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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.Nos.27 to 30 of 2015

R.Subramanian .. Petitioner in Crl.R.C.Nos.27 & 30/2015

City Capital Foundation Ltd.,

Chennai,

Rep., by its Director,

R.S.Raghavan

.. Petitioner in Crl.R.C.No.28 of 2015

Custodial Services (India) Pvt. Ltd.,

Chennai 600 007,

Rep., by its Director,

P.Rammohan

.. Petitioner in Crl.R.C.No.29 of 2015

Vs

1. ICICI Bank Ltd.,

Corporate Office:

ICICI Bank Towers,

Bandra Kurla Complex,

Mumbai 400 051.

Rep., by its Managing Director,

Ms.Chanda Kochhar

2. Mr.K.R.S.Varadhan,

S/o.K.V.Ramabhadran,

Chief Manager,

ICICI Bank Ltd.,

ICICI Bank Towers,

4th Floor West Wing,

Plot No.24, Ambattur Industrial Estate,

Chennai 600 058.

.. Respondents in

Crl.R.C.Nos.27, 28 and 29/2015

1. HDFC Bank,

Rep., by its Managing Director,

Mr.Aditya Puri,

HDFC Bank House,

Senapati Bapat Marg, Lower Parel,

Mumbai, Maharashtra 400 013.



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2. Mr.K.N.Prakash Narayanan,
Sr. Manager,
Remedial Management Unit,
HDFC Bank,
No.30, Cenotaph Road,
Teynampet, Chennai 600 018.

.. Respondents in
Crl.R.C.Nos.30 of 2015

Criminal Revisions filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order, dated 07.10.2014 in C.C.Sr.Nos.1003 and 1004 of 2013 & 205 and 206 of 2014 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr.Prakash Goklaney

O R D E R

Mr.R.Subramanian (petitioner in Crl.R.C.Nos.27 and 30 of 2015), M/s.City Capital Foundation Ltd., represented by its Director, R.S.Raghavan (petitioner in Crl.R.C.No.28 of 2015) and M/s.Custodial Services (India) Pvt. Ltd., represented by its Director, P.Rammohan (petitioner in Crl.R.C.No.29 of 2015) have filed separate complaints, under Section 200 Cr.P.C., for an offence, under Section 463 IPC, against Ms.Chanda Kochhar and Mr.K.R.S.Varadhan, Managing Director and Chief Manager of ICICI Bank Ltd. Mr.R.Subramanian has filed another complaint, under Section 200 Cr.P.C., for an offence, under Section 501 IPC, against Mr.Aditya Puri and Mr.K.N.Prakash Narayanan, Managing Director and Senior Manager of HDFC Bank Ltd. All the private complaints have been dismissed, as not acceptable. Being aggrieved by the same, the present revision cases have been filed.

2. As facts and submissions are similar, the revision cases are disposed of, by a common order.

3. Reading of the complaints discloses that recovery proceedings have been initiated by the Banks, before the Debt Recovery Tribunal, Chennai, against Subhiksha Trading Services Ltd., and others. In C.C.S.R.No.205 of 2014, Mr.R.Subramanian, petitioner in Crl.R.C.Nos.27 and 30 of 2015 has filed C.S.No.104 of 2011, before this Court, to terminate the proceedings before the Debt Recovery Tribunal, Chennai. Before the Debt Recovery Tribunal, the Bank had filed documents, titled as "Guarantees", which according to the petitioners, are void under Section 56 of the Contract Act. On 02.12.2010, Banks have filed their respective proof affidavits. As the documents, titled as "Guarantees", alleged to have been executed by the complainants, which according to the petitioners, are forged, private complaints, under Section 200 Cr.P.C., have been filed to issue notice to the accused, mentioned in the respective complaints.



4. Assailing the correctness of the impugned orders, Mr. Prakash Goklaney, learned counsel for the petitioners submitted that when the offences are made out in the complaints, the learned XIV Metropolitan Magistrate, Chennai, ought to have taken the case on file and issue summons to the accused. He further submitted that by making false averments, the Banks as well as the authorised officers, have committed offences, under Sections 500 and 501 of the Indian Penal Code. According to him, at the stage of entertaining the complaint, the learned Metropolitan Magistrate has to find out, as to whether, the averments made in the pleadings in the judicial proceedings, can be the subject matter of prosecution for defamation. He also added that accusations made in the pleadings, can only be defended under Exception 8 to Section 499 of the Indian Penal Code and that too, in good faith, after summon is issued to the accused. In this context, he placed reliance on the following decisions,

- (i) Jaisudershan v. R. Sankaran [1992 (1) MLJ 439],
- (ii) Surinder Mohan Vikal v. Ascharaj Lal Chopra [1978 AIR SC 986],
- (iii) M. Arumugam v. Kittu @ Krishnamoorthy [2009 (1) SCC (Cri) 245]
- (iv) G. S. R. Krishnamoorthy v. Govindaswami [(1992) 195 ITR 137 (Mad.)].

Heard the learned counsel for the parties and perused the materials available on record.

5. Before advertng to the correctness of the orders impugned, this Court deems it fit to extract Sections 463, 500 and 501 of the Indian Penal Code, as follows:

“463. Forgery:

Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

500. Punishment for defamation:

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

501. Printing or engraving matter known to be defamatory:

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.”



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6. In Surinder Mohan Vikal v. Ascharaj Lal Chopra reported in 1978 AIR SC 986], the Apex Court held as follows:

"It will be recalled that the complaint for the commission of the offence under section 406/420 I.P.C. was filed on March 15, 1972. It has specially been stated in the respondents complaint under section 500 I.P.C. that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under section 500 I.P.C. was committed on March 15, 1972, which was the date of the within the meaning of section 469 (1) (a) of the Code, and the of three years' limitation would be calculated with reference to ,date for purposes of the bar provided by section 468. But, as has b stated, the complaint under section 500 I.P.C. was filed on February 11, 1976, much after the expiry of that period. It was therefore permissible for the Court of the Magistrate to take cognizance of offence after the expiry of the period of limitation.

The High Court ignored the bar of limitation on the ground the "cause of action for proceeding for defamation could not before he (respondent) was acquitted by the Court of Session." the respondent was acquitted on April 1, 1975, it appears that High Court took the view that the "protection of section 468(c) was not available to the appellant. We are constrained to say the question of "cause of action could not really arise in this as the controversy relates to the commission of an offence. It been stated, sub-section (1) of section 469 of the Code specific provides that the period of limitation prescribed in section 468, relation to an offender, shall commence (inter alia) on the date the offence. It would therefore follow that the date of the of was March 15, 1972, when the defamatory complaint was file the Court of the Magistrate, and that was the starting point for purpose of calculating the three years' period of limitation. High Court clearly erred in taking a contrary view."

7. In Dr.Jai Sudershan v. R.Sankaran reported in 1992 (1) MLJ 439, at Paragraphs 5, 6 and 9, the Court held as follows:

"5. It is settled law that at this stage, when a mere process has been issued to the accused, all that the learned Magistrate has to see, is to find out whether the averments made in the complaint, if accepted, constitute an offence. If they do not or if there is any legal impediment to the commencement or continuance of the trial, it would be an abuse of the process of court and this court will have to invoke its inherent powers to quash the proceedings. If the averments make out an offence and there is no legal impediment to the trial, this court cannot stifle a prosecution at its very threshold. Every opportunity has to be given to a complainant to prove his



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case. Dr. J. Sudershan, rightly relies upon a decision of the Supreme Court in *State of West Bengal v. Swapan Kumar Guha* [1982 AIR 949 = 1982 SCR (3) 121] for accepting the above proposition of law.

6. Let us take the first contention of Dr. J. Sudershan that what is stated in the plaint absolutely privileged and can never be the subject matter of prosecution for defamation. The definition of 'defamation' in S. 499 of the Indian Penal Code, does not exclude averments made in pleadings in judicial proceedings. However, if the particular defamatory passage was made in such circumstances as would fall under any one of the 10 Exceptions to S. 499, the prosecution cannot succeed, though this is a matter which could be gone into only during trial. The illustration to Exception 8 would seem to indicate, that it could be the possible Exception under which, the question of privilege to statements made in judicial proceedings can be brought. Exception 8 is as follows :-

"Accusation preferred in good faith to authorised person. - Eighth Exception. 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 of accusation."

.....

9. The next contention of Dr. J. Sudershan is that, the present prosecution is premature and the respondent would have to wait till the civil suit is ultimately disposed of and in the event of the suit being dismissed, the petitioner could be subjected to any criminal prosecution. This contention is totally untenable. The allegation in the plaint is that the agents, servants and workmen of the defendants entered the office of the petitioner on several occasions, threatened to dispossess him and to cause injury, damage, alienate and remove valuable property, including important case documents. Nothing more is averred in the plaint. In this context reliance is placed by the petitioner on the decision in *Ram Kumar Pori v. State of U.P.* to contend that when the civil suit is pending, a parallel prosecution for defamation, could not be proceeded with. Such a proposition of law cannot be deduced from the above decision. In that case, the Supreme Court held that, when a civil court is seized of the question of disputed possession between rival parties, parallel proceedings by the Executive Magistrate u/S. 145, Cr.P.C. also to decide possession ought not to be proceeded with. This has no bearing on the case before us. The offending passage is per se defamatory and it is open to the respondent to choose to prosecute the petitioner, irrespective of the pendency or the result of the civil litigation. The Civil Court would confine its decision to



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the trespass, threat of injury and damage by the servants, agents and workmen of the various defendants and the entitlement of token damages by the respondent, while the criminal Court, the passage being per se defamatory, would proceed to find out whether any one of the 10 Exceptions to S. 499, I.P.C. would apply. The scope of the two proceedings is entirely different. They are not parallel."

8. In *M.Arumugam v. Kittu @ Krishnamoorthy* [2009 (1) SCC (Cri) 245], the Supreme Court, while dismissing the appeal, at Paragraph 10, held as follows:

"14. Allegations made in the said complaint petition, thus, in our opinion, make out a case for proceeding against the appellant under Section 500 of the Indian Penal Code, as thereby imputation concerning the respondent had been made intending to harm or knowing or having reason to believe that such imputation would harm his reputation.

15. For the purpose of bringing his case within the purview of the Eight and Ninth Exception appended to Section 499 of the India Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good.

16. It is now a well settled principle of law that those who plead exception must prove it. The burden of proof that his action was bona fide would, thus, be on the appellant alone.

17. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities."

9. The complaint filed by the petitioners, though may indicate the abovesaid offences, the fact remains that in the proof affidavit filed by the Banks, it has alleged mis-management and fraud. The allegations of forgery, material alteration and interpolation, in the documents, filed before the Debt Recovery Tribunal, are matters for evidence.

10. As rightly decided by the learned Magistrate, all the documents pertain to monetary transactions and that the matter is purely civil in nature. As rightly observed, only after full trial before the civil Court, it can be decided, as to whether, there is any allegation of interpolation or forgery by the Banks and its Officers.

11. Though some of the judgments relied on, by the learned counsel for the petitioners, may indicate that there is no bar for any criminal prosecution, if the pleadings in judicial proceedings, indicate defamatory statements and that Courts have held that



proceedings in the criminal Court are different, yet it could be seen from the material on record that banks have instituted the proceedings, in the year 2010, before the Debt Recovery Tribunal and proof affidavits have been filed in the year 2010 itself. Complainants have inspected the original documents in the year 2012. Thereafter, correctness of the same have been quashed in the year 2014. Whether the documents have been forged, interpolated and materially altered, can be very well examined by the Debt Recovery Tribunal and it is always open to the complainants/petitioners to adduce necessary evidence and that the Debt Recovery Tribunal, Chennai, is empowered to pass findings.

12. From the material on record, it could be deduced that there were exchange of notices, on the allegations made against the Banks and Officers. The Banks, in their reply notices, have contended that their stand is fortified by the investigation conducted by the Serious Fraud Investigation Office, Government of India and there is no need to withdraw the averments made in the proof affidavit. At this juncture, it is to be seen that when the defence of the Bank, on the basis of an investigation conducted by the special agency, viz., Serious Fraud Investigation Office, evidence on that aspect, can be adduced by the Bank, and open to cross-examination and analysis by the Debt Recovery Tribunal. Proof affidavit has been filed in the year 2010. Now after four years, the petitioners have chosen to institute private complaints. Jurisdiction of the Debt Recovery Tribunal, is not fettered to examine the correctness of the defence. There is no manifest illegality in the impugned orders, warranting interference.

13. In the result, all the Criminal Revision Cases are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The XIV Metropolitan Magistrate,
Egmore, Chennai.

+4 cc's to Mr.Prakash Goklaney, Advocate, SR.27686 to 27689.

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