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

Delivered on: 30 November, 2015

\+ **<u>CRL.M.C. 432/2015 & Crl. M.A. 2116/2015</u>**

SUKENDU SEKHAR BASAK & ORS ..... Petitioners

Represented by: Mr. Chinmoy Pradip Sharma and Mr. Ritesh Singh, Advocates.

Versus

DILIP KUMAR BOSE ..... Respondent

Represented by: Mr. Manan Verma and Mr. Ashim Shridhar, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

<u>SURESH KAIT, J</u>.

<u>CRL.M.C. 432/2015</u>

1. Vide the present petition, petitioners seek directions thereby quashing of impugned order dated 19.11.2014 on the basis of which summons were issued against them on 18.12.2014 by the ld. Metropolitan Magistrate, Saket Courts, New Delhi.

2. Further seeks directions thereby quashing the criminal complaint No. 324/1 titled as 'D.K. Bose v. S.S. Basak', pending before the said Court.

3. Ld. Counsel appearing on behalf of the petitioners submitted that respondent had filed a Suit for Declaration and Permanent Injunction being no. 55/2013 before the ld. Sr. Civil Judge, Tis Hazari Courts, Delhi, thereby stated as under:

> *"4. ....*
> *xii. Mr. Arun Biswas (Treasurer) misrepresented to donors and fraudulently collected donations as having exemption got*

under Section 80-G of Income Tax Act for donation toward the Samity.

xiii. They illegally resolved to induct Mr. M.K. Mookherjee, Mr. Dipak Mukhopadhyay and Mr. S.K. Saha, a co-opted Vice Presidents without ratification which is mandatory.

xiv. Mr. M.K. Mookherjee and Mr. Dipak Mukhopadhyay in fact had resigned in 2005 from membership were knowing made in year, 2010 Presidents of Kali Mandir Committee and Durga Puja Committee respectfully to perpetrate hatred amongst the members.

xv. They inducted in the executive as Vice President Mr. M.K. Mookherjee in spite of he having committed anti-Samity activities for which a serious complaint was lodged with the High Authority of the State.

xvii. They didn't allow the inspection of minutes of meeting of the Samity as well as applications of the newly inducted members contrary to Practise/Rule of the Society and in gross disobedience of clear directions Office of the Registrar of Society, Govt. of NCT of Delhi.

....

xix. Mr. Krishna Sen (President), Ajay Mitra (I) (Vice President); Tarun Mukherjee (Joint Secretary) fumed communal hatred amongst the Bengali and non-Bengali members in spite of objection from the plaintiff."

4. While filing written statement to the Suit mentioned above, Minto Road Puja Samity (respondent therein), stated as under:

> *"The defendant Society has been informed that plaintiff number 1 is either being investigated or prosecuted for acts involving moral turpitude in Case no. RC-4(E)/06/EOU-IX. If the same is true, in and of itself, this is reason enough to keep plaintiff number 1 at some distance from the Managing Committee of a non-profit society."*

5. Thereafter, respondent sent a legal notice to the petitioner no.1 on

10.05.2013. Same was accordingly replied on 21.05.2013 as under:

> *"8. It is clear from the above that no reckless or unfounded allegations were made against the plaintiffs in the written statement. The defendants only stated that they had been informed that plaintiff number 1 (your client) is either being investigated or prosecuted and that if the same were true, this would be reason to keep plaintiff number 1 at some distance from the Managing Committee of a non-profit society. The paragraph itself makes clear the reasoning and the context for the statement in respect of information received by the Samity with regard to pending criminal investigation or proceedings against your client."*

6. Ld. Counsel for the petitioners further submitted that along with the aforesaid reply cutting of various newspapers was also filed. One of which is of "METRO", Supplement of Hindustan Times dated 23.07.2006, wherein it is reported as under:

> *"CBI has registered a criminal case for cheating and forgery and prevention of corruption Act against Assistant Commissioner of Customs Ram Chandra, Custom Superintendent, D.K. Bose and a private person."*

7. Thereafter, respondent filed an application for striking out / expunging the scandalous pleadings in the Suit mentioned above stating therein as under:

> *"That the above quoted pleadings are unnecessary scandalous, frivolous and vexatious in the said Suit. They tend to prejudice, embarrass and delay the fair trial of the said suit. Further they are an abuse of the process of the Court. Such averments are pleaded intentionally knowing they are in bad taste and with oblique motive deliberately pleaded making use of its authority as the "Non General Secretary" under grab of authority to file written statement for the Defendant Society."*

8. Petitioners filed reply to the said application thereby stated as under:

> *"That to the best of the information available with the Defendant, the plaintiff is being investigated for acts involving moral turpitude in Case no. RC-4(E)/06/EOU-IX. If the same is true, in and of itself, this is reason to keep plaintiff at some distance from the managing committee of a non-profit society. If however, the information provided to the defendant turns out to be false, the defendant society undertakes to tender unconditional apology to the plaintiff for the same."*

9. Accordingly, ld. Civil Judge-I, Central District, Delhi, passed its order on 04.10.2013 as under:

> *"4. I have heard the arguments and have perused the record. Present Suit has been filed for derecognizing the Executive Committee of defendant Society and to restrain the defendant from conducting elections on 24.02.2013 or any other date by the Executive Committee of 2010-2012. The suit has been filed on the allegation of misdeeds committed by the Executive Committee of 2010-2012. None of these allegations are that the plaintiff no. 1 was kept away from the Managing Committee of the defendant Society. Therefore, the reason for keeping away plaintiff no. 1 from the Managing Committee is not relevant in the present case. Even in the reply to the application, the defendant has not demonstrated how the said portion is relevant in the present case. Thus, the aforementioned portion of paragraph no. 2 of Para wise reply of Written Statement is unnecessary. The application is allowed and the matter is ordered to be struck out."*

Moreover, the petitioners filed the amended written statement, which was accepted by the ld. Trial Court.

10. Ld. Counsel for the petitioners submitted that the act of the accused should be intentional and deliberate by which the victim is defamed and thereby losses his reputation in society. Whatever the petitioners stated that

was in good faith and for public good. However, the petitioners said nothing untrue and that was based upon the news reporting.

11. Ld. Counsel for the petitioners has relied upon the document of Ministry / Department, under the heading *"Ministry / Department wise summary of cases pending sanction for prosecution over four months as on 30.11.2010"*, annexed at Page 90 of the paper book, serial no. 25 of which indicates as under:

Sr. No.	Crime Number	Date on which sanction solicited / proposed	Name of Accused Officer	Designation	Organization / Department
…………………………………………………………………………………					
…………………………………………………………………………………					
25.	**RC-4(E)/06-EOU-IX**	**23.03.2010**	1. Pradeep Aggarwal	Sr. System Analyst, NIC	Ministry of Communication and Information Technology
			2. Ram Chander	Dy. Commissioner, DGI, CCE, ND	Customs & Central Excise, New Delhi
			3. D.K. Bose	**Supdt.**	
			4. Bhagwan Das Singhal	Dy. Commissioner	
			5. Rajinder Kumar Saini	Dy. Commissioner	
			6. Sunil Kumar	Supdt.	
			7. R.K. Kasotia	Supdt.	
			8. Paramjit Singh Saini	Supdt.	
			9. Ram Rattan	Supdt.	
			10. Bharat Bhusan	Supdt.	
			11. H.S. Teotia	Supdt.	
			12. Smt. Saroj Chadha	Supdt.	
			13. Inderjeet Kakkar	Supdt.	
			14. Appu Kutan Pillai	Supdt.	
			15. Shiv Narayan Sharma	Supdt.	

12. Ld. Counsel for the petitioners reiterated Para 8 above and stated that on the basis of newspaper reporting and the documents from the Ministry mentioned above, petitioners made no imputation directly and since the name of respondent is mentioned in the case cited above, there was no false communication on the part of the petitioners. Moreover, petitioners had tendered unconditional apology in reply to the application filed by

respondent in Suit no.55/2013 for striking out / expunging the scandalous pleadings.

13. The allegations against the petitioners as narrated in the criminal complaint filed under Section 200 Cr.P.C. are as under:

> *"6. That the accused persons made the above said averments / pleadings against the complainant intentionally and knowingly well that the said averments / pleadings will be read by large number of members of the society and the reputation and credibility of the complainant will be lowered in the eyes of the said members. The above noted pleadings were verified and approved by all the accused persons and signed by the accused no. 1 and all the accused persons are responsible for day to day affairs of the Puja Samity and were principle office bearers at the relevant time. All the accused persons continued and vouch to maintain the said scandalous and defamatory pleadings against the complainant without any remorse. The accused persons are responsible individually and collectively for contributing, selecting and editing the said written statement and the same was submitted before the Hon'ble Court with their consent, knowledge and connivance of each other primarily with the consent, knowledge and direction of accused no. 1. All the accused persons have made the defamatory averments in the written statement in their personal capacity.*
>
> *7. That the said pleadings were made intentionally, knowingly well that due to the said pleadings, the reputation of the complainant will be damaged permanently. The said pleadings / written statement were read by a large number of members of the Puja Samity and their friends and family members. After reading the said written statement the attitude of the members of the Puja Samity has changed drastically. The members of the Samity who used to hold the complainant in high esteem started avoiding the complainant after reading the said written statement. The members of the Samity who used to invite the complainant in every function avoided the complainant or excluded the complainant in their functions after reading the said written statement. The members of the*

Samity used to talk in hush tones and look at the complainant in a way that the complainant is a big criminal whenever they see the complainant. The above named accused persons, in furtherance of and / or with common intention, knowledge, belief and active connivance of each other filed the written statement without verifying the facts either from the concerned agencies or from complainant which contains highly defamatory and un-parliamentary material concerning complainant. The accused persons raised the defamatory averments in their pleadings / written statement intentionally which has no relevance and nothing to do with the subject matter of the suit."

14. Ld. Counsel further submitted that the aforesaid complaint has been filed malafidely by the respondent just to cause harm to the petitioners. If the ingredients of the offence, as allegedly committed, are not sufficient, the summons cannot be issued against the proposed accused. However, the ld. Trial Court vide its impugned order dated 19.11.2014 issued summons on the submission of the respondent that he has never been prosecuted by CBI. However, his name is mentioned in the list of summary of cases pending sanction for prosecution released on 30.11.2010, whereas in the next list published on 31.03.2013 his name is nowhere mentioned.

15. Ld. Counsel for the petitioners submitted that if there was a newspaper reporting and in the list of summary of cases pending sanction for prosecution, name of the respondent was mentioned, which was admitted by the respondent, then the petitioners had not committed any offence.

16. To strengthen his arguments, ld. Counsel has relied upon a case of ***State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Supp. (1) Supreme Court Cases 335*** wherein held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the

principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
xxxxxxxxxxxxxxxxxxxxxxxx
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
xxxxxxxxxxxxxxxxxxxxxxxx
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
xxxxxxxxxxxxxxxxxxxxxxxx
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. While concluding his arguments, ld. Counsel for the petitioners submitted that in view of the submissions and the dictum of the Apex

Court in ***Bhajan Lal*** *(Supra)*, the summoning order issued against the petitioners deserves to be quashed.

18. On the other hand, ld. Counsel appearing on behalf of the respondent submitted that after issuing summons, the petitioners appeared in the Court and were released on bail. He further submitted that a notice under Section 251 Cr.P.C. ought to be framed against the petitioners and they shall be at liberty to make all submissions before the Trial Court and accordingly, ld. Trial Court would consider the same and if any material is found in favour of the petitioners, Trial Court is empowered to discharge them from the case. However, the petitioners have approached this Court bypassing the trial court. He further submitted that no case has ever been registered against the respondent, however, it was intentionally, deliberately and falsely mentioned that respondent is booked in a criminal case. Moreover, the complaint filed by the respondent has been supported by 5 witnesses and CW3 and CW4 have clearly stated that the petitioners were distributing paper in the community members. As a result of which, the reputation of the respondent lowered in the Society. Thus, in such eventuality, ld. Trial Court has rightly summoned the petitioners.

19. To strengthen his arguments, ld. Counsel has relied upon a case of ***Arvind Kejriwal and Ors. V. Amit Sibal and Anr. 212 (2014) DLT 489***, wherein this Court held as under:

> *"20. In view of the authoritative pronouncements of the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra) and of this Court in Rajeev Taneja (supra), Urrshila Kerkar (supra) and S.K. Bhalla (supra), the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. in all summons cases arising*

out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra)."

20. Ld. Counsel further submitted that there are disputed facts, which can be tried before the Trial Court. Therefore, at this stage, this Court may not interfere with the order dated 19.11.2014 passed by the ld. Trial Court.

21. I have heard the learned counsel for the parties.

22. Admittedly, the issue in hand is arisen from the information given by the petitioners to Minto Road Puja Samiti qua the respondent that he is either being investigated or prosecuted for acts involving moral turpitude in Case No. RC-4(E)/06/EOU-Interim orders to continue and if the same is true, that is sufficient for keeping the respondent at some distance from the Managing Committee of a non-profit society. When the respondent filed a suit for Declaration and Permanent Injunction being No. 55/2013, the aforesaid fact qua the respondent was also stated by the said Samiti in their written statement. But, fact remains that said information was given by the petitioners on the basis of reporting of various newspapers including "METRO" Supplement of Hindustan Times dated 24.07.2006.

23. Thereafter, respondent filed an application for striking out/expunging the scandalous pleadings in the suit mentioned above, to which the petitioner filed reply stating that if any information provided by them turns out to be false, they undertake to tender unconditional apology to the respondent for the same. Accordingly, the aforenoted application was allowed by the learned Civil Judge-I, Central District, Delhi, vide its order dated 04.10.2013.

24. In addition to the newspaper reporting, the petitioners relied upon the document of Ministry/Department, under the heading "Ministry/Department wise summary of cases pending sanction for prosecution over four months as on 30.11.2010, wherein in the column of 'Name of Accused Officers', name of the respondent is shown at serial No.3 in RC-4(E)/06/EOU-IX. Despite, the petitioners had tendered unconditional apology in reply to the application filed by respondent in Suit No.55/2013.

25. However, the learned Trial Court vide its impugned order dated 19.11.2014 issued summons on the submission of the respondent that he had never been prosecuted by the CBI. It is an admitted fact that name of the respondent was mentioned in the list of summary of cases pending sanction for prosecution released on 30.11.2010, whereas in the next list published on 31.03.2013 his name was nowhere mentioned. Thus, if there was a newspaper reporting and name of the respondent was mentioned in the list dated 30.11.2010 of summary of cases pending sanction for prosecution, then petitioners have not committed any offence. Moreover, the information was not intentional of deliberate to harm the reputation of respondent but it was in good faith and for welfare of a non-profit society.

26. In view of the facts recorded above, I hereby set aside the orders dated

19.11.2014 passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi.

27. Consequently, proceedings pending against the petitioner before the trial court are hereby quashed.

28. Consequently, the petition is allowed with no order as to costs.

Crl. M.A. 2116/2015 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*. The same is dismissed accordingly.

SURESH KAIT
(JUDGE)

NOVEMBER 30, 2015
*JG/*sb/RS