keep free the flow of information and assure and safeguard freedom of expression.

14. The residuary field of privilege which has also the basis of public policy and public convenience is governed by qualified privilege. That too has clear relevance to the occasion and is not a mere matter of arbitrary whim or choice of the person making the allegations. Occasions should be such where such qualified privilege is

being claimed on the ground of public policy and convenience. Once the occasions are established, qualified privilege will extend to the statements which are *per se* defamatory and which are in fact untrue, but would be protected from the legal liability in torts. (See *Watson v. M' Swan*² *Beresford v. White*,³ *Watt v. Longsdon*⁴ and *Lincoln v. Daniels*⁵.) Upon such occasions, the person is permitted to state what he believes to be true, provided the statements are made honestly without any indirect or improper motive. The rule in this regard is based on general welfare of the society and is only available on the ground of public policy, provided the honesty of the maker of the defamatory statement is not in doubt. No doubt, reports of crime upon successful investigation lead to initiation judicial proceedings, but from that it cannot be said that in all matters, complaints lodged with the police are necessarily a step in an intended judicial proceeding. For it is equally possible that no judicial proceeding may ensue upon such a complaint to the police, the same being false and imaginary. Such a complaint is to the non-judicial authority and would rule out the extension of absolute privilege. The matter would fall in the arena of qualified privilege ordinarily, unless cognisance is taken by the Court of such report. However, in appropriate case, a question may arise when, after such a complaint, the same is lodged with the Court and did form part of judicial proceedings. But that would be governed by different considerations. For the purposes of the present appeal, it is enough to observe that the character of the statement made to the police, even under the Code of Criminal Procedure, is not the one to which privilege can be extended. The position of the police officer is not one of official confidence, (See *Hittu Bansi v. Sheolal Dinaji*⁶ *Subbayya v. Sub-Judge, Vijayawada*,⁷ and *Haji Ahmad v. State*,⁸), nor the inquiry is either *quasi-judicial* or judicial. It is for all purposes investigatory, by reason of the authority conferred by law upon the police to investigate into the same. Once that be the character of the police complaint, the matter is clear. Investigative proceedings do not furnish occasions for claiming absolute privilege. This position of law has been put beyond doubt even in England by the decision in *Lincoln v. Daniels* (Supra). There the Court was concerned with a defamatory statement contained in the complaint to the Bar Council which had no *quasi-judicial* or judicial authority and had at the most investigative authority. In that case, all the learned Lord Justices were of the view that only qualified privilege could be extended. Devli, L.J. after considering the decisions of the English Courts, has observed:

“The function of the Bar Council was to investigate the matter and take any action that they thought proper. The same sort of description would apply to a complaint made at a police station or to a letter addressed to the Director of Public Prosecutions. Such ‘Statements in aid of justice’ are said, in *Gatley on Libel and Slander* (5th ed., p. 210) to attract qualified privilege, and authority is cited for the proposition, though it does not appear that the question whether the privilege should be absolute or qualified has ever been specifically considered”.

Thus, the distinction appears to have been made between the steps in the judicial proceedings and the statements given ‘in aid of justice’. Statements made to the investigative machinery established by law, like the police, would, ordinarily, be the statements in aid of justice and nothing more. They could not be elevated to the status of the statements made as a step in the administration of justice itself. In the holding of Danckwerts, L.J. in *Daniels's case*, the position is further made clear that since the Bar Council was no more than an investigating body, without any judicial or quasijudicial function or disciplinary powers, the statements contained in the complaint to the Bar Council would attract qualified privilege and not absolute privilege (p. 269, supra). The position of the police in India would be the same with regard to the complaint made and entertained for the offences having reference to the Prohibition Act.

15. The decision of the Rajasthan High Court in *Lachhman v. Pyarchand*, (Supra) which appears to take the view that the report made to the police officer is a preliminary step towards moving the proper Court of law and, therefore, protected by absolute privilege, with respect, does not appear to lay down correct position of law. The decision mainly follows the English case in *Watt v. Longsdon* (Supra) which has been considered *in extenso* in England in *Lincoln v. Daniels* (supra) by the Lord Justices, all of whom ruled that the statements contained in the communication to a body like Bar Council, having no judicial authority, could not be protected by absolute privilege.

16. As far as this Court is concerned, in *Maroti Sadashiv v. Godubai Narayanrao*⁹, absolute privilege was not extended to the statements made before the police officer in the course of investigation, following the earlier decision of the Division Bench of this Court in *Gangappagouda v. Basayya*¹⁰. That also appears to be the position of the decision of the Patna High Court in *Surendra Nath v. Bageshwari Pd.*¹¹, where to the statement contained in the complaint to the Superintendent of Police qualified privilege was extended, and the decision in *T. Ayyangar v. K.S. Ayyangar*¹², which is the case concerning the petition to the Deputy Inspector General of Police, where the plea of absolute privilege was negatived. Further, as far as the cases of this court are concerned, the doctrine of absolute and qualified privilege has been considered in *Keshavlal v. Bai Girja*¹³, by observing that the same would be determined by the occasion, the relations and duty arising there from between the parties and the manner and circumstances under which the communication was made. In respect of qualified privilege, it is available when the occasion is lawful, and is limited by the necessities of the case, if good faith is proved, but not where the express malice or *mala fides* are established. *Narasimha Shankar v. Balvant Lakshman*¹⁴, is distinguishable as the case of privilege extended to a report by Government officer to the superior officer. Similarly, qualified privilege was extended to the statements made to the superior officer, though those statements were such which were not intended to be made in a Court of justice nor made as any step or at any stage of the judicial proceedings, in the case of *Jusab Tharia v. G.S. Morrison*¹⁵. These decisions of this Court clearly go to show that absolute privilege is not available unless the occasion is clearly identified for extension of such absolute privilege. By reason of official duty or by reason of any other public duty if the occasion arises, then the matter may be governed by qualified privilege. Complaints or statements made to the police, which do not form part of any judicial proceedings and particularly when matters do not go to Court, would not thus be governed by absolute privilege. Maximum that can be made available is the qualified privilege.

18. I am also of the view that the Appellant has not pleaded anywhere in the pleadings that there was any malice, nor have they disclosed as to how those complaints would constitute defamation, save and except repeatedly pleading that the same were a method to coerce the Appellant into giving up their legal rights and to intimidate them, and was more of a nature of settling scores as a fallout of

the contractual dispute between the Appellant and the Respondents. It is therefore my view that in absence of the aforesaid pleadings, the mere making of a complaint before the statutory authorities without establishing any concrete reputational/business harm, the Appellant was rightly denied the injunction by the Trial Court.

19. I am therefore of the view that the submission made by learned Senior counsel on behalf of the Appellant that insofar as the law relating to defamation in the Indian context is concerned, mere plea of justification would not be sufficient for mere denial of interim relief, needs to be rejected in the present case, inasmuch as the complaints per se to the statutory authorities were not defamatory, and they were grievances which the statutory/quasi-judicial authorities would ultimately adjudicate on the basis of the facts of the case. Therefore, the reliance of learned Senior counsel on the case of **Khanjan Jagdishkumar Thakker** (supra) would not help him advance his submission, as the facts of that case differ from the facts of the present case, and the decision was rendered in a different fact pattern. In the case of **Khanjan Jagdishkumar Thakker** (supra), the defamatory statement was made by an investigative journalist and publications were made online as well as through print media by the journalist, and there were articles/write ups which were widely circulated with the specific intent of lowering the image of Plaintiff therein in the estimation of public at large, and also in their social circle, and it is in that context that this Court applied the principle that even at interlocutory stage, the Court is very much entitled to look at the material which is defamatory in nature and granted injunction against the defendant therein. The facts of the present case

to my mind do not warrant this conclusion. However, I am in agreement with learned Senior counsel on behalf of the Appellant that indiscriminately publishing allegations to unrelated third-parties would have to be decided and considered when the Appellant establishes a *prima facie* case concerning those publications. However, that does not take the right from the Respondents to make their grievances to the statutory authorities, and the findings in the present order are only confined to the relief sought at the interlocutory stage, and particularly to communications made to statutory authorities.

20. It is clarified that nothing contained in this order shall be construed as a finding that the allegations of fraud, tax evasion, or coercion made by the Respondents are true, and equally there is no finding that the allegations are false. Those questions are expressly kept open for determination in accordance with law.

21. The Respondents shall also not construe this order as granting them unrestricted right to disseminate allegations against the Appellant to persons having no legitimate interest therein, and as held aforesaid, the present order is only confined to the relief sought at interlocutory stage, particularly to communications made to statutory authorities.

22. In view of the aforesaid and considering the settled position of law in **Wander Ltd. v. Antox India (P) Ltd.**⁵ that while considering an application under Order XXXIX Rules 1 and 2 of the CPC, the Appellate Court would not ordinarily interfere with the exercise of discretion by the Court of first instance or substitute its own discretion, except where such discretion has been exercised or

5 1990 Supp SCC 727

has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, the facts of the present case do not warrant any interference with the impugned order of the Trial Court, as the impugned order is a well-reasoned and well-considered order, and this Appeal from Order deserves to fail.

23. The Respondents shall remain at liberty to pursue the complaints already made before the statutory/regulatory/investigative authorities in accordance with law.

24. Nothing in this order shall prevent the Appellant from pursuing such remedies as may be available to in in law in respect of any communication which is ultimately established to be false, malicious and defamatory.

25. In view thereof, the Appeal from Order fails and is accordingly dismissed. The Trial Court is directed to dispose of suit expeditiously. There shall be no order as to costs.

26. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any do not survive and are accordingly disposed of.

(AARTI SATHE, J.)