IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.147 OF 2016

Ketan Anil Shah .... Applicant

Vs.

Motilal Oswal Commodities Broker Pvt. Ltd. & Ors. .... Respondents

Mr. Sandeep R. Karnik, Advocate for the Applicant.
None for the Respondents

Coram : Smt. R.P. SondurBaldota, J.
Date : 13th February, 2017

PC :-

1 This application challenges the order dtd. 18th November, 2015, by which the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai issued process against the petitioner for the offence punishable under Section 500 Indian Penal Code. Respondent no.1 is a subsidiary company of Motilal Oswal Financial Services Ltd. Respondent no.1 is a registered commodity broker carrying on business of trading in commodities and is a member of National Spot Exchange Ltd.

2 In the month of July 2013, the functioning of NSEL came under a cloud and subsequently the Economic Offence Wing, Unit-III, GB CB CID Crime Branch registered an FIR

being C.R.No.89/2013 under Sections 409, 465, 467, 468, 471, 474, 477A, 120(B) of Indian Penal Code along with Section 3 of the MPID Act against the promoters and directors of NSEL and the Management who carried out the operation of NSEL.

3 The applicant herein is a high net worth individual who has been trading on the stock markets both Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) since the last many years. Sometime in the month of October, 2012, the applicant expressed his desire to carry out trading in the commodities market and thus had got registered as a client with respondent no.1 and had opened up a trading account for the purposes of trading commodities on NSEL. When the NSEL scam broke out and when trading on commodities came to an abrupt halt, the exposure of the applicant in the commodities market with respondent no.1 was to tune of Rs.7.69 crores.

4 Respondent no.1 filed private complaint being CC No.135/SW of 2015 alleging that after registration of a complaint by Economic Offence Wing, the applicant started sending abusive mails to respondent no.1 and circulating to various recipients. He also started tweeting defamatory comments on his registered twitter account of which he is the administrator. The defamatory tweets have been reproduced at para 11 of the complaint. A bare perusal thereof is sufficient to know that the tweets are per-se defamatory.

5 Mr.Karnik, the learned advocate for the applicant submits that respondent no.1 -Company is one of the accused in C.R. No.89 of 2013 registered with Economic Offence Wing, which has been referred to in the complaint itself. He alleges that the applicant who is one of the witnesses in the complaint against respondent no.1 is being targeted in this manner with an oblique motive to pressurise him. The second argument of Mr. Karnik is that there is in fact mismanagement and misappropriation by the Company of which the applicant himself is one of the victims. Therefore the statements made by him are true.

6 The imputations are seen to be per-se defamatory. Since the imputations have been published over the Social Networking Websites, it's publication cannot be denied. Even if respondent no.1 is an accused in the offence registered with E.O.W., the proceedings against it are still pending. Hence, the defence of truth cannot be available to the applicant as of now. Therefore, there is no infirmity whatsoever with the order of issuance of process by the trial Court. Hence, the application is dismissed.

(Smt. R.P. SondurBaldota, J.)