

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.P.No.6436 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner-A.2 praying to set aside the order dated 08.12.2014 in S.R.No.1426 of 2013 on the file of the XIV Additional Chief Metropolitan Magistrate at Hyderabad whereunder after recording the sworn statement of the Accounts Executive Sri M.Naresh Kumar Reddy(pursuant to the authorization in the minutes of the meeting dated 16.06.2014) and the Managing Director Sri G.V.S.Reddy, of complainant-entity, taken cognizance for the offences under Section 499 read with 500 of I.P.C. on the private complaint filed for the offences mentioned of Sections 500,504 and 506 of I.P.C., filed by the 2nd respondent-M/s GVPR Engineers Limited dated 27.02.2013 against the three accused M/s Cube Construction Engineering(A.1) and Aravinda Gupta(A.3) including the petitioner Thakur Ashwani Singh(A.2) and consequently to quash the proceedings of the C.C.No.1350 of 2014.

2. Heard Sri Ankush Manhas, the learned counsel for the petitioner(A.2) so also the learned Public Prosecutor for the 1st respondent-State and Sri N.Naveen Kumar, learned counsel for the 2nd respondent-defacto-complainant and perused the material on record.

3. The petitioner Thakur Ashwani Singh is A.2 apart from the entity(A.1) M/s Cube Construction Engineering represented by him(A.2) and one A.3. The documents 1 to 11 relied are authorization by resolution of the meeting dated 16.06.2012, copies of agreements dated 20.12.2008 and 04.11.2008, copy of list of agreements (undated), nature not even written, copy of letter dt.29.05.2010, sub contract agreements(3 in number) dated 02.06.2010,copy of FIR in Cr.No.55 of 2012,copy of newspaper, dated 17.03.2012, details not given of which newspapers and how many, and a copy of final report of the Jammu and Kashmir police in Cr.No.55 of 2012.

4. It is to say before filing of the present complaint for the offences mainly under Section 499 read with 500 I.P.C., against the present complaint etc, herein on the report of the accused herein Cr.No.55 of 2012 was registered by

Gandhi Nagar Police of the State of Jammu and Kashmir and after investigation filed final (referred) report(document No.11 supra).

5. From the above background, the present complaint particularly from paras-1 to 8 in nutshell reads that the accused persons not honoured the terms and conditions of the special contract agreement, misused the complainant's machinery without executing the work entrusted to them from which the complainant suffered a lot in money and also with mental agony and complainant's company warned the accused and later terminated the special contract agreement from which the accused bore grudge against the complainant and filed a false report before the Jammu Police (Gandhi Nagar) of Cr.No.55 of 2012 under Sections 420,405, 120-B R.P.C. against the complainant company and its Directors. It is further averred that thereafter, the A.2(Thakur Aswani Singh-the quash petitioner) provoked the police by filing false information in apprehending them at the complainant's company office and humiliated the company and its officials and got the same published in Deccan Chronicle and other newspapers (not given their names) on 17.03.2012 and therein A.2 used defamatory language against the complainant's company and its Directors and its available staff. Apart from the same, it is averred that on false information given by A.2(quash petitioner), the police got freezed the complainant's accounts with Jammu & Kashmir bank, Abids branch, Hyderabad and thereby humiliated the complainant before bank officials and got its reputation damaged. It is further averred that after filing of the false complaint(in Cr.No.55 of 2012 in Gandhi Nagar of Jammu and Kashmir) by the accused supra, the complainant-company approached the police and provided the material information and answered the questions put by police and after detailed investigation, the police filed final report before the Court stating the complaint as false and baseless and defreezed the complainant's bank accounts.

6. The referred report in Cr.No.55 of 2012 not even placed before this Court to know whether it is a mistake of fact or per se held as false from the investigation; There is in fact no even any observation even by the learned Magistrate, much less referring to the final report to say it is referred as false. To substantiate the averment of final referred report in Cr.No.55 of 2012 is stating as false, nothing is placed before this Court. The other averment is that

accused herein filed number of false cases against the complainant's company and have been continuously harassing and causing torture and defaming the complainant's company and its Directors in the society, from which complainant's company suffered reputation and goodwill in the market and also in society and lost opportunities for its growth and thereby the accused(quash petitioner) is liable for loss of crores of rupees to the complainant's company.

7. No doubt, with quash petition material filed regarding the order of the III Additional Judicial Magistrate of First Class, Jammu, dated 08.01.2013 of final report No.15 referring to it particularly internal page 6 '*According to the investigating agency, no offence was proved against the accused and final report was produced before the Ld CJM Jammu who transferred the same to this Court for disposal under law*'. From this, there is nothing to say, the complaint filed is false or baseless but for to say no offence is proved from the investigation; the allegations in paras-4 and 5 of the complaint in this regard as to false information given to the police and filed number cases falsely etc.; it is as vague as anything and nothing even supported by any of documents referred supra, apart from the sworn statements of P.Ws. 1 and 2.

8. Coming to the complaint at para No.6, it is further averred that due to the giving of false report to Jammu and Kashmir police by the accused herein basing on false information given by A.2 to the news reporters and the police, Banjara Hills, Hyderabad, news published in Deccan Chronicle on 17.03.2001 and other newspapers against the complainant company and due to such willful acts of the accused, the complainant company suffered a lot and it caused damage to their reputation in general public at large, lost tremendous good will in the market, lost their opportunities and its growth. It is needless to say as referred supra, once it is not per se false or baseless but for no offence made out from the investigation, it cannot be within the purview of Section 499 read with 34 of I.P.C. but for if at all any other civil remedy. Further, undisputedly, the complaint no way referred any Eenadu daily newspaper clipping, much less dated 17.03.2012. It is very clear therefrom that there was no any Eenadu newspaper clipping that was made a basis for filing the complaint.

9. No doubt, a perusal of the scope of Section 200 and 202 read with 204 and 190 Cr.P.C. it is not the complaint contents alone but the material placed along with the complaint including the sworn statements of the witnesses examined if

any, that material is the basis for taking cognizance under Section 190 of Cr.P.C. by the learned Magistrate concerned.

10. Now coming to the sworn statement of the complainant's Accounts Executive as P.W.1 running in two pages; (needless to answer regarding scope of the so called F.I.R. No.55 of 2012 per se not defamatory but for if at all the so called paper clipping); page No.2 middle para of the sworn statement of P.W.2 reads as follows:-

"While things stood thus, at the instance of the accused, the newspapers Deccan Chronicle(English Edition of Hyderabad dated 17.03.2012) Eenadu Daily Newspaper, Hyderabad Edition (date not available on the certified copy of newspaper), alleging that Jammu police registered a case against the Director M.Naresh Kumar Reddy S/o M.Udayashanker Reddy, for the offences punishable under Sections 420,406,409 and 120-B IPC and when the Jubilee Hills police, tried to arrest, said persons found escaped etc. In fact, the question of escape does not arise and it is only a defamatory statement got published at the instance of the accused".

11. That is the sum and substance regarding newspaper clipping. It was not made a clear mention of so called statement is per se false, but for saying question of escape does not arise and that it is only what the defamatory statement got published at the instance of the accused. Here also what is the Eenadu paper clipping that is placed reliance not mentioned by P.W.1 in his sworn statement referred supra and there remains sworn statement of Veera Shankar Reddy(P.W.2) claimed as Managing Director of complainant company and referred to the award of Sub Contract and its cancellation and police registering Cr.No.55 of 2012 and filing of final report. Apart from it that is covered supra accused got published an article in Deccan Chronicle and Eenadu newspapers on 17.03.2012 stating that the complainant company cheated and thereby the complainant company's reputation is damaged in the sight of common public as well as financial institutions and due to the said publication, complainant's company undergone mental agony and so filed present case against the accused for taking necessary action under law. Even from this, it is not his version that police when came to arrest, the alleged absconding of them mentioned that is per se defamatory.

12. Now in the additional material, the newspaper clipping on which the complainant placed reliance is filed. So far as the newspaper clipping of

Eenadu regarding registering of Cr.No.55 of 2012 referred by police as no case made out with final report not in dispute, not found as a false case, on perusal shows the news clipping is own articulation of the Desk reporter or the Editor or other responsible persons regarding crime registered. The crime registration is not disputed. To say it is false there is no material as it is a referred report not as a false and baseless but no offence is made out.

13. Coming to this portion for arresting G.S.P.Veera Reddy and his son G.Veera Shekar Reddy in that crime(Cr.No.55 of 2012) by Jubilee hills police, it is prior to that police came and tried to arrest and those two persons fled away as per the information of Thakur Ashwani Singh who is A.2 to this private complaint case and the quash petitioner herein. Whether it is a defamatory statement per se if any is the criteria. Undisputedly from para-4 of the complaint, complainant himself stated about bringing of police of Jammu and Kashmir at the complainant's office. So the police personnel going to the complainant's office is not in dispute. If they were available, they could have been arrested, for nothing to say otherwise why not they were arrested. Even to say from para-5 of the complaint averments as to they approached Jammu and Kashmir police and gave information from which the report is referred as false. It is unknown whether they were served with any notice under Section 41-A of Cr.P.C. by assigning reasons under Section 41 of no grounds to arrest and as answer to that, they submitted any information. Such material is neither before the Court in filing the above complaint nor in the material filed in the quash proceedings to give much credence.

14. From this as referred supra, when the complaint is not made a basis from the Eenadu paper clipping much less the so called abscondence from the police of Jammu and Kashmir when came to them to arrest and it is not even their case that police also issued assigning reasons not to arrest to answer by giving 41-A notice; it substantiates that police came to arrest them as also admitted in para-4 of the very complaint of the Jammu and Kahsmir police came. It has not been mentioned in the sworn statement or in any of the material documents 1 to 11 or in the complaint with specific averments that they were available and not absconded or they were at any particular place and even knowingly the complainant made the false averments to defame and it is within the meaning of

Section 499 of I.P.C. to attract section 500 of I.P.C.

15. No doubt, the learned counsel for the defacto-complainant placed reliance upon two expressions of the Apex Court in

1) **SEWAKRAM SOBHANI Vs. R.K. KARANJIA,CHIEF EDITOR,WEEKLY BLITZ** (three Judge Bench) and following it(2) the expression of the Apex Court in **M.A.RUMUGAM Vs. KITTU ALIAS KRISHNAMOORTHY**. What is laid down therein is that as per the explanations to Section 499 IPC, the burden is on the accused and it is the matter to be decided as to statement made to the person or not, for them and for the own interest(explanations 8 and 9) is to be appreciated during the trial. It is the submission therefrom that quashing but for to face trial and any observation on merits even with reference to section 105 of the Indian Evidence Act could be only during trial.

16. In fact a perusal of the news clipping of the Deccan Chronicle speaks that it is the source of information by Gandhi Nagar(Jammu and Kashmir) police to the press correspondent about complaint filed by M/s. Cube Construction Engineering and its promoters in Chief Judicial Magistrate Court of Jammu and the Gandhi Nagar police registered the crime for cheating, criminal conspiracy and criminal breach of trust. G.V.P.R Engineering Limited of Hyderabad represented by its Managing Director G.V.S Reddy, and one of the Directors G.S.P.V. Reddy and they are facing the allegations of swindling of 8.4 crores and there is nothing to say the M/s. Cube Construction Engineering or any of its Directors responsible for the news item in the Deccan Chronicle.

17. Further, the order of the learned XIV Metropolitan Magistrate, Hyderabad in S.R.No.1426 of 2013, dated 08.12.2001 (impugned herein) in taking cognizance for the offences under Section 500 and 504 IPC at paras 4 to 10 read in nutshell that according to the complainant, the Eenadu paper clipping is a basis in saying said publication was intended to defame in saying from Jammu police came to apprehend them, they escaped. What the learned Magistrate observed therefrom at para-11 is:-

“Having prima facie considered the complaint averments, contents of sworn statements and the documents filed along with the complaint, I am of the opinion that complaint prima facie established and made out the case under Section 499 read with 500 I.P.C. to proceed against the A.1 to A.3 i.e.A.1 is the company being represented by A.2 and A.3”.

18. As discussed supra and at the cost of repetition even from the para-11, the Magistrate did not apply his mind to make the observation even to give any credence for saying he is of the opinion of complainant prima facie established and made out a case for the offence under Sections 499 read with 500 and/or Sec.504 I.P.C. and if so on what basis out of the several averments in the complaint. Is it a basis to say the police report from the perusal per se false. Is it a basis to say any of the documents per se shows statement is defamatory to make liable for criminal prosecution. It is a basis to say the Deccan Chronicle news clipping is defamatory and for which the accused are responsible. The order of the Magistrate seems influenced by what the complainant stated in paras 4 to 10 and without application of mind as otherwise, he could have mentioned at least with some basis. It is bereft of reasons. In fact, the private complaint no way speaks of Enadu newspaper clipping but for of Deccan Chronicle. What the contents of Deccan Chronicle are discussed supra. As held by the Apex Court in Sewakram Sobhani(supra) at para-28 when the press statement of Deccan Chronicle placed reliance in the private complaint and also the Cr.No.55 of 2012 referred report will no way make liable the accused for the offence under Section 500 of I.P.C. but protecting them, the case proceedings can be quashed invoking Section 482 of Cr.P.C. In **B.S.Joshi Vs. State of Haryana**-it was also held that it would not be expedient to allow a lame prosecution to continue as the ends of justice are higher than the ends of law. When such is the case, the cognizance taken by the learned Magistrate is per se unsustainable and proceedings of the complainant's case taken cognizance is liable to be quashed.

19. Accordingly, the Criminal Petition is allowed by setting aside the order dated 08.12.2014 S.R.No.1426 of 2013 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad and by quashing the proceedings. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 16.07.2015

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